



Appeal Decision

Site visit made on 11 September 2018

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th October 2018

Appeal Ref: APP/X5210/W/18/3200715

Camden Bakery, 94 Camden High Street, London NW1 0LT

- 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 S Wasif, Baladi Kitchens Limited against the decision of the Council of the London Borough of Camden.
 - The application Ref 2017/3010/P, dated 25 May 2017, was refused by notice dated 7 December 2017.
 - The development proposed is the change of use from A1 Café/Sandwich Bar to A3 Restaurant.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from A1 Café/Sandwich Bar to A3 Restaurant at Camden Bakery, 94 Camden High Street, London NW1 0LT in accordance with the terms of the application, Ref 2017/3010/P, dated 25 May 2017, subject to the conditions in the attached schedule.

Procedural Matters

2. Since the Council determined the application and the appeal was submitted the new National Planning Policy Framework (the Framework) has been published (July 2018). Both parties have been given the opportunity to comment on the revised document and I have considered any comments received.
3. The Council have confirmed that they no longer wish to proceed with the second reason for refusal in relation to the extraction equipment subject to the inclusion of conditions. I have therefore based my consideration of the appeal proposal on the first reason for refusal only.

Main Issue

4. The main issue is the effect of the development on the designated primary shopping frontage and provision of retail units.

Reasons

5. The appeal site is located on Camden High Street and is currently occupied at ground floor by the Camden Bakery which is an A1 use. The existing shop provides food to take away as well as a few tables inside for customers to eat and drink on the premises. To the rear of the ground floor is a kitchen. The site is located within the designated primary frontage (South) of Camden Town

- Centre which is characterised by retail and commercial units on the ground floors.
6. The proposed development would change the use of the premises from A1 to A3 to provide a restaurant. The changes to the building would be internal involving the addition of more tables to the rear of the ground floor. The existing servery area to the front of the premises would remain, as would the arrangement of the tables to the front. The basement would remain for a staff area and storage.
 7. Policies TC2 and TC4 of the Camden Local Plan (2017) (Local Plan) seek to protect the primary frontages as locations with high proportions of A1 uses and ensure that town centre uses do not cause harm to the function, vitality and viability of a centre. Paragraph 3.7 of the Camden Planning Guidance 5 (2018) (CPG5) identifies that in this area the Council will not grant planning permission for development which results in the number of ground floor premises in retail use falling below 75%.
 8. The Council have calculated that the proposed change of use would result in the percentage of A1 uses along the primary frontage being reduced to 63% which falls below the 75% required by Appendix 4 of the Local Plan and CPG5. The Appellant has disputed the inclusion of two units on Plender Street. Whilst I recognise that these are positioned around the corner, they are in proximity to the main high street and are included in the formal designation in the Camden Local Policies Map (2017). I therefore find that the inclusion of these properties is reasonable.
 9. The Council and Appellant also dispute the methodology of calculating the percentage of A1 uses within the retail frontage, with the Appellant considering that this should be calculated in terms of the length of the site frontages rather than the number of individual units. However, Appendix 3 of CPG5 clearly sets out the methodology for calculating the percentage of uses which requires the total number of premises to be used as opposed to the lengths. I acknowledge that there are a number of larger 'anchor' units present along the primary frontage which would clearly alter the overall percentage of A1 uses should the site frontages be calculated using this alternative method. Nevertheless the Policy requirement is clear and I find it to be a reasonable method of calculation.
 10. The Council and Appellant have raised differing opinions on the lawful use of the unit which is occupied by a pawnbroker. The Council have identified this unit to be a sui generis use as, despite the presence of an area where items were for sale, they consider that the majority of the unit is occupied by a waiting room and private office. I observed a level of retail sales available within the store. However, were I to conclude that this was sufficient to result in the property being considered as an A1 use, it would not raise the percentage of A1 units to that which would exceed the required amount.
 11. In addition, I observed that one unit had been occupied by Mind since the calculations were carried out which would increase the number of A1 uses within this particular frontage. Whilst this would still remain under the required percentage following the loss of the appeal site as A1 use, it does serve to boost the percentage of A1 units somewhat.

12. Taking all of the above into consideration, the percentage of A1 uses would be below the required 75% should the use of the Camden Bakery be changed to A3. However, Policies TC2 and TC4 require the consideration of the effect of the development on shopping provision and the character of the centre and the impact of town centre uses on the character, function, vitality and viability of a centre.
13. Whilst there would be a shortfall in the percentage of A1 uses along this primary frontage, I have had regard to the existing nature of the development and the impact that the proposal would have on the vibrancy, function and character of this part of Camden town centre. Of the A1 uses along this part of Camden High Street, there are some large well established stores which serve to make a positive addition to the primary frontage. Although these do not increase the actual percentage of A1 units, I have had regard to their location and contribution to the primary frontage.
14. In addition to the take-away service, the existing premises offer tables and chairs for customers, and whilst at present this is ancillary to the main A1 use, I find that the use as a restaurant would not significantly alter the character and function of the unit itself. I understand the Council's view that the retention of the A1 use would mean that if the current business vacated the site the unit would remain in A1 use, however, I find that there would not be undue harm arising from the use of the premises as an A3 unit.
15. Accordingly, whilst I find that there would be a shortfall in the provision of A1 uses along the primary frontage, the proposed change of use to A3 would not diminish the retail function of the town centre to a degree where it would harm the character or vibrancy of the town centre for the above reasons. As such, whilst there would be a conflict with Policies TC2 and TC4 of the Local Plan and CPG5 insofar as they relate to the protection and provision of A1 units in the primary frontage, the proposed change of use would still comply with the spirit of these Policies which seek to retain the vibrancy, vitality, function and character of the town centre. I find that this outweighs the identified policy conflict in this instance.

Other Matters

16. I have had regard to the examples of other similar refused schemes referred to by the Council. However, I have limited details of these and accordingly I am unable to determine if these are wholly comparable to the proposal before me.
17. The appeal site is set within the Camden Town Conservation Area. Initially the Council raised concerns over the proposed development and its impact upon the character and appearance of the Conservation Area on the basis that there was insufficient evidence in relation to the design and location of the ventilation equipment. However, this has now been resolved to the satisfaction of the Council. On the basis of the evidence before me, I have no reason to disagree with the view that the extraction equipment would be acceptable and would therefore preserve the character and appearance of the Conservation Area.

Conditions

18. In addition to the standard time limit condition, I have imposed a condition requiring the development to be carried out in accordance with the approved plans as this provides certainty. The Council have requested a number of

conditions which I have considered against the guidance in the Planning Practice Guidance and amended where necessary.

19. Conditions for hours of opening, details of plant equipment, noise emissions and music levels are necessary in the interests of the adjoining premises and the area.

Conclusion

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

R Norman

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Drawing Numbers 1614-100A; 1614-200A.
- 3) The premises shall only be open for customers between the following hours:
07:30 – 23:00 Mondays - Fridays
07:30 Saturdays – 00:00 Sunday mornings
09:00 – 20:00 Sundays and Bank and Public Holidays.
- 4) Amplified or other music shall not be played on the premises in such a way as to be audible within any adjoining premises or on the adjoining highway.
- 5) Prior to the first use of the premises for the A3 use hereby approved, full details of a scheme for ventilation, including manufacturers specifications, noise levels and attenuation, shall be submitted to and approved in writing by the local planning authority. The use shall not proceed other than in complete accordance with the approved scheme. All such measures shall be retained and maintained in accordance with the manufacturers' recommendations.
- 6) The external noise level emitted from plant, machinery or equipment at the development hereby approved shall be lower than the lowest existing background noise level by at least 10dBA as assessed according to BS4142:2014 at the nearest and/or most affected noise sensitive premises, with all machinery operating together at maximum capacity.
- 7) Prior to the commencement of use, plant or equipment and ducting at the development shall be mounted with proprietary anti-vibration isolators and fan motors shall be vibration isolated from the casing and adequately silenced and maintained as such.