



Appeal Decision

Site visit made on 4 August 2010

by **Gary Deane BSc(Hons) DipTP MRTPI**

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

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Decision date:
7 September 2010

Appeal Ref: APP/X5210/A/10/2121969

49 Endell Street, Covent Garden, London WC2H 9AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Messrs A and A Ziaeddia against the decision of the Council of the London Borough of Camden.
- The application Ref 2009/3361/P, dated 8 July 2009, was refused by notice dated 6 November 2009.
- The development proposed is the change of use from Class A1 shop to Class A3 restaurant as integral extension to No 47 Endell Street and installation of new shop front.

Decision

1. I dismiss the appeal.

Main issues

2. The main issues are the effect of the proposal on the retail character of the Covent Garden Area and on the character and appearance of the Seven Dials (Covent Garden) Conservation Area.

Reasons

Covent Garden Area

3. The proposal would change the use of the ground and basement floors of the appeal property, 49 Endell Street, from Class A1 (shop) to Class A3 (restaurant). In so doing, it would facilitate the extension of the existing Fish and Chip restaurant within the adjacent property at 47 Endell Street, *Rock and Sole Plaice*. The ground floor of No 49 would primarily include additional seating for diners and the basement would be used for storage, both as part of the proposed enlarged restaurant.
4. The appeal property is located within Covent Garden which is an area characterised by a rich mix of uses broadly set within a tightly contained, historic environment. Specialist retail uses, including independent fashion retailers, make a particularly strong contribution to the special character of the Covent Garden area. Policies within the London Borough of Camden Replacement Unitary Development Plan (UDP) seek to retain strong elements of retailing within centres and resist the loss of shops where this would cause harm to the character and viability of the centre.
5. The site is situated within a designated commercial frontage (CF) and a protected retail frontage (PRF), as defined in the Council's Supplementary Planning Document, *Revised Planning Guidance for Central London, Food, Drink*

and Entertainment, Specialist and Retail Uses (SPD). As the Council has adopted the SPD, following public consultation, I attach considerable weight to it. The site also falls within the Seven Dials (Covent Garden) Conservation Area.

6. In this case, the CF and PRF cover the same area, from 47 to 69 Endell Street (inclusive). The Council's evidence, confirmed by my own observations, notes that this area comprises 11 premises of which 7 units are in retail use, just over 63% of the total number of premises. This is significantly below the 80% threshold set out in the SPD. There are 3 units in food and drink use within the designated area, which equates to about 27% of the total number of units, above the 25% threshold set by the SPD. The proposal would lead to an even higher concentration of food and drink uses and a lower concentration of retail uses within these designated areas, in conflict with the advice within the SPD.
7. In assessing the SPD guidelines towards the CF and PRF, the appellant has referred to the dental surgery, which forms part of the same designated areas as the appeal premises. I am not aware of the detailed planning history of this property and the particular circumstances of this non-retail use. I also acknowledge the appellant's point that office development exists beyond the designated PRF and CF areas. The SPD also notes that to protect, amongst other things, the character of the area, new or extended food, drink or entertainment uses should be small scale, generally with a maximum gross floor area of 100sqm. Taking into account the use of No 47 at ground and basement levels as a restaurant, and based on the appellant's estimates of the floorspace of No 47 and 49, the proposed enlarged restaurant would also exceed this threshold.
8. This evidence clearly indicates to me that this part of the Covent Garden area is particularly vulnerable in terms of its retail strength. This vulnerability is reaffirmed by 2 vacant retail units, in addition to the appeal premises, and the significant concentration of one type of retail use, hairdressers, within the designated PRF and CF. Given the strategic importance of Covent Garden as a shopping area and as a major tourist destination, I consider that the loss of a retail unit and the proposed enlarged restaurant at this location would unacceptably harm the retail character of the Covent Garden area.
9. That the existing restaurant is a long established, popular and thriving business and a major tourist draw, which contributes to the vitality of the Covent Garden area, including its evening economy, is without doubt. I would also not dispute the appellant's view that the proposed enlarged restaurant would positively contribute to the local economy. However, I have no detailed evidence to suggest that a retail use at this location would not do likewise.
10. I also recognize the importance of tourism to Covent Garden and the important role that uses such as restaurants play in supporting a diverse evening economy. While national guidance, the UDP and the SPD encourage tourism related uses, they also acknowledge that such uses should be appropriately located and should not harm the character, vitality or viability of the centre.
11. The Council has indicated that there would be some flexibility in the application of policy if the retail use at No 49 were no longer viable. Although the appellant has advised that the appeal premises has been vacant for some considerable time that in itself does not necessarily indicate that No 49 is not

viable for retail use, because vacancy could be due to a number of factors. While an empty property can in the short-term harm vitality and viability, this does not add up to a compelling argument to overcome the longer-term harm that I have identified. The appellant has also referred to several retail shop closures in recent months and recent changes in the other areas where Class A3 uses have been allowed. I am not aware of the particular circumstances of these cases. Therefore, they do not weigh in support of the appellant's case.

12. I therefore conclude that the proposal would significantly harm the retail character of the Covent Garden area in conflict with UDP Policies R2, R3, and R7. These policies seek to ensure that development, including food and drink uses, should not cause harm to the character, function, vitality and viability of the area, particularly taking into account its effect on shopping provision.

Seven Dials (Covent Garden) Conservation Area

13. The Council appears to raise no objection to the physical alterations to Nos 47 and 49 including the proposed new shop front to the appeal premises. I, too, find these elements of the proposal acceptable as they would be in keeping with the character of the existing property and the style and materials of the proposed shop front would match that of No 47. However, given that part of the overall character of the Seven Dials (Covent Garden) Conservation Area is derived from its retail character, vibrancy and vitality, and this would be significantly eroded by the proposal, I find that it would fail to preserve or enhance the character or appearance of the Conservation Area, in conflict with UDP Policy B7. This policy seeks to ensure that development preserves or enhances the special character or appearance of the Conservation Area.
14. In reaching this conclusion, I accept that an empty property does little to positively contribute to the Conservation Area and that the proposal would make active use of part of the appeal building, increase footfall and contribute to the local economy.

Other matters

15. Interested parties raise several additional objections to the proposal. These include the potential for odours, noise, access and fire risk to the flats above the appeal premises, litter, pedestrian safety, sustainability and the need for larger restaurants. These are all important matters and I have considered all the evidence before me. However, given my findings with regard to the main issues, these are not matters upon which my decision has turned.

Conclusion

16. I have had regard to all other matters raised including the proposed access and toilet facilities for the disabled and the fact that the proposal would comply with other aspects of national guidance and UDP policy. However, these matters are not sufficient to outweigh the harm that I have identified. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Gary Deane

INSPECTOR