



Appeal Decisions

Site visit made on 28 March 2014

by Miss A Morgan BSc (Hons) Dip UP MRTPI

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

Decision date: 16 June 2014

Appeal A: APP/X5210/C/13/2206540

Land at 46 Camden High Street, London, NW1 0JH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Mohammed Azom against an enforcement notice issued by the London Borough of Camden.
 - The notice was issued on 22 August 2013.
 - The breach of planning control as alleged in the notice is *without planning permission the unauthorised use of the retail (Class A1) part of the ground floor level (63 sq m) as an estate agent (Class A2)*.
 - The requirements of the notice are to *cease the use as an estate agency of the 63 sq m formerly used for retail purposes (as shown on the layout arrangement to the approved ground floor plan as part of planning permission ref: 2010/0605/P)*.
 - The period for compliance with the requirements is 18 months.
 - The appeal is proceeding on the ground set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/X5210/A/13/2199787

Land at 46 Camden High Street, London, NW1 0JH

- 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 Mr Nadeem Quazi against the decision of the London Borough of Camden.
 - The application Ref 2012/4549/P, dated 24 August 2012, was refused by notice dated 24 May 2013.
 - The development proposed is the change of use of ground floor from A1 to A2.
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Preliminary Matters

1. Planning Practice Guidance was published on 6 March 2014. I shall have regard to it in reaching my decision. I have not however, in the light of the issues in this appeal, considered it necessary to refer back to the parties and invite comments.

Formal Decisions

Appeal A: APP/X5210/C/13/2206540

2. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act as amended.
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Appeal B: APP/X5210/A/13/2199787

3. The appeal is dismissed.

The appeal site and background

4. In 2010, under ref:2010/0605/P, planning permission was given for the change of use of part of the existing retail unit (Class A1) to financial and professional services (Class A2). The current appeals relate to the change of use of the remaining retail part of the unit to Class A2 use (Estate Agent).
5. At the time of the site visit the front part of the appeal property facing Camden High Street was in operation as a hairdressers (a use falling within Class A1) and the rear part, accessed from Plender Street, was in operation as Allen Goldstein Estate Agents. The current arrangement does not comply with the requirements of the enforcement notice, however, as the layout does not conform to the layout arrangement forming part of planning permission 2010/0605/P.

Appeal A, ground (a) and Appeal B

Main Issue

6. The main issue in these appeals is the effect of the change of use on the function, vitality and viability of Camden High Street.

Reasons

7. The appeal site is located within the locally designated Secondary Shopping Frontage. Policy CS7 of the Camden Core Strategy (CS) and Policies DP10 and 12 of the Camden Development Policies (DP) of the Local Development Framework aim to protect and enhance Camden's centres by, amongst other things, providing for a range of shops, services and other suitable uses to provide variety, vibrancy and choice; and protecting and promoting small and independent shops, resisting their loss where it would cause harm to the character, function, vitality and viability of a centre. The policies are supported by the Supplementary Planning Document (SPG) *Camden Planning Guidance 5, Town Centres, Retail and Employment* (CPG5).
8. In order to provide for and retain the range of shops in the Borough, the Council aims to keep a certain proportion of premises in its centres in retail use (CPG5 para.2.7). In Camden Town, within the Secondary Frontages, that figure is 50% (CPG5 para.3.14).
9. The Appellants say, and there is no dispute, that an A2 use is acceptable in principle within this secondary frontage. Indeed that is demonstrated by the planning permission granted in 2010 for a part of the unit for just such a use. The Council's primary concern is the loss of further retail space which it considers will exacerbate an existing under provision of retail units along this frontage.
10. I have been provided with calculations of the percentage of units that remain in A1 retail use from the Council and from one of the Appellants. Whilst these differ, both confirm that the percentage of units in A1 retail use is less than the 50% that CPG5 seeks to retain. I recognise that the percentage is given in an SPG only and does not from part of the Development Plan. Nonetheless that

document supports the Development Plan policies, is a material consideration and the percentage figure given is a useful guide in seeking to strike the appropriate balance between maintaining the retail function and providing sufficient flexibility to enable other uses to be introduced to provide the variety, vibrancy and choice sought.

11. To further reduce the number of retail units within this frontage below the guide figure would be contrary to the aim of the policies to protect and promote small and independent shops. It is claimed that there is no demand for retail units in this area and that others as well as the appeal premises have lain vacant. However, that argument alone cannot be sufficient justification for allowing the appeals since it could be repeated for any number of retail units and would seriously undermine the Council's policies.
12. I have been provided with evidence to show that the appeal unit remained vacant following the 2010 permission and that it was marketed without success until early 2012. However, it is said that the unit was in a poor state of repair and continued to decline as the marketing campaign went on until largely boarded up to prevent further vandalism, forced entry and further dilapidation. This apparent neglect and allowing the property to fall into a state of disrepair would not, in my view, have been likely to attract potential occupiers. It does not seem that any effort was made to attract interest.
13. However at my site visit, I saw the unit has once again been subdivided, albeit in a different layout to the approved layout plan with 2010/0605/P, and that there is currently an A1 use taking place in the front part of the property. This undermines the argument that the alternative to occupation of the unit for A2 use is continued vacancy and impacts on the weight I afford the marketing exercise. Clearly an A1 use has been found and is actively taking place. Moreover the threat that a refusal of permission will lead once again to neglect is an argument that can be too easily used in an attempt to justify a proposal that is unacceptable.
14. The scope for variety and diversity of uses within the Secondary Shopping Frontage is recognised and provided for in the policies of the Development Plan. However, a further loss of a retail unit is not justified here where more than 50% of the units are already in non retail use. The balance between maintaining the retail function (including protecting and promoting small independent shops) and providing for a range of complementary uses to provide variety, vibrancy and choice would be undermined. The current use by a hairdresser suggests that there is some demand for retail units and that occupation is consistent with policy CS7 of the CS, and policies DP10 and DP12 of the DP.
15. Therefore I conclude that the development would materially harm the function, vitality and viability of Camden High Street and would conflict with the objectives of the above mentioned policies.

Other matters

16. Although the appeal site is in Camden Town Conservation Area neither party has argued that the use enforced against affects the character and appearance

of the conservation area. I have no reason to conclude otherwise. The use preserves the character and appearance of Camden Town Conservation Area.

Conclusion

17. I have taken into account all other matters raised in the written representations received in addition to the main issue discussed above but find nothing which individually or cumulatively outweighs the harm I have identified in my consideration of the main issue, nor which indicates that the appeals should be determined otherwise in accordance with the Development Plan. The appeals do not succeed.

Miss A Morgan

INSPECTOR