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Appeal Decision

Site visit made on 19 July 2004

by **John L Gray** DipArch MSc Registered Architect
an Inspector appointed by the First Secretary of State

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Date
- 2 AUG 2004

Appeal Ref. APP/X5210/A/04/1142374
341 West End Lane, London, NW6 1RS

- 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 Industrial and Mercantile Investments Ltd against the decision of the Council of the London Borough of Camden.
- The application (ref. 2003/0363/P), dated 19 May 2003, was refused by notice dated 22 August 2003.
- The development proposed is the change of use of the ground floor, upper ground floor and basement from A1 to A3 restaurant use with a new access to the flat above and a rear exterior extract ventilation flue.

Summary of Decision: the appeal is allowed and planning permission granted in the terms set out in the Formal Decision below.

Procedural Matter

1. The ground floor of no. 341 was already in use as a café when I made my site visit. Work to the upper floors was in progress. I did not enter the building. I could not tell if the works undertaken for the café use matched those in the appeal scheme. No ventilation flue had been installed at the rear of the building. I shall deal with the appeal on the basis of the application proposal rather than for retention of what has already been done.

Main Issues

2. The main issues in the appeal are whether the introduction of another A3 use in the area would harm the character, vitality and viability of the West Hampstead District Centre or cause unacceptable noise, fumes or smells for neighbouring residents.

Planning Policy

3. The London Borough of Camden Unitary Development Plan, adopted in 2000, (UDP) is the Development Plan for the area. Policy SH8 allows changes away from A1 use in secondary shopping frontages provided there would be no harm to character, function, vitality and viability of the centre. Policy SH18 addresses the detailed considerations in proposals for A3 use but also says that account will be taken of the number and distribution of such uses in order to avoid any cumulatively harmful impact.

Reasoning

4. No. 341 is at the very northern end of the District Centre and the most northerly building in a terrace of eight. It differs from the other seven in that it turns the corner into Mill Lane and has a double frontage to compensate for its diminishing depth. Five of the other seven have A3 ground floor uses; three of those have sitting out areas between the frontage and the back of the footway, defined by modest fencing, hedging and planters. The gist of the Council's case is that another A3 use in this parade, dominated by non-A1 uses, would bring a further diminution of its retail character. There are three ways of looking at that.
5. Firstly, if there was harm in the move away from an essentially retail function, then it seems to me to have happened some time ago. To resist A3 use when five out of seven adjoining properties are already in that use, and another in A2 use, seems to be shutting the stable door long after the horse has bolted. I see no merit in the argument in this particular case.

6. Secondly, the vitality and viability of the District Centre is normally better assessed as a whole, rather than by reference to separate short frontages. From Mill Lane down to the railway line there are over 80 units. A sense of the vitality and viability of the centre may be gauged from the fact that just two were vacant at the time of my site visit. Of the occupied units, marginally over half are in A1 use, just over a third in A3 use. It therefore seems to me that the character and vitality of the area may be due in no small part to the highly varied A3 offer it contains. I do not believe that an additional A3 use at the very northern extremity of the centre could noticeably affect its overall vitality and viability.
7. Thirdly, I consider that the three restaurants with outdoor sitting areas animate the terrace in a way that the A2 use, the dry cleaners and the takeaway cannot. The café at no. 341 also does this, taking advantage of the area between the curved building frontage and the footway. Without these sitting-out areas, there would be a potentially bleak expanse of hard surface in front of the terrace. The appeal scheme, even if different to the use actually commenced, may therefore be seen as offering an additional opportunity for visual enhancement. Given that the building apparently stands in a conservation area (no details have been provided), the clear benefits from refurbishment of the fabric, very much to be welcomed, could be added to by the style of the proposed use.
8. Accordingly, I find no compelling objection to the proposal in terms of the UDP policies referred to by the Council. Nor do I see any likelihood of harm to residential amenity. The flats above the ground floors (those that are still used as such) already sit above a number of A3 uses fronting a busy street. Another A3 use would not make any significant difference. The building is also sufficiently apart from other dwellings that no problem of noise should arise. As to smells and fumes, the Officers' report acknowledges that a suitably designed extraction system can avoid ill-effects and can be controlled by condition. Subject to details of the design, the proposed location of the flue is visually acceptable.

Conditions

9. In addition to a condition controlling extraction, the Council suggests what I consider a reasonable condition to limit opening hours in the interests of residential amenity.

Conclusion

10. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Formal Decision

11. I hereby allow the appeal and grant planning permission for the change to A3 restaurant use of the ground floor, upper ground floor and basement of no. 341 West End Lane, London, NW6 1RS, together with a new access to the flat above and a rear exterior extract ventilation flue, in accordance with the terms of the application ref. 2003/0363/P, dated 19 May 2003, and the plans submitted therewith, subject to the following conditions.
 - 1) The development hereby permitted shall be begun before the expiration of five years from the date of this decision.
 - 2) The use hereby permitted shall not be open to customers outside 0900-2300 hours on Mondays to Saturdays and 0900-2300 hours on Sundays and Bank and Public Holidays.
 - 3) Details of the equipment for the extraction of fumes and odours and any associated plant, machinery and flues shall be submitted to and approved in writing by the local planning authority before the change of use hereby permitted is implemented. Development shall be carried out in accordance with the approved details.


Inspector