
Appeal Decision

Site visit made on 11 March 2020

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 31st March 2020

Appeal Ref: APP/X5210/C/19/3227863
260 Kilburn High Road, London NW6 2BY

- The appeal is made by Luli Tafasi under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: EN18/0414) issued by the Council of the London Borough of Camden on 27 March 2019.
 - The breaches of planning control alleged in the notice are "The use of the ground floor unit as a restaurant (Class A3), installation of recessed replacement shopfront with bi-fold doors and raised terrace area".
 - The requirements of the notice are as follows: -
 - "1. Cease the use of the restaurant at ground floor level (A3 use class);
 - 2. Completely remove the recessed shopfront and install a shopfront in the same position, design and materials as the pre-existing as shown on existing drawings no. 0310-P02 Revision C and 0310-P03 submitted within planning permission reference no: 2016/6314/P as shown in appendix A; and
 - 3. Completely remove the raised terrace and reinstate a level frontage."
 - The period for compliance with these requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g). Since there is an appeal on ground (a), an application for planning permission is deemed to have been made by section 177(5) in respect of the matters stated in the notice as constituting a breach of planning control.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for development at 260 Kilburn High Road, London NW6 2BY consisting of the use of the ground-floor unit as a restaurant (Class A3) and the installation of a recessed replacement shopfront with bi-fold doors and a raised terrace area, subject to the following conditions:-
 1. If, within one month of the date of this decision, details of the improvements to be carried out to the entrance to the ground-floor unit so that it conforms to the principles of inclusive design have not been submitted in writing to the local planning authority for their written approval and if the improvements are not carried out in accordance with the approved details within three months of the local planning authority's approval, the use of the ground-floor unit as a restaurant shall cease until such time as the improvements have been approved and carried out. If no such details are approved within twelve months of the date of this decision,
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the use of the ground-floor unit as a restaurant shall cease until such time as the improvements have been carried out in accordance with the approved details. The improvements carried out shall be retained as approved.

2. If, within one month of the date of this decision, details of the system to be put into operation for the extraction of fumes from the ground-floor unit have not been submitted in writing to the local planning authority for their written approval, or if the approved system is not put into operation as approved within three months of the local planning authority's approval, the use of the ground-floor unit as a restaurant shall cease until such time as the system has been approved and put into operation. If no such system is approved within twelve months of the date of this decision, the use of the ground-floor unit as a restaurant shall cease until such time as the system has been put into operation in accordance with the approved details. The system put into operation shall be retained as approved.
3. The ground-floor unit shall only be open for customers between the following hours: 11.00 to 23.00 (Monday to Friday), 11:00 to 24:00 (Saturday) and 12:00 to 23:00 (Sunday and Bank Holidays).

Reasons for the decision

Ground (a)

The main issues

2. The ground-floor unit is in a secondary frontage within the Kilburn High Road Neighbourhood Centre and the wider Kilburn Town Centre. This side of the road is in Camden and the other side is in Brent.
3. The main issues in deciding whether planning permission should be granted for the use of the ground-floor unit as a restaurant, for the shopfront and for the raised terrace relate to (a) the effect of the change of use to a restaurant on the Kilburn High Road Neighbourhood Centre, (b) the effect of the shopfront on the appearance of the property and the street scene, (c) the standard of access to the ground-floor unit, (d) the arrangements for controlling emissions from the ground-floor unit and (e) anti-social behaviour occurring as a result of the design of the shopfront.
4. I have reviewed the previous appeal decision APP/X5210/W/19/3224269, which dealt with the same development after planning application Ref 2018/3574/P had been refused. I have explained below why I have, on balance, come to a different overall conclusion.

Planning policies and guidance

5. The Council and the appellant have drawn attention to the following planning policies and guidance that relate to the main issues identified above: -
 - Camden Local Plan Policies TC2, TC4 and Appendix 4 and Camden Planning Guidance Town Centres and Retail:

Policies TC2 and TC4 indicate that the Council will support and protect Neighbourhood Centres, will seek to retain convenience shopping in them for

local residents and will ensure that development in them does not harm the function, character, vitality and viability or success of the centre. They indicate that, in order to protect the primary retail role of core frontages, secondary frontages are the preferred locations for shops together with a broader range of services and food, drink and entertainment uses that support the viability and vitality of the centre.

The supporting text to these policies, together with Appendix 4 and the Guidance, indicate that the Council will take into account the individual character of the neighbourhood centre when assessing development proposals but, as a guide, will resist schemes that would result in less than half of ground-floor premises in a neighbourhood centre from being in retail use or in more than three consecutive premises being in non-retail use.

The Guidance indicates that the ground-floor unit is in a secondary frontage, within an area that has a cultural focus and contains a theatre and music and comedy venues, as well as a number of shops, restaurants, cafes, and pubs. It adds that the Council will seek to enhance the cultural and musical character of this area.

- Camden Local Plan Policy D1 Design

Policy D1 states that the Council will seek to secure high quality design in development. The criteria set out in the Policy include respecting local context and character, contributing positively to the street frontage, being inclusive and accessible for all and being designed to minimise anti-social behaviour.

- Camden Local Plan Policy D3 Shopfronts:

Policy D3 states that the Council will expect a high standard of design in new shopfronts and it sets out a list of considerations that will be taken into account when proposals are considered.

- Camden Local Plan Policy C6 Access for all:

Policy C6 expects buildings to meet the highest practicable standards of accessible and inclusive design so that they can be used safely, easily and with dignity by all.

- Camden Local Plan Policy C5 Safety and security:

Policy C5 aims to make Camden a safer place by, amongst other measures, promoting effective design principles.

- National Planning Policy Framework:

Paragraph 80 states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt.

Paragraph 85 indicates that the long-term vitality and viability of town centres should be promoted by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses and reflects their distinctive characters.

Paragraph 92 states that planning policies and decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs and should ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community.

Paragraph 130 states: 'Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development'.

The effect of the change of use on the Neighbourhood Centre

6. The previous appeal decision states that the ground-floor unit is in a 'Secondary Retail Frontage'; that term is not used in the Local Plan or in the Guidance, which refer only to 'secondary frontage'. It also describes Policies TC2 and TC4 as requirements, a term that attributes too much weight to them; the statutory obligation is to determine an appeal in accordance with the development plan, unless material considerations indicate otherwise. In addition, it refers to the provision of retail units here as being 'below the minimum requirement', when the Local Plan refers to the numbers in retail and non-retail use as 'a guide'.
7. The information available to me indicates that the ground-floor unit used to be in retail use as a general store selling products for house and garden, DIY, tools and gifts. Items for sale were displayed inside and under a blind in the open between the shop front and the back edge of the pavement. The business appears to have closed some time before the ground-floor restaurant use commenced, but no information has been made available to me about the reasons for the closure or of any efforts made to market the ground-floor unit for retail purposes.
8. A basement restaurant existed here when the ground-floor unit was still in retail use. This was authorised by planning permissions granted in 2016 and 2017, which permitted the basement of the unit and the basement and rear ground floor of the adjoining unit to be used as one as a restaurant. The entrance to the basement restaurant is a doorway on the street that gives access to a staircase between the two units.
9. This restaurant business has now expanded into the ground-floor unit. The expansion conflicts with the statement that the Council will, as a guide, resist schemes where less than half of ground-floor premises in the Neighbourhood Centre are in retail use or more than three consecutive premises are in non-retail use. However, there are other considerations that should be taken into account, as follows: -
 - The overall viability and success of the Neighbourhood Centre is dependent in part on supporting existing businesses in the Centre that wish to expand within it. That approach accords with Policies TC2 and TC4 and the National Planning Policy Framework.

- This part of the frontage is in an area that has a cultural and entertainment focus, which according to the Guidance the Council seek to enhance. The restaurant provides a service that complements this focus.
- Paragraph 9.15 of the Local Plan recognises that there are permitted development rights relating to changes of use within centres, 'meaning the Council cannot apply our planning policies'. One of these is the right to change the use of a shop to a restaurant, subject to prior approval conditions that are less testing than the Local Plan policies and the Guidance. When the then Government announced its intention to allow this change of use, it stated that the purpose was to support mixed and varied high streets.

The effect of the shopfront on the appearance of the property and the street scene

10. The notice requires the shopfront of the restaurant to be removed and a reproduction of the shopfront of the previous retail unit to be installed in its place, as shown on the drawings attached to the notice. I have also been supplied with images of the previous shopfront with the appellant's appeal statement and the Council's Enforcement Delegated Report. It appears that none of this information was provided in the previous appeal.
11. The new information shows that the previous shopfront had a functional design and appearance, with no architectural or historic interest apart from the pilasters (which have been retained in the restaurant's shopfront). Policy D3 only seeks to protect 'shopfronts that make a significant contribution to the appearance and character of an area, for example through their architectural and historic merit' [Supporting text, paragraph 7.72].
12. The previous appeal decision accurately recorded that there is 'a degree of variety in the design of shopfronts in the area around the site'. The decision added that the design of the restaurant's shopfront was 'substantially different to others along the road'. I found on my inspection of the locality (both sides of the road) that there are at least five other shopfronts with similarities to the shopfront at the restaurant.
13. The restaurant's terrace and fully-openable bi-fold doors present an inviting appearance to potential customers and therefore make a contribution to the vitality of the frontage. Their detailed design, and the materials used, are high-quality and are an improvement when compared to the previous shopfront. In an area where shopfronts vary and there are others with similar characteristics to the restaurant's, it is not clear that the restaurant's shopfront has a harmful impact on the appearance of the property or the street scene.

The standard of access to the restaurant

14. The entrance to the restaurant has two steps and the restaurant is therefore not fully accessible by all customers. Works should be undertaken to ensure that the highest practicable standard of accessibility is achieved, so that the quality of design expected by Policy C6 is met. The space formerly used for the display of goods for sale between the previous shopfront and the back edge of the pavement is wide enough for these works to be carried out.

15. This issue can be satisfactorily resolved by imposing a planning condition requiring suitable works to be approved by the Council and carried out as approved.

The arrangements for controlling emissions from the restaurant

16. It is uncertain whether the arrangements that exist for fume extraction from the basement restaurant are being used for the ground-floor restaurant as well and whether they are fit for purpose. This issue can be satisfactorily resolved by imposing a planning condition requiring details of the system to be approved by the Council and installed as approved.

Anti-social behaviour occurring as a result of the design of the shopfront

17. For the reasons given in paragraph 13 of the previous appeal, I am satisfied that the design complies with Policy C5.

Overall conclusions on ground (a)

18. I have carefully considered what the effect of the change of use will be on the Neighbourhood Centre, particularly in view of the loss of a retail unit that might have catered for convenience shopping and the number of consecutive units here that are in non-retail use. The issue is finally balanced, but in my view for the reasons I have explained the balance is in favour of granting planning permission for the use of the ground-floor unit as a restaurant.
19. When all the factors relating to the effect of the shopfront on the appearance of the property and the street scene are taken into account, I do not consider that there is sufficient justification to withhold planning permission for this reason. The concerns about access and emissions can be dealt with by planning conditions. The possibility that increased anti-social behaviour will occur as a result of the design of the shopfront is improbable.
20. Accordingly, I have concluded that a conditional planning permission should be granted and the appeal has therefore succeeded on ground (a). Conditions have been imposed as indicated in paragraphs 15 and 16 above and, in the absence of any proposals for opening earlier in the mornings, a condition has been imposed restricting the hours of use of the ground-floor restaurant to those imposed in respect of the basement restaurant. The reasons for the conditions are: 1. to allow inclusive access and 2. and 3. to protect residential amenities.

Ground (g)

21. As a result of the success of the appeal on ground (a), the enforcement notice has been quashed. Ground (g) no longer falls to be considered.

D.A.Hainsworth

INSPECTOR