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# Appeal Decision

Site visit made on 17 April 2018

**by C L Humphrey BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25<sup>th</sup> May 2018**

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**Appeal Ref: APP/X5210/W/18/3196067**

**19-21 Great Queen Street, London WC2B 5BE**

- 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 Marc Nelson Smith (Royal Masonic Benevolent Institution Care Co.) against the decision of the Council of the London Borough of Camden.
  - The application Ref 2017/4076/P, dated 17 July 2017, was refused by notice dated 8 November 2017.
  - The development proposed is change of use of the ground and basement floor levels from Use Class A1 (shops) to Use Class A3 (food and drink), associated installation of plant (extract/ventilation) and retention of existing shopfront.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. It has been confirmed by the Council and accepted by the appellant that the appeal site forms part of the designated secondary frontage within the Central London Covent Garden Specialist Shopping Area (CGSSA) as shown on the Camden Local Plan (LP) Policies Map. Moreover, whilst a technical error means that the map shown on page 28 of the Camden Planning Guidance Town Centres and Retail (CPG) does not currently include the appeal site, it is shown to form part of the CGSSA secondary frontage on the overall 'Map of centres in Camden' on page 5 of the CPG. I have considered the appeal proposal accordingly.

## Main Issues

3. The main issues are the effect of the appeal proposal upon the retail character, function, vitality and viability of the secondary frontage of the CGSSA and upon the living conditions of occupiers of neighbouring residential properties.

## Reasons

### *Retail*

4. The appeal site is located on the north side of Great Queen Street and comprises a 5 storey building with a basement. The building is divided into 2 separate planning units, namely the appeal property which is a vacant retail unit at ground floor and basement level and the upper floors which, at the time of my site visit, were undergoing conversion to create 4 flats. It is proposed to change the use of the retail unit to a restaurant.

5. The LP recognises that 'traditional high street centres face challenges from changes in consumer behaviour, new retail models, the growth in online shopping and competition from out of centre retail development.' However it goes on to identify that 'Camden's centres also have strengths in terms of their location, accessibility by public transport, walking and cycling, character and offer (including many independent and specialist shops).'
6. LP Policy TC2 seeks to protect and enhance the role and unique character of each of Camden's centres, whilst LP Policy TC4 seeks to ensure that the development of shopping, services, food, drink, entertainment and other town centre uses does not cause harm to the character, function, vitality and viability of a centre, the local area or the amenity of neighbours. Both policies refer to Appendix 4 of the LP, which sets out the Council's expectations for the mix and balance of uses within frontages of each designated centre, stipulating that within the CGSSA secondary frontage there should be a maximum of 25% of A3, A4 and A5 food, drink and entertainment uses, that A3, A4 and A5 and other non-retail uses should be a maximum of 100sqm and that there should be no more than 2 consecutive food, drink or entertainment uses. These criteria are reiterated in the CPG.
7. Of the 19 units within the Great Queen Street secondary frontage, 42% of the existing uses are A3, A4 or A5. The proposal would result in a significant 5% increase in food, drink and entertainment uses within the secondary frontage to 47%, almost twice the limit set out in development plan policy. Furthermore, the floorspace of the appeal property amounts to 530.5sqm, more than 5 times the 100sqm limit for A3, A4 and A5 and other non-retail uses set out in policy.
8. The proposal would not give rise to more than 2 consecutive food, drink or entertainment uses and so would comply with development plan policy in this regard. Moreover, the appeal property represents just 8% of the 170m defined secondary street frontage along Great Queen Street, the shopfront would be retained and used as a deli display of retail goods, more than half the overall floorspace is at basement level and thus is not visible from the street and a considerable area of the basement and part of the ground floor would comprise ancillary accommodation. Nevertheless, the proposal would result in the loss of a sizeable retail unit and a consequent reduction in the proportion of premises in retail use within the secondary frontage and lead to a greater concentration of food and drink uses, thereby causing a material change in the character and retail offer of the street.
9. I note that the former retail occupier vacated the building in February 2015 in order to facilitate conversion works of the upper floors, and prior to that the net floorspace in retail use was around 30% of the gross floorspace. Whereas it may be the case that it was not viable for the previous occupier to utilise the entire floorspace I have no evidence that it would not be viable for another retailer to do so.
10. Whilst the appellant states that the site has historically been marketed for its existing A1 retail use, I have no details of this. I have been provided with letters from the Masonic Charitable Foundation, Farebrother and CBRE which indicate that the size and split level format of the unit would limit its appeal to retailers. However, as set out in the CPG, marketing evidence is required in order to demonstrate that there is no realistic prospect of demand to use the site for continued retail use. Although, as the CPG notes, the CGSSA has a fine

grain of development with mostly smaller sized shop premises, I have not been provided with any marketing evidence to show there is no demand for the larger appeal property.

11. The CPG acknowledges that to the west of the CGSSA the mix of uses has a greater emphasis on food, drink and entertainment, with a focus of these uses on Great Queen Street. However, while they are an important part of the mixed use character and function of Covent Garden, there is already a considerable concentration of such uses in the street. The appeal proposal would result in a significant increase in the proportion of food, drink and entertainment premises within the secondary frontage which would further unbalance the fine grained mix of uses in the area.
12. The existing A1 use is unrestricted and a convenience store could operate within the appeal property. However, I have no evidence that such a use would adversely affect residents' living conditions, restrict the availability of on-street parking or harm highway safety. Moreover, it would retain the retail use and add to the offer in the street.
13. As a longstanding stakeholder and property owner in Great Queen Street the United Grand Lodge of England has produced a comprehensive street strategy which aims to improve the vitality and viability of the frontage and create an upgraded pedestrian link between Covent Garden and High Holborn. Whilst it may well be the case that this strategy has helped to secure a number of recent lettings to independents and specialists, shopfront enhancements and a better retail offer, there is no good reason to believe that continued retail use of the appeal premises could not form part of these improvements.
14. The appellant makes the case that the proposed operator is not currently represented in the Covent Garden area and would add to the food offer and provide employment. However, there is already a wide ranging food and drink offer within the secondary frontage and the established retail use of the premises would also provide employment.
15. In 2015 planning permission was granted for the change of use of the retail unit at 34 Great Queen Street to a mixed retail and restaurant use. Whilst I do not have full details of that scheme, it is apparent from the evidence before me that the floorspace of this other unit is significantly smaller than the appeal property and a retail function was retained. As such, the circumstances of that scheme are not directly comparable with the appeal proposal. In any event, I must determine the appeal on its own merits.
16. For the reasons set out above I conclude that the appeal proposal would have a harmful effect upon the retail character, function, vitality and viability of the secondary frontage of the CGSSA. As such, it would be contrary to LP Policies TC2 and TC4 and the CPG.

#### *Living conditions*

17. The submitted evidence demonstrates that many of the food, drink and entertainment uses along Great Queen Street open until the late evening, with some closing in the early hours of the morning. Whilst there are residential flats on the upper floors of the building directly above the appeal property, I saw at my site visit that the bedrooms are positioned at the rear. As a result, although it is proposed that the restaurant would be open until midnight from

Monday to Saturday, residents wishing to rest or sleep would be unlikely to suffer from noise and disturbance caused by customers or staff or from any cumulative impact arising from food, drink and entertainment uses in the area. If I were to allow the appeal, a condition could be imposed to prevent the premises opening outside the proposed hours of operation.

18. Suitable conditions could also be imposed to ensure the proposed plant and machinery, servicing and deliveries would cause no harm to the living conditions of residential occupiers by reason of fumes, vibration or noise.
19. For the foregoing reasons I conclude that, subject to the conditions outlined above, the appeal proposal would not have a harmful effect upon the living conditions of occupiers of neighbouring residential properties. As such it would accord with the amenity protection aims of LP Policies A1, A4, TC2 and TC4.

### **Other Matters**

20. The appeal site lies within the Seven Dials Estate Conservation Area (CA), which is characterised by the range and mix of building types and uses and the street layout. The Council has not raised any concerns about the effect of the proposal upon the CA. Nevertheless, I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. The proposed extract and ventilation plant would be enclosed in an internal lightwell flanked by high walls and so would not be visible, whilst the existing shopfront would be retained. As such, the proposal would have a neutral effect and would preserve the character and appearance of the CA.
21. I note that the appellant is the principal service delivery charity within the Masonic Charitable Foundation, providing care which is funded in part by income from its investment properties, including the appeal premises. However, income from the retail use of the premises would also contribute to achieving these social benefits, and it has not been adequately demonstrated that there is no realistic prospect of such a use continuing.

### **Conclusion**

22. I have found that the appeal proposal would result in material harm to the retail character, function, vitality and viability of the secondary frontage of the CGSSA and so would conflict with development plan policy. Based upon the evidence before me, there are no material considerations which outweigh that conflict or which indicate that the proposal should be determined other than in accordance with the development plan.
23. Although I have found no harm, subject to appropriate conditions, in relation to the living conditions of neighbouring residents or the character and appearance of the CA these are neutral factors which weigh neither for nor against the proposal.
24. Therefore, for the reasons given above and having had regard to all other matters raised I conclude that the appeal should be dismissed.

*CL Humphrey*

INSPECTOR