
Appeal Decision

Site visit made on 17 July 2014

by Mr C J Tivey BSc (Hons) BPI MRTPI

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

Decision date: 18 August 2014

Appeal Ref: APP/X5210/A/14/2216988
51-53 Fairfax Road, London NW6 4EL

- 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 N Potenza against the decision of the Council of the London Borough of Camden.
 - The application Ref 2013/7370/P, dated 25 November 2013, was refused by notice dated 1 April 2014.
 - The development proposed is for the change of use of ground and basement floors from A1 Retail Use to a mixed A1 retail and A3 restaurant use; installation of kitchen extract duct on rear elevation.
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Decision

1. I allow the appeal and grant planning permission for the change of use of ground and basement floors from A1 retail use to a mixed A1 retail and A3 restaurant use; installation of kitchen extract duct on rear elevation at 51-53 Fairfax Road, London NW6 4EL in accordance with the terms of the application, Ref:2013/7370/P dated 25 November 2013 and the plans submitted with it, subject to the conditions as set out within the schedule attached to this decision.

Procedural Matter

2. The planning application forms originally submitted to the Council proposed a closing time of 22.30 on all days, however it is understood that during the lifetime of the application the appellant reduced this to 22.00. I have determined the appeal on this basis.

Main Issue

3. The main issue in this case is the effect of the proposals on the living conditions of local residents, with specific reference to noise and disturbance.

Reasons

4. The site is situated within a parade of shops with three floors of residential flats over. It is within an area of mixed commercial and residential uses, and restaurants can be found due south of the appeal site at no.s 65-67 Fairfax Road (Peter's Ristorante Pizzeria), 75 Fairfax Road (Atariya Sushi Bar), 81-83 Fairfax Road (Singapore Garden) and at 95a Fairfax Road (Zara Cafe) adjacent
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to the roundabout junction of the B509 with Fairfax, Belsize and Loudoun Roads.

5. Fairfax Place is a residential street that runs parallel and to the rear of the appeal site and is accessed via an archway between 57 and 59 Fairfax Road. The rear elevations of 16-26 Fairfax Place abut the service access road to the commercial block within which the appeal site forms part. The dwelling immediately to the rear of the site, 18 Fairfax Place has three bedroom windows facing the rear of the appeal site (2 on the second floor and 1 on the first floor). There are two service doors to the rear of the appeal property, one at basement level and the other to the ground floor, an air conditioning unit has been installed which is the subject of an allowed appeal (APP/X5210/A/13/2210931 refers). There is no public access into the appeal building from the rear, but an outdoor seating area has been provided on the public highway across the shop front. I do however note that this seating area is located largely outside the red line appeal site as shown on the site location map (drawing 10-429-OS-001).
6. Notwithstanding this, and noting that other restaurants within the area also have pavement seating, I have been made aware of the planning permission recently granted at 65 Fairfax Road (part of the aforementioned Pizzeria) with a conditioned closing time of 22.00. I understand that this was seen as a compromise by the Council as the proposal was extending the A3 use from no.63 which has a permitted closure time of 23.00. Whilst no.65 is in a relatively similar situation to the appeal site, with residential dwellings situated above and to the rear, the character of the parade of shops within which the appeal site forms part (from the Fairfax Place archway northwards) has a higher concentration of lower key retail uses which then leads to an area that is wholly residential and quieter in character. The extant A3 uses are concentrated at the southern end of the road, nearer to the relatively busy roundabout.
7. I have also had regard to my colleague's decision on an earlier appeal at the appeal site (APP/X5210/A/12/2185091) which was predominantly dismissed on the grounds of evening opening hours until 23:00 being harmful to the living conditions of surrounding occupiers, in terms of noise and disturbance. Whilst the 22:00 hour closing time as suggested by the appellant would be in line with the planning permission at no.65, and I agree that such a time couldn't be described as 'late night', there are family homes situated to the rear. Therefore any incursion into the evening, however late, could give rise to noise and disturbance to their occupants, particularly where until recently there has been little.
8. I accept that the existing A1 use within no.51 is unfettered, such that it could operate within its licensing hours of up to midnight on Mondays to Saturdays and until 22:30 on Sundays; however the proposals would intensify the use of the appeal site as a whole. I also note that the Council's Camden Planning Guidance 5 – Town Centres, Retail and Employment (CPG5) states that in some instances, depending on the location, character of the area, the nature of the proposed use and its likely impact on amenity, earlier closing times may be more appropriate. CPG5 states that generally earlier closing times will be more appropriate in neighbourhood centres and residential areas and I note that the appellant, whilst stating that a closing time of 22:00 is preferable, would accept an earlier closing time. I consider that 21:00 would be the latest closing time that would be appropriate, being a more sociable time for local residents.

9. In addition, I also consider it appropriate to restrict the times that outdoor tables and seating shall be provided, to within 08:00 to 19:00 each day. This is necessary for the warmer summer months in particular when one would expect windows to be open. Customer activity from talking and movement of chairs could give rise to noise and disturbance to local residents during the early evening period, which could be detrimental to their living conditions.
10. Consequently I find that subject to the imposition of conditions, that the proposals would not give rise to a significant loss of amenity through noise or disturbance to local residents. The proposals comply with Policies CS5 and CS7 of the Camden Core Strategy 2010-2025 (CS) in that they would protect the amenity and quality of life of the local community, and would ensure that the impact of the development on neighbours has been fully considered, with mitigation measures imposed where necessary. In addition, I find that the proposal complies with Policies DP12 and DP26 of the Camden Development Policies 2010-2025. The proposals would not cause harm to the character, function, vitality and viability of the local area or the amenity of neighbours. Furthermore, in accordance with these policies I have taken into account the cumulative impact of food, drink and entertainment uses, including the number and distribution of existing such uses and the potential for anti-social behaviour.

Other Matters

11. I note the comments of local residents with regard to the activities currently taking place both within the appeal site and across the pavement to its frontage. However, it is for me to deal with the appeal proposals before me and the principle of the proposed change of use along with all material considerations. I am aware of concerns with regard to noise emanating from the use of air-conditioning unit/s, however, this is controlled by way of condition as set out within the earlier appeal decision (APP/X5210/A/13/221093). I also note the comments with regard to the nature of uses within the parade, however the Council have not raised an issue with regard to the principle of the change of use, with the main issue as highlighted above centring upon evening time activities, and whether or not they would give rise to material levels of noise and disturbance.
12. I also note concerns with regard to the potential for increased levels of traffic, additional noise and traffic movement from delivery of supplies, collection of food waste, general rubbish and bottle removal late at night and in the early morning, as well as noise and smells from extractor fans. I consider that with the parking restrictions in place, at certain times of the day patrons to the appeal site would either have to arrive by means other than the private motor car or utilise the limited amount of pay-and-display parking bays that are available in the area, with a limitation on the closing time customers would not be leaving the area late at night in any case. Planning conditions can control the timing of deliveries, collection of waste and the deposit of bottles either late at night or in the early morning, and noise and smells from extractor fans can also be controlled by way of condition. Food waste and a potential for an increase in vermin is noted, but are not determining matters in this appeal. Furthermore, I am aware of the anecdotal evidence with regard to the need for a Police presence following certain anti-social behaviour, however, I have not been provided with evidence to demonstrate that such events have or would occur on a regular basis.

Conclusion and Conditions

13. For the reasons given above and having regard to all other matters raised by local residents, I conclude that the appeal should be allowed.
14. The Council has put forward a number of suggested conditions upon which the appellant has commented, in addition to there being a list of suggested conditions by the appellants themselves within their appeal statement. For simplicity I will go through the Council's list in the order that they appear.
15. In addition to the standard implementation condition, it is appropriate to impose a condition requiring that the development be carried out in accordance with the approved plans. Furthermore, having regard to the semi-residential nature of the site's surroundings, it is considered appropriate to control noise levels and prohibit the playing of loud music. For the reasons given above, and bearing in mind the location of the appeal site situated towards the northern end of the parade of shops away from the roundabout, I also consider that outdoor tables and seating should be removed by 19:00, and that the premises should close to customers by 21:00.
16. Other conditions regarding the rear doors of the premises and ensuring that the windows in the kitchen which face onto the service road be fixed shut, are appropriate, in the interests of minimising noise transference to adjacent residents. It is also appropriate to restrict the times that outdoor tables and seating can be provided to the site frontage as well as restricting servicing/delivery times and the number of covers to be permitted within the A3 element of the appeal building. The final suggested condition also refers to the closure of "the rear door" and I note that there are two on the appeal premises and therefore, I have amalgamated suggested conditions 6 and 11 into one condition. I also consider it necessary, as suggested by the appellant to impose controls over potential odours emanating from the proposed extract ventilation system.

C J Tivey

INSPECTOR

Schedule of 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: 10-429-OS-001, 10-429-P-010 Rev A, 10-429-P-011 Rev A, 10-429-P-110 Rev A and 10-429-P-121 Rev A.
3. Noise levels at a point 1m external to the facades of the residential flats above the appeal site and the dwellings in Fairfax Place to the rear shall be at least 5dB(A) less than the existing background measurement (LA90), expressed in dB(A) where all plant/equipment (or any part of it) is in operation unless the plant/equipment hereby permitted will have a noise that has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or if there are distinct impulses (bangs, clicks, clatters, thumps), then the noise levels from that piece of plant/equipment at any sensitive facade shall be at least 10dBA below the LA90, expressed in dB(A).
4. No music shall be played on the premises in such a way as to be audible in any adjoining premises or on the adjoining highway.
5. No customers shall be on the premises outside of the hours of 08:00 to 21:00 on any day.
6. The rear doors of the premises leading to the service road shall only be used in the case of emergency or for servicing (including the removal of refuse and recycling) between the hours of 08:00 until 19:00 each day.
7. Prior to commencement of the use hereby approved, the windows in the kitchen which face onto the service road at the rear shall be fixed shut and shall remain permanently fixed shut, unless otherwise agreed in writing by the Local Planning Authority.
8. No outdoor tables or seating shall be provided outside of the following times: 08:00 until 19:00 each day.
9. No deliveries to the premises shall take place outside of the following times: 08:00 until 19:00 each day.
10. The A3 element of the development hereby approved and as identified on drawing 10-429-P-110 Rev A shall provide for no more than 45 covers at any one time.
11. Before the use hereby permitted begins, a scheme for the installation of equipment to control the emission of fumes and smell from the premises shall be submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be implemented. All equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the manufacturer's instructions.