

Appeal Decision

Site visit made on 17 August 2016

by **S J Lee BA(Hons) MA MRTPI**

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

Decision date: 19th September 2016

Appeal Ref: APP/X5210/W/16/3151286

Units 1 and 2, 106 New Oxford Street, Camden, London WC1A 1HB

- 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 Kimchee Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref 2015/5800/P, dated 12 October 2015, was refused by notice dated 7 March 2016.
 - The development proposed is the change of use of the basement and ground floor from Retail (Class A1) to Mixed Use A1/A3 (Sui Generis) use.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of the basement and ground floor from Retail (Class A1) to Mixed Use A1/A3 (Sui Generis) use at Units 1 and 2, 106 New Oxford Street, Camden, London WC1A 1HB in accordance with the terms of the application, Ref 2015/5800/P, dated 12 October 2015, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan at 1:1250; AP001-I1; AP008-I1; GA-00-21 Rev. 6; C371/001 Rev. A; C371/002 Rev. B; C371/003.
 - 3) The use hereby permitted shall not be carried out outside the following times: Monday to Friday 0900 to 2030; Saturday 0900 to 1930; Sunday and Bank and Public Holidays 1000 to 1930.

Main Issue

2. The main issue is the effect of the proposed change of use on shopping character, function, vitality and viability of New Oxford Street.

Reasons

3. The appeal site is an A1 use which is currently operated by the appellant as a food and drink retailer. The site is within the Bloomsbury Conservation Area and is defined as part of a primary frontage within the Central London Frontage Area. This is classed as a defined shopping centre in the Core Strategy¹. The

¹ Camden Core Strategy 2010-2025

- site is near to the Tottenham Court Road underground station, a number of important visitor attractions and a high degree of commercial activity.
4. The Council's Town Centres, Retail and Employment planning guide² (CPG) highlights the growth in cafes and sandwich shops in this area and states that in order to protect the shopping function of the area, permission will generally not be granted for any use which reduces the proportion of A1 uses in the frontage below 80%. Both parties accept that the proportion of A1 units in the frontage would fall below this threshold as a result of the change of use.
 5. The Council's evidence indicates that between Dyott Street and Bainbridge Street, eight of the 10 units were primarily selling food and drink, though six of these, including the appeal site, fall within the A1 use class. One was in an A3 use (granted through a temporary permission) and one was A4. It would appear that one of the A1 food and drink units has become vacant since the Council's survey, though there was no sign of marketing information or agent's boards. This could, however, provide some opportunity for a non-food related operator to take up space on the street. Notwithstanding this vacancy, there are no signs that either this frontage, or the area in general, is suffering from stress or lack of vitality.
 6. This appears to be a street people pass through to reach the important transport, tourist, leisure and commercial destinations in the vicinity of the site. There is a reasonably high level of footfall, but the make-up of the street as it stands means that it is unlikely to be a significant retail destination in its own right, particularly once past the Burtons/Dorothy Perkins units on the corner of New Oxford Street and Tottenham Court Road. Irrespective of its definition as a primary frontage, this is a location which is currently providing a complementary convenience role for the large number of people passing through the area. If people are specifically visiting these units then it is likely to be for the food and drink offer and not the limited number other types of shop.
 7. I acknowledge the Council's concerns over the potential opportunity cost of releasing an A1 unit, the proliferation of sandwich and coffee shops and their desire to try to increase the retail role of primary frontages over time. As a result of this, the CPG sets a very high bar in terms of the proportion of A1 uses on a primary frontage. However, the retail market has changed significantly in recent years and, even in primary shopping locations, there has been a move toward a greater variety of operator catering to different needs. The recent changes to the General Permitted Development Order (GDPO) have also created additional flexibilities, largely in order to try to react to the changing nature of the high street. While it is clearly legitimate to identify a point at which the Council feels harm to the shopping function of a street might take place, this also needs to be considered in the context of the current nature of retail activity, existing levels of vitality and viability and the Development Plan's policies. The CPG itself states that proposals which drop frontages to below 80% A1 use will be generally, rather than universally, resisted which implies there may be situations where a reduction may be acceptable.
 8. Notwithstanding the difference in use class, the A3 and A4 units do not appear significantly different to their A1 counterparts on the street. While there may be some distinction in terms of menu, opening hours and business models,

² CPG 5: Town Centres, Retail and Employment (September 2013).

they all have a large amount of indoor seating and similar types of window display. Members of the public are unlikely to discern any practical difference in the nature of the units. The actual change in the nature of the existing business would be negligible insofar as it would allow people who already have the opportunity to drink/eat their purchases on the premises to have hot food. It is difficult in such circumstances to know exactly where the A1 element would end and the A3 element begins. However, I am satisfied that the current operation and focus of the unit would remain in place.

9. There would, therefore, be no obvious effect on the character or function of the street or the attraction of the area to visitors. I have seen nothing which would suggest that this proposal would undermine the existing provision of shopping services in this location. Neither would it lead to any actual increase in the number units selling food and drink on the street. In this case, I do not see any direct harm to the vitality and viability of this street or the Central London Frontage Area as a whole from this frontage dropping below the 80% A1 threshold.
10. The proportion of units in food and drink uses in this area also suggests that if the unit did become vacant in the near future, the most likely occupant would be another food and drink operator. The proximity of the unit to the Tottenham Court tube station and Oxford Street does not appear to be attracting more traditional A1 shops and I have seen no compelling evidence to suggest that there is a large demand for this type of retailer in this location. Dismissing the appeal would also be unlikely to increase the prospect of the make-up of the street reverting to what the Council wishes to see, particularly as there is no suggestion the current use would cease. Although planning permission would need to be granted, this change would not prejudice any future return to A1 use should circumstances change. Neither should it lead to an undesirable precedent, as each case can continue to be assessed on its merits in terms of the individual and cumulative impact of any proposed change of use.
11. On the main issue I conclude that the proposed change of use would not harm the character of the street, the existing shopping function of the centre or its vitality and viability. Accordingly, the change of use would be in accordance with Policies CS7 of the Core Strategy and DP12 of the Development Policies³ document which, amongst other things, seek to protect and enhance Camden's defined shopping centres. In reaching this view, I acknowledge that the change of use would not comply with the guidance in the CPG but this material consideration does not alter my overall finding on the main issue.

Other matters

12. The proposal would have no material effect on the exterior of the building or the existing requirement for external flues, fans or other equipment. The Council is satisfied that the change of use would preserve the character of the Bloomsbury Conservation Area and I have seen nothing which would lead me to disagree with this conclusion.
13. Both parties have drawn my attention to appeal decisions which they feel support their arguments. I have not been provided with the full details of the circumstances of these appeals but note that they apply to different locations,

³ Camden Development Policies 2010-2025

types of centre within the hierarchy and, in some cases, different types of end user. Accordingly, their circumstances may not be directly comparable to those which apply in this appeal. I have, in any case, reached my own conclusions on the appeal proposal on the basis of the evidence before me.

Conditions

14. I have had regard to the Council's suggested conditions in the context of Paragraph 206 of the National Planning Policy Framework. In addition to the standard condition on timescales, I have included a condition specifying the relevant plans as this provides certainty. I have also imposed a condition on the operating hours of the store both in the interests of noise and disturbance to nearby occupiers and to help maintain the current operating characteristics of the store in order to help protect the shopping function and character of the street. I have amended this slightly to include reference to bank and public holidays for completeness.

Conclusion

15. For the reasons given above I conclude that the appeal should be allowed.

S J Lee

INSPECTOR