



Appeal Decision

Site visit made on 16 June 2014

by R Curnow MA(TCP), BSC(Hons), CMS, MRTPI

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

Decision date: 23 July 2014

Appeal Ref: APP/X5210/A/14/2213879
215a and 217a Belsize Road, London, NW6 4AA

- 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 Rokib Ali against the decision of the London Borough of Camden.
 - The application Ref 2012/0352/P, dated 5 January 2012, was refused by notice dated 22 August 2013.
 - The development is change of ground floor use from retail shop (A1) to Community Centre (D1). No internal or external alterations are proposed, except for changing the name on the fascia sign.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect that the development would have on the parade of shops in which the appeal site lies, by reasons of its retail character, function, vitality and viability.

Reasons

3. 215 and 217 Belsize Road are typical of properties on the south side of this road between its junctions with Kilburn Priory and Kilburn Vale. They present three storeys to the road frontage with, due to a change in levels, four to their rears. From the front, they comprise commercial premises with traditional shopfronts at ground level, with what appears to be two floors of residential accommodation above. These upper floors have independent accesses from the street. The appeal site consists of the ground floors of both properties and the basement of No 215. The appeal site, which is within the Priory Road Conservation Area; some 160 metres to the east of Kilburn High Road, which is a busy shopping street. As the site was being used for the development that is being applied for, I have edited the description of development in my header, above, to reflect this and I have also omitted reference to those parts of the original description that were not development.
 4. The form of development on the north side of the road here is similar, resulting in a small centre of twenty-three commercial units flanking the road at ground
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- floor level. This has been described as a 'parade' by the Council and I have used this to describe these twenty-three properties.
5. The policy framework for assessing development proposals involving retail premises is set out in the Camden Core Strategy 2010-2025 (CS), with further guidance contained in the Council's Camden Planning Guidance 5 – Town Centre, Retail and Employment. Amongst other things, CS Policy CS7 sets out to protect and enhance the role and character of Camden's retail areas, seeking to protect and promote small and independent shops and resisting changes of use that would be harmful to the character or function of these areas. This is reflected, amongst other things, in CS Policy DP12, the overall tenor of which is to set out the Council's support for strong centres whilst managing the impact of non-retail uses.
 6. CS Policy DP10 relates specifically to small and independent shops, providing support for these and setting out when planning permission will be granted for the net loss of shop floorspace. With regards to the latter, the two criteria relevant here are: d) that there is alternative provision available within 5-10 minutes walking distance; and e) that there is clear evidence that the current use is not viable.
 7. It is a matter of fact that there is alternative provision within the specified walking distance, in nearby Kilburn High Road. To support the contention that there is no viability in the units, the application was accompanied by a Retail Viability Survey, (the Survey), although its authors admit that its scope was limited by budgetary constraints.
 8. The Survey was undertaken in December 2011 and, at that time, there were nine retail premises in the parade. Five of these were described as serving the local community and, of these five, three were hairdressers. The Survey recorded footfall along the parade and people entering shops and, from this and information relating to business rates and rental levels, reached conclusions on the viability of the retail units. Of these nine premises, it considered that six appeared to be unviable, one might be viable but that there was some doubt over this and the remaining two might also be viable, but they served the wider community. However, these findings rely on a number of assumptions for which no strong evidence has been submitted.
 9. My site visit was undertaken in the order of thirty months after the Survey was carried out. At the time of my visit, ten properties were in what appeared to be either full or partial shop use and four were in use as restaurants or take-aways, with other uses comprising a pub, what appeared to be a recruitment agency and the appeal site. Furthermore, there had been seven empty or dormant units at the time of the Survey; at the time of my visit it appeared that there were five empty or dormant properties in the parade.
 10. Of the ten shops I saw, the majority were the same businesses that were present at the time of the Survey. This would suggest that the assumptions and consequent doubts expressed regarding their viability were misplaced. One property that had been brought back into use was that at 213 Belsize Road, adjacent to the appeal site, which was in use as a patisserie/café. Whilst the parade is not at all busy in the way that Kilburn High Road is, one would not

- expect this to be the case. However, it was fairly busy and vital when I visited the site, and I would not have described it as being quiet.
11. Given that the business climate was difficult during the period between the Survey and my visit, the fact that empty units had decreased during that period and that most of the shops I saw were trading under the same names as at the time of the Survey, this suggests that there are reasonable prospects of viability in shops in the street.
 12. I have been given limited evidence regarding the viability of the units that form the appeal site. When last in shop use, these sold fruit, vegetables, confectionery, grocery and newsagent's items and reportedly became unviable as a result of the opening of a small Tesco store nearby, on Kilburn High Road. However, whilst I appreciate that the owners of the units worked hard at keeping them trading, I cannot conclude from what I have been told of these units that their use for any retail purpose would be unviable.
 13. In the light of the above, it has not been clearly demonstrated that the use of the units for retail purposes would not be viable and, therefore, the proposed change of use would be contrary to the terms of CS Policy DP10 e). The unjustified loss of these shop units would cause harm to the retail character, vitality and function of the parade, contrary to terms within CS Policy CS7, largely mirrored amongst those of CS Policy DP12, and would undermine the Council's clear policy aims for small shops and small shopping areas.
 14. I am aware of support in CS Policy CS10 for, amongst other things, community facilities to serve the Borough's growing population, and the general support for such uses in the 'Big Society' philosophy; however, these do not outweigh the harm that would arise from the loss of the shop units.
 15. I have taken into account the suggestion that the use might have a positive effect on the other shops, but even though the use has been undertaken since August 2009 there is no specific evidence put forward to support this. Although it may be that the nature of the UK's high streets are changing, the evidence here is that retail use in the parade is enduring and growing.
 16. I am aware of the reported assistance of the Council for the relocation of the community centre use but, in the light of the policy considerations, this has not played a role in my decision. Whilst the original officer's report lent support to the scheme, it was not incumbent upon the Council's Members' Briefing Panel to accept this. The formal decision of the Council was to refuse permission, and it is this decision that forms the basis of this appeal. Similarly, whilst the Council as landlord might have given its permission for the change of use, this is not binding upon the Council as the local planning authority.
 17. As the site lies within the Priory Road Conservation Area, there is a statutory duty to pay special regard to the desirability to preserve or enhance its character or appearance. In this respect, whilst the change of use would be contrary to shopping policy, it would pass the test of preserving the character of the conservation area.

Other matters

18. Concerns have been raised regarding noise generated by the proposed use; however, given its location in a parade where there are also take-aways and a pub, I cannot conclude that this use would adversely affect the living conditions of the area's residents. Similarly, given its location in the parade and proximity to a railway station and bus routes, I do not find that the proposed development would lead to increased congestion and parking problems. Whilst there may be other community facilities in the area, these do not militate against this proposal.

Conclusion

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

20. The Government's Planning Practice Guidance was published on 6 March 2014. The content of the Guidance has been considered but, in the light of the facts of the case, the document does not alter my conclusions.

R. Curnow

INSPECTOR