



Appeal Decision

Site visit made on 10 July 2017

by C L Humphrey BA (Hons) DipTP MRTPI

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

Decision date: 17th July 2017

Appeal Ref: APP/X5210/W/17/3173441
203 King's Cross Road, London WC1X 9DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Vural Siyirtmac against the decision of the Council of the London Borough of Camden.
 - The application Ref 2016/6368/P, dated 19 November 2016, was refused by notice dated 21 March 2017.
 - The application sought planning permission for change of use from retail (Class A1) to takeaway (Class A5) and installation of flue on rear elevation without complying with a condition attached to planning permission Ref 2015/5197/P, dated 12 July 2016.
 - The condition in dispute is No 3 which states that: The use hereby permitted shall not be carried out outside the following times 06:30 to 18:00 hours Mondays to Friday, 07:30 to 16:30 hours on Saturday and 08:00 to 16:30 hours on Sundays and Bank Holidays.
 - The reason given for the condition is: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 (Managing the impact of growth and development) and CS7 (Promoting Camden's centres and shops) of the London Borough of Camden Local Development Framework Core Strategy and policies DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In the interests of natural justice and fairness to all parties, I have dealt with the appeal on the basis of the proposal which was considered and determined by the Council and on which interested people's views were sought. If the appellant wishes to seek permission for alternative hours of use, a fresh application could be made to the Council.
3. Since the application was determined and the appeal lodged the Council has adopted the Camden Local Plan (the Local Plan), which has replaced the Camden Core Strategy and Camden Development Policies as the basis for planning decisions. Therefore, in determining this appeal, I have only had regard to the Local Plan policies identified by the Council in the reason for refusal set out on the decision notice.

Background and Main Issue

4. Planning permission Ref 2015/5197/P was granted on 12 July 2016 for the change of use of the appeal premises subject to a number of conditions, including Condition 3 which related to hours of use. The appellant wishes to extend the hours of use to:
 - 06:00 to 01:00 the following morning Monday to Thursday;
 - 06:00 to 02:00 the following morning on Fridays and Saturdays; and
 - 07:30 to 22:00 on Sundays and Bank Holidays.
5. I note that the Council does not raise any concerns regarding the noise generated by the extract duct. Based upon the submitted evidence, I have no reason to take a different view.
6. The main issue is the effect that the proposed hours of use would have on the living conditions of neighbouring residents with particular regard to noise and disturbance caused by customer activity.

Reasons

7. The appeal premises occupy a ground floor unit within a 3 storey 19th century terrace on King's Cross Road, with mainly commercial uses at ground floor and some residential uses on the upper floors. The appeal site is not located in a designated town centre frontage and, whilst the road is a bus route, at the time of my site visit, which took place during the early afternoon on a weekday, pedestrian and vehicular activity and attendant noise was lower than in neighbouring streets. Although the wider area features a variety of uses, including some which operate in the evening, the majority of commercial premises in the immediate vicinity of the appeal site appear to be occupied by daytime uses. I have no evidence that any of these commercial premises operate in the late evening or early hours of the morning. Accordingly, I would expect pedestrian and vehicular activity to reduce and the area to be quieter throughout late evening and night time hours than it is during the day.
8. A takeaway use operating in the late evening and early hours of the morning would draw people to the premises and would be likely to cause more noise and disturbance to the residents of neighbouring properties than transient pass-by activity. Noise would result from customers arriving at and departing from the appeal premises, talking and possibly congregating in groups on the footway outside. I have not been provided with full details of a management plan. However, takeaway food outlets tend to generate a high turnover of walk-in customers and so, even with careful supervision, the premises are likely to give rise to additional noise.
9. All this activity and resultant noise disturbance would occur beneath the windows of the adjoining flat at 201 King's Cross Road and in close proximity to other neighbouring residential properties situated on the upper floors of the terrace. This noise would be more intrusive during the late evening and early hours of the morning when background noise levels would be lower. Given the fairly small number of existing late opening uses in the vicinity, neighbouring residents would have a reasonable expectation that their living environment would be quieter in the late evening and during the night.
10. I have no evidence that neighbouring residents are supportive of the appeal proposal. I note the objections submitted by the occupant of the adjacent flat,

and there is nothing before me to demonstrate that this representation is not genuine. Nor do I have any evidence that the upper floor flats referred to in the Council's delegated report and appeal statement are no longer in residential use. Indeed, I noted during my site visit that the entrance door to 195 King's Cross Road is clearly marked as serving Flats A, B and C.

11. The appellant states that other late night uses in the area do not cause a nuisance. However, I am not aware of the particular site circumstances of these other uses or their proximity to residential properties. In any event, I must determine the appeal with regard to the planning merits of the case. Accordingly, I have given this matter little weight.
12. I conclude that a condition limiting the hours that the appeal premises can be used in the evening and at night is necessary in the interests of protecting the living conditions of neighbouring residents, with particular regard to noise and disturbance caused by customer activity, and that the hours imposed by the Council in condition No 3 of planning permission Ref 2015/5197/P are reasonable and accord with the aims of Local Plan Policies A1 and A4 with regard to the control and management of noise and amenity protection.

Conclusion

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

C L Humphrey

INSPECTOR