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## Appeal Decisions

Site visit made on 24 April 2019

**by Elaine Gray MA(Hons) MSc IHBC**

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

**Decision date: 03 June 2019**

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### **Appeal A - Appeal Ref: APP/X5210/W/18/3209747**

#### **Unit 18, Brunswick Centre, London WC1N 1AE**

- 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 Ovelshield Limited t/a ICCO against the decision of the Council of the London Borough of Camden.
  - The application Ref 2018/1447/P, dated 21 March 2018, was refused by notice dated 1 June 2018.
  - The development proposed is proposed change of use from retail to restaurant/cafe and ancillary take away sales; together with associated internal and external alterations, installation of plant and signage.
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### **Appeal B - Appeal Ref: APP/X5210/Y/18/3209750**

#### **Unit 18, Brunswick Centre, London WC1N 1AE**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Ovelshield Limited t/a ICCO against the decision of the Council of the London Borough of Camden.
  - The application Ref 2018/1658/L, dated 21 March 2018, was refused by notice dated 1 June 2018.
  - The works proposed are proposed change of use from retail to restaurant/cafe and ancillary take away sales; together with associated internal and external alterations, installation of plant and signage.
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### **Appeal C - Appeal Ref: APP/X5210/Z/18/3209753**

#### **Unit 18, Brunswick Centre, London WC1N 1AE**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
  - The appeal is made by Ovelshield Limited t/a ICCO against the decision of the Council of the London Borough of Camden.
  - The application Ref 2018/1448/A, dated 21 March 2018, was refused by notice dated 1 June 2018.
  - The works proposed are display of one internally-illuminated fascia sign and two internally illuminated projecting signs onto existing shopfront.
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## **Decisions**

1. Appeal A is dismissed.
2. Appeal B is dismissed.
3. Appeal C is dismissed.

## **Preliminary Matters**

4. In the interests of conciseness and clarity, I have dealt with all three appeals together in my reasoning.
5. With regard to Appeal A only, the Council's second reason for refusal related to a lack of information with regard to noise and odour emissions from the proposed new plant equipment. In their statement of case, the Council confirm that their concerns over these aspects of the proposal have been addressed by further evidence submitted by the appellant. I have no basis on which to take a different view, and so I have not considered these matters further in my reasoning.

## **Main Issues**

6. The main issues are:
  - The effect of the proposal on the special interest of the Brunswick Centre, a grade II listed building;
  - the effect of the proposal on the visual amenity of the Bloomsbury Conservation Area;
  - the effect of the development on the character and function of the Neighbourhood Centre, and;
  - the effect of the proposal on the living conditions of neighbouring residents, with particular regard to noise and disturbance.

## **Reasons**

### *Listed building, conservation area and visual amenity*

7. The appeal site is a unit located within the Brunswick Centre, which was built between 1967-72. The concrete structure comprises two linked 'A-framed' blocks which rise to eight storeys at their highest point. The centre incorporates around 560 flats above a shopping centre with rows of shops at raised ground level. Beneath is a basement containing a car-parking/service area.
8. The list description states that the centre was a pioneering example of a megastructure scheme which combined several functions of equal importance within a single framework. It was also a pioneering example of low-rise, high-density housing. The shopping mall is characterised by a strong degree of uniformity through the design and appearance of the retail units. The formal entrance to the shopping mall is wide with shallow steps, allowing long views along the mall from the adjacent street.
9. The immediate environs of the centre, within the Bloomsbury Conservation Area (CA), provide a marked contrast with its modern character, for example, the fine townhouses directly opposite its entrance. However, the CA is of a substantial size, taking in a large range of different building types and styles, which are interspersed with public open spaces. The features outlined above all contribute to the special significance of the grade II listed building, and also to the variety of built forms that makes a positive contribution to the character and appearance of the CA.

10. In association with the proposed change of use of the unit, it is proposed to install a new fascia sign behind the glazed shopfront, and a new external projecting sign. Both new signs would be of metal and vinyl, and would be internally illuminated. I note the appellant's willingness to accept a condition or split decision withholding consent for the illumination, were I to allow the appeal. However, for the sake of completeness, I have considered the proposal as it appears before me.
11. A standardised retail signage strategy for the centre was adopted, setting out approved locations for each unit, including a standard size of projecting sign. The number, type and size of the proposed signs are in keeping with this strategy, and the Council raise no objection on these grounds. From the evidence before me, I have no basis on which to take a different view. It is also the case that the scheme would not obscure any important features of the building.
12. On my site visit, I saw that the existing retail signage remains generally consistent in its appearance. Nonetheless, the appellant states that illuminated signage exists at a large number of the commercial premises, and they have submitted assessments of the existing signage to support this position. Whilst I saw a number of illuminated signs in place, the majority of these were inside the units.
13. In terms of the external projecting signs, illuminated examples appeared to me to be in the minority. Within this context, the proposed internal illumination of the projecting sign would depart from the established character of the retail centre. It would result in a visually prominent sign that would draw the eye, thus dominating the area. By disrupting the uniform appearance of the existing sequence of projecting signs, the new sign would erode the uniformity of the parade of shops on this side, thus harming the character and appearance of the listed building. The projecting sign would also be perceptible in longer views along the arcade from the street. It would be clearly out of character in such views, thus harming the significance of the CA.
14. The visual impact of the internal fascia sign would be more limited, due to its location inside the unit. The planning history set out in the Council's statement of case indicates with some consistency that illuminated signs behind the shopfronts have been permitted, but not illuminated external projecting signs. I therefore consider that the new internal sign would have an acceptable effect on the character and appearance of the listed building.
15. However, in view of my concerns over the proposed illuminated projecting sign, I therefore conclude that the appeal scheme would unacceptably harm the character and appearance of the listed building. By harming the listed building, the development would also fail to preserve or enhance the character or appearance of the wider conservation area, and would thus unacceptably harm the visual amenity of the area.
16. Accordingly, conflict arises with the overarching statutory duty as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, which must be given considerable importance and weight, and with the National Planning Policy Framework (NPPF). In addition, the scheme would fail to comply with Policy D2 of the Camden Local Plan (LP), insofar as it resists development that is less than substantial to the significance of a heritage asset unless the public

benefits of the proposal convincingly outweigh that harm. It would also conflict with the element of LP Policy D2 that seeks to protect CAs.

17. Although serious, the harm to the heritage asset in this case would be less than substantial, within the meaning of the term in paragraph 195 of the NPPF. Paragraph 194 states that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Paragraph 196 requires that, where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal.
18. The appellant contends that the illuminated signage is a necessary and essential part of the streetscape announcement of the unit. However, as I have observed that the majority of the projecting signs are not illuminated, I am not convinced that this is the case. Whilst rebranding and identification of the premises is necessary, the redesign of the signs with the new logo would be sufficient for this purpose. I accept that the new unit be open after dark. However, I am confident that there would be sufficient ambient lighting for patrons to find the premises. There is little quantified evidence to show that the economic viability of the business would suffer due to the lack of illumination.
19. Further benefits alluded to by the appellant include enhancing and maintaining the economic viability of the beneficial use of the listed building, and continued public access to it. However, these factors are not reliant on the appeal scheme. The appellant states that the development would ensure the on-going maintenance and upkeep of the building. Whilst the proper maintenance of a heritage asset would constitute a public benefit, I have not been provided with a repair schedule, or any documentary evidence to demonstrate how the presence of this specific signage would directly contribute to the physical upkeep of the building.
20. I therefore find that insufficient public benefits have been identified that would justify or outweigh the harm I have identified to the heritage asset. The scheme would therefore conflict with the NPPF, which directs, at paragraph 193, that great weight should be given to the asset's conservation ... irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

*Appeal A only – character and function of Neighbourhood Centre*

21. LP Policy TC2 promotes successful and vibrant centres throughout the borough to serve the needs of residents, workers and visitors. The Brunswick Centre is designated as a Neighbourhood Centre (NC). The Council seek to retain a strong element of convenience shopping for local residents in NCs, and to ensure that any development in them does not harm the function, character or success of that centre.
22. The LP seeks to maintain an acceptable level of convenience shopping, and to ensure an overall mix of uses at the Brunswick Centre. It therefore resists schemes that would result in any of the following within each frontage: less than 50% of ground floor premises being in A1 retail use; more than 25% of premises being in food, drink and entertainment (FDE) uses; more than two consecutive FDE uses; or FDE premises larger than 100sqm.

23. The Council's document entitled 'Camden Planning Guidance – Town Centres and retail' (CPG) states that large-scale retail development (over 1,000sqm) and late-night licensed entertainment will generally be inappropriate in NCs due to the impact of deliveries, noise and customers on residential amenity. NCs will be considered suitable locations for food and drink uses of a small scale (generally less than 100sqm) that serve a local catchment, provided they do not harm the surrounding area.
24. The Council carried out a retail survey of the centre in 2018. In terms of the south-west frontage, the survey found that, including the proposed change, 80% of units would remain in use class A1, resulting in only 15% in FDE uses across the frontage. Taking the whole centre into account, the proposal would result in 67% of units remaining within use class A1, and a total of 23% of units in FDE uses. Furthermore, the proposal would not result in a row of more than two consecutive non-A1 units in the South-western frontage. To that extent, the proposed development would comply with the LP requirements.
25. However, the new restaurant/café/takeaway would have a total gross internal area of approximately 325sqm, which would be significantly greater than the LP target size within NCs. The ground floor area would comprise around 175sqm, and around 54sqm of this area would be reserved for kitchen/preparation space. The appellant argues that the trading area of the business would be modest, with a maximum number of covers of around 58.
26. Nevertheless, I am unable to find any wording within the Council's policies or guidance to suggest that the 100sqm limit refers to anything other than the size of the premises as a whole. In this case, the proposed development would be more than three times greater than the stated maximum floor area, and thus clearly gives rise to a policy conflict in that regard.
27. The appellant contends that the Council's 100sqm guideline figure for FDE uses within the Brunswick Centre is solely in order to protect residential amenity. However, this is not borne out by the policy wording. It is clear that residential amenity is of specific concern in relation to retail development of over 1000sqm and late-night licensed entertainment. However, for small scale food and drink uses, the concern is that they 'do not harm the surrounding area.' Whilst residential amenity may be encompassed within this phrase, it is clearly not the sole concern, as potential harm to the surrounding area would necessarily take in a range of factors.
28. I have taken into account the marketing information provided by the appellant. The submitted leasing history of 14 August 2018 states that the unit had been vacant since August 2017, following the departure of a long-term tenant. Since then, a short term let was agreed from August 2018 to January 2019. Subsequently, the unit was taken over by, and is currently occupied by, EE. The evidence also suggests that overall vacancy rates at the centre are relatively low, with three other units stated to be vacant in the appellant's statement of case. In the context of a shopping centre of this size, this level of vacancy would not appear to be out of the ordinary. Certainly, my impression during my visit was of a vibrant and busy shopping area. The appellant has since submitted some further information and commentary on marketing. Nevertheless, there is little before me to show convincingly that there remains no prospect of the appeal unit being rented for alternative retail uses.

29. The appellant contends that the Council's approach to convenience shopping is outdated. However, I am not persuaded that there have been such significant changes in the retail sector since the LP was adopted in 2017, or the CPG in 2018, to allow me to set aside the relevant policies. There is little evidence to suggest that convenience shopping is not still desired by people in the area, or that they wish for no more variety than that provided by the local Waitrose and Sainsburys shops. Whilst I accept that trading conditions are challenging, amid wider changes in shopping trends, including online shopping, the marketing evidence before me is not sufficiently compelling to justify a departure from the development plan requirements in this particular case.
30. In addition, the Council refer to a number of units in retail use (A1) which are currently occupied by businesses whose primary function is the sale of hot and cold foods for consumption off premises, but which retain areas for seating. The Council contend that, at present, the convenience shopping offer of the NC, is very poor, with only 44% of units offering any form of convenience shopping. This is in comparison with the 37% of units which are either restaurants, or are a retail 'food store' whose prime function is the sale of prepared foods and drinks.
31. The appellant disputes the approach of taking A1 units into account in this way. I accept that some of these units may indeed contribute to the day to day needs of local residents. However, it seems to me that, taking both the A3 restaurant uses and the proportion of A1 food outlets together, the character of the shopping centre is gradually tending towards a food and drink destination, and away from the convenience shopping facility that the Council wish to protect. The proposed change of use of the appeal site would further exacerbate this shift.
32. However, even if the A1 uses are taken out of the consideration, the policy conflict in terms of the size of the new unit would remain. As noted above, it is clear from the wording of the CPG that the Council wish to support small scale food and drink uses that serve a local catchment. LP Policy TC2 also aims to provide for and maintain a range of shops, including independent shops and other services. In my view, setting aside the 100sqm guideline figure would be contrary to the aim of promoting small, independent facilities within Neighbourhood Centres.
33. The appellant argues that the proposal would provide enhanced local employment both through jobs on site, and amongst suppliers and other support. However, little substantive evidence of such a benefit has been submitted. Similarly, little evidence has been provided to show that the proposal would add significantly to footfall and customer spend in the area. Even if quantified evidence showed that the proposed restaurant would produce a higher financial turnover and attract a larger number of customers, these are not the sole considerations in this case. I can therefore attach only limited weight to the stated benefits.
34. In the absence of any compelling reason to set aside the relevant policy requirements, I conclude that the proposed development would unacceptably harm the character and function of the designated Neighbourhood Centre, contrary to LP Policy TC2, LP Policy TC4, which amongst other things, sets out expectations for the mix and balance of uses within frontages for each centre, and the provisions of the CPG.

*Appeal A only - living conditions*

35. Due to the significant number of residents who are located close to the appeal site, the Council have voiced concern over the effect of the proposal on living conditions with regard to the comings and goings of patrons, and also deliveries to the appeal site. In response, the appellant has commissioned and submitted a Noise Impact Assessment (NIA, dated 10<sup>th</sup> July 2018).
36. A survey was undertaken on Tuesday 10<sup>th</sup> July between the hours of 17:57pm and 22:58pm. The assessment sought to establish a worst case scenario based on calculating the noise emissions from a group of 20 people having a normal conversation outside the unit. I note also that the recording was undertaken at roof level above the front of the unit, rather than at a position near a residential window. The NIA states that additional noise measurements were made with a hand-held measurement system at other locations in the immediate area, but it is unclear how these positions related to the residential receptors.
37. Nonetheless, based on the measurements taken, the average existing background noise levels were recorded at 53.6dB, dropping to 49.1dB in the last hour of the survey, which was from around 22:00 to 23:00pm. On the basis of 20 people, ten of whom would be presumed to be speaking at a time, the noise emissions predictions were calculated at 67dBA. As noise is attenuated by separation distance, the assessment estimated that break-out noise from such a group would be reduced below 25dBA at a distance of around 30m, which is characterised as subjectively inaudible.
38. However, a number of matters arise. Firstly, the survey was carried out on a weekday evening, and therefore may not be representative of the noise that might be generated at weekends, when the proposed restaurant, and the other existing restaurants in the vicinity, would be expected to be at their busiest. I note also that the Council's document entitled 'Camden Planning Guidance – Amenity' (CPGA) requires background noise levels measured over a minimum of 24 hours. In this case, a single period of around five hours was assessed, which would fall significantly short of the CPGA requirement. Thirdly, the matter of cumulative noise impacts within the centre has not been thoroughly addressed.
39. In the light of these factors, I am unable to be certain that it has adequately been demonstrated that the proposed development would safeguard the living conditions of existing residents in terms of noise and disturbance. As a result, the proposed development would conflict with LP Policy A1, which seeks to protect the quality of life of occupiers and neighbours, LP Policy A4, which seeks to ensure that noise is controlled and managed, and with the requirements of the CPGA.

**Conclusion**

40. For the reasons above, the proposed works and development would be contrary to the development plan as a whole, and so the appeals are dismissed.

*Elaine Gray*

INSPECTOR