



Appeal Decision

Site visit made on 1 November 2011

by R Ogier BA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 November 2011

Appeal Ref: APP/X5210/A/11/2155635

Tassli Coffee Bar, 279 Gray's Inn Road, London WC1X 8QF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Madeira Patisserie Ltd against the decision of the Council of the London Borough of Camden.
- The application Ref 2010/5239/P dated 27 September 2010, was approved on 23 May 2011, and planning permission was granted subject to conditions.
- The development permitted is Change of use from offices (Class B1a) at ground and basement levels to a café (Class A3), and alterations to rear elevation extract duct.
- The conditions in dispute are Nos 1 and 4, which state:
 - (1) 'The use hereby permitted shall not be carried out outside the following time: 07:00 hours to 18:00 hours Mondays to Fridays and 08:00 hours to 17:00 hours on Saturdays, Sundays or Bank Holidays'.
 - (4) 'Automatic time clocks shall be fitted to the equipment/machinery hereby approved, prior to commencement of the use of the units, to ensure that the plant/equipment does not operate outside of 07:00 hours to 18:00 hours on Mondays to Fridays and 08:00 hours to 17:00 hours on Saturdays, Sundays or Bank Holidays. The timer equipment shall be properly maintained and retained permanently thereafter.'
- The reasons given for the conditions are:
 - (1) To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of Policies CS5 (Managing the impact of growth and development) and CS7 (Promoting Camden's centres and shops) of the London Borough of Camden Local Development Framework Core Strategy and Policies DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) and DP26 (managing the impact on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies'.
 - (4) To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of Policies CS5 (Managing the impact of growth and development) and CS7 (Promoting Camden's centres and shops) of the London Borough of Camden Local Development Framework Core Strategy and Policies DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses), DP26 (managing the impact on occupiers and neighbours) and DP28 (Noise and vibration) of the London Borough of Camden Local Development Framework Development Policies'.

Decision

1. The appeal is dismissed.

Main Issue

2. The appellant requests that the permitted hours of use of the appeal premises (trading as the Madeira Café) be extended by one hour per day, to permit the

business to open at 06:00 hours on Mondays to Fridays and 07:00 hours on Saturdays, Sundays and Bank Holidays. The main issue is therefore the effect of such an extension on the amenity of neighbouring residential occupiers, in terms of noise and smell.

Reasons

3. The café is regarded as an A3 Use, its functions as an internet café, a takeaway food facility and a small bakery all being accepted by the Council as subordinate to its principal use as a café/restaurant. The Grounds of Appeal indicate that since the café first opened before planning permission was granted retrospectively for a change of use from B1a use, it has been trading to the hours for which approval is now sought. The upper floors of 279 Gray's Inn Road have a lawful residential use as three self-contained flats. The Council's appeal statement suggests that there are a further three units of residential accommodation at 277 Gray's Inn Road. Gray's Inn Road is a busy thoroughfare, carrying vehicular and pedestrian traffic between Holborn and the King's Cross/St Pancras Stations/Euston Road area.
4. The Council decided to impose a starting time for trading at 07:00 on weekdays and 08:00 on Saturdays, Sundays and Bank Holidays, to protect the amenity of neighbouring residents. The Council's officer report supports the appellant's submission that, at the time the subject application was considered by the Council, no complaints or representations had been made from neighbours about the actual trading start of 06:00 and 07:00 hours respectively. Nor is there any other evidence of concern being expressed by neighbours as to the duration of the café trading hours. Accordingly the Council's position in this matter can reasonably be interpreted as a reflection of the potential of the earlier starting time for trading on the residential amenity of neighbours.
5. The appellant maintains that the particular cooking and preparation activities engaged in at the café, principally the baking of bread and cakes, cause no undue impact on or disturbance to residents living on the upper floors, because of the specific nature of the operations. However, it would be impracticable to restrict the permitted use by specifying what food could or could not be prepared and cooked at the premises.
6. It is therefore necessary to take into consideration the potential impact of any use of the appeal property as a café or restaurant on the amenity of neighbouring residents. The appellant's café is located on a main pedestrian and vehicular thoroughfare where there is likely to be a noticeable traffic flow even at the early time of 06:00 hours on Mondays to Fridays or 07:00 on Saturdays. However, the location is in a part of Gray's Inn Road where there is not such a concentration of commercial uses and particularly those relating to food and drink, as further to the north nearer the junction with Euston Road and Pentonville Road.
7. PPG24 *Planning and Noise* refers to the hours between 23:00 and 07:00 as the period during which people are normally sleeping. The start time for trading of 06:00 hours on Mondays to Fridays for which the appellant seeks permission would break into that period. On Saturdays, Sundays and Bank Holidays residents in this locality might reasonably expect the relatively quiet period to extend to a slightly later time. Whilst effective plant and machinery to mitigate the effect of noise and odour arising from cooking activity could control the

- impact of those activities within the building at an earlier hour, this would not be effective in mitigating the impact of general activity such as the comings and goings of staff and customers at that time of day.
8. I conclude in all these circumstances that the proposed amendment to Conditions 1 and 4 of the planning permission to enable a café or restaurant at the appeal premises to open and operate one hour earlier than already permitted would have the potential to undermine the reasonable expectation of neighbouring residents to enjoy relative peace and quiet at those earlier hours of the day. Accordingly the appeal proposal would not meet the objectives of the development plan in Policies CS5(e) and CS7(h) of the London Borough of Camden Local Development Framework (LDF) Core Strategy and Policies DP12(c) and DP26(d) of the LDF Development Policies.
 9. In reaching this conclusion I have taken into consideration the terms of planning permissions granted for other A3 uses in the neighbourhood and referred to in the Council appeal statement, at 293 and 315 Gray's Inn Road. I note that neither of these permissions allows for the use to commence earlier than 07:00 on any day. Whether or not as the appellant suggests this is because an earlier commencement time was not requested by the applicants in those cases, the fact remains that no earlier trading start than 07:00 has been permitted.
 10. I am satisfied that the proposed extension of trading hours at the appellant's café would result in no material harm to the character or appearance of the King's Cross Conservation Area, and would thereby serve to preserve that character or appearance. However neither this finding nor any other matter raised in the written representations is sufficient to outweigh the considerations which lead to my conclusion on the main issue, on which basis the appeal does not succeed.

Richard Ogier

Inspector