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Appeal Decision

Unaccompanied site visit made on 13 September 2005

by **PE Dobsen** M. Oxon DipTP MRTPI FRGS

an Inspector appointed by the First Secretary of State

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Date

20 SEP 2005

Appeal Ref: APP/X5210/A/05/1186035
291-293 West End Lane, London NW6 1RD

- 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 Creature Comforts against the decision of the Council of the London Borough of Camden.
- The application (Ref 2004/2452/P), dated 4 June 2004, was refused by notice dated 13 June 2005.
- The development proposed is "change of use of ground floor and basement from A1 to A3".

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Procedural Matters

1. The Council describes the application as follows: "variation to planning permission ... for the demolition of the existing buildings and the erection of a new building comprising basement and ground floor in retail use and 3 upper floors in residential use, in respect of the change of use of basement and ground floor from retail use (class A1) to restaurant use (class A3)".
2. Although the application was submitted some time before the recent, 2005 changes to the Use Classes Order, the appellants' main statement confirms that the application is seeking a change specifically to use class A3 (use as a restaurant or café) as defined in the recently amended Order. I have dealt with it as such, and not as a change to a use within new use classes A4 (drinking establishments) or A5 (hot food takeaways), which would carry other implications for local residential amenity.

Main Issues

3. From my inspection of the site and its surroundings, and from the written representations, I consider that there are 2 main issues in this appeal. These are: i) whether, in the light of the Council's adopted UDP policies, the proposed change of use would harm the vitality and viability of the West End Lane (West Hampstead) shopping centre; and ii) whether it would harm the residential amenities of nearby dwellings, particularly by reason of noise and disturbance.

Planning Policy

4. I have considered these matters in the light of the relevant policies (cited in the Council's decision notice) in the development plan, which is the Camden Unitary Development Plan (UDP), adopted in 2000. I note that policy SH8 permits changes of use within defined secondary shopping frontages from class A1 to non-retail uses, "provided the proposal

would not be detrimental to the character, function, vitality and viability of the centre". Policy SH18 deals with the potential effects on amenity of A3 uses, and states inter alia that it will seek to avoid a cumulatively harmful effect upon loss of retail outlets, traffic, parking and local residential amenity. It also deals with possible conditions on related planning permissions.

5. I note that the UDP is in the process of being replaced, but the Council does not rely upon any emerging policies.

Reasons

6. The appeal premises comprise the basement and ground floor of 291-293 West End Lane, a site which is currently undergoing redevelopment and which at the time of my visit was no more than a shell. Permission has been granted for a redevelopment to include retail use on the lower floors, with residential use of the 3 upper floors. The appellants now wish to use the lower floors as a restaurant, instead - most probably for occupation by the established Strada chain, although I attach no particular significance to the prospective occupier.
7. The premises lie in the northern part of a defined secondary shopping frontage on the west side of West End Lane. This is part of the West Hampstead District Centre, which extends for some distance to the south.
8. In this location, as described in the appellants' statement, there is already a substantial variety and preponderance of restaurants and cafes. That applies to the entire secondary frontage north of about Inglewood Road, such that, in my opinion, this part of the frontage no longer has any marked or significant retail character or function. Thus nearly all of the ground floor units between the appeal site and the fire station to the north, and several to the north of that too, are restaurants and cafes. The other side of West End Lane, opposite the appeal premises, is also a defined shopping frontage; but although this still contains some shops scattered among non-retail uses, its retail character and function also appear to me to be somewhat weak and probably in decline.
9. There is a Victorian mansion block (Inglewood Mansions) adjacent to the south of the appeal premises, and numerous other residential properties in the near vicinity, including above commercial premises. The locality forms part of the West End Green Conservation Area, but that designation per se is agreed to have no particular bearing on the main issues in this appeal.
10. In line with Government policy for town centres (most recently stated in PPS 6), UDP policies are intended to protect retail uses principally within defined primary frontages. But while I have some sympathy with the UDP policies' aim to bolster retail character and function even within secondary frontages, I doubt that this can realistically be achieved in locations where these have already been very substantially lost. (That is borne out by the agents' letter on the apparent lack of demand for retail space in this location). In fact, the last shop on this site closed some time ago, and there are no others in close proximity. If this part of the secondary frontage (i.e. north of Inglewood Road) was ever vital and viable as a shopping centre - and I have no clear information on that - it is certainly not so today. This change has already occurred, and as my colleague Inspector remarked recently in the nearby case of 341, West End Lane (now an apparently thriving café) there seems little to be gained by "shutting the stable door long after the horse has bolted".

11. I agree, too, with that Inspector's judgement that the character and vitality of the West End Lane centre as a whole is largely due to the "highly varied A3 offer" it contains. In my view, an additional A3 use in the appeal premises is unlikely to undermine this overall vitality and viability, but, on the contrary, would consolidate the area's credentials as a destination for eating-out. On the first issue, I have therefore concluded that the appeal proposal would not harm the vitality or viability of the West End Lane (West Hampstead) centre.
12. On the second issue, I note that restaurants very often co-exist successfully with residential premises, especially in lively, urban centres. However, I also accept that restaurants and cafes can be detrimental to the amenity of nearby residential premises, especially where there are - as here - significant concentrations of them, and that it is a legitimate role of planning policies to seek to prevent or at least mitigate any such harm. But in this case, apart from a general reference in the Council's officer's report, I have almost no evidence of any nuisance to local residents, of the types mentioned in the UDP policy, even of a cumulative type. There has been only one letter of objection from the many addresses consulted. Provided the Council's suggested conditions are imposed, I do not think that the proposed use would seriously harm local residential amenity. Given my conclusions on the first issue, I therefore propose to allow the appeal.
13. I have considered all the other matters raised, including both parties' references to transport, traffic, and parking, but they do not alter or outweigh my conclusions on the 2 main town planning issues in this appeal.

Conditions

14. The Council has suggested just 2 conditions, to which the appellants have not responded specifically, although their statements clearly anticipate the imposition of conditions. I agree that it would be appropriate and necessary to impose conditions requiring acoustic insulation for the extract duct, and limiting the restaurant's opening hours. On the latter, I have imposed hours which seem to me reasonable and, as far as I can tell, in line with other establishments in the area.

Formal Decision

15. I allow the appeal, and grant planning permission for change of use of ground floor and basement from A1 to A3 use, at 291-293 West End Lane, London NW6 1RD, in accordance with the terms of the application, Ref 2004/2452/P, dated 4 June 2004, and the plans submitted therewith, subject to the following conditions:
 - 1) The development hereby permitted shall begin before the expiration of five years from the date of this decision.
 - 2) The use hereby permitted shall not be open to customers outside the following times: 0800 hrs. to 2400 hrs. Mondays to Saturdays, and 0900 hrs. to 2300 hrs. on Sundays and Bank Holidays.
 - 3) Before the use commences, the extract ventilation system shall be provided with acoustic insulation and sound attenuation, and subsequently maintained, in accordance with a scheme to be first submitted to and approved by the Local Planning Authority.

Information

16. Attention is drawn to the requirements of section 76 of the Town & Country Planning Act 1990 concerning provisions for the benefit of persons with disabilities.

Pam Dobson

INSPECTOR