
Appeal Decision

Hearing held on 18 September 2013

Site visits made on 17 and 18 September 2013

by Neil Pope BA (HONS) MRTPI

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

Decision date: 2 October 2013

Appeal Ref: APP/A5840/A/13/2198122

84-90 Lordship Lane, London, SE22 8HF.

- 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 Farcastle Group Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref. 12/AP/3773, dated 7/11/12, was refused by notice dated 10/4/13.
 - The development proposed is the *refurbishment of the existing retail store at ground floor level to include single storey rear extension with associated plant, change of use of the first and (part) second floor from office (Use Class B1) to form eight two bed flats (Use Class C3).*
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council's decision notice, amongst other things, identifies conflict with policy 6.13 of the London Plan (LP), strategic policy 2 of the Southwark Core Strategy (CS) and the Council's Sustainable Transport Supplementary Planning Document (SPD). At the Hearing, the Council informed me that the scheme would not conflict with LP policy 6.13, CS strategic policy 2 or the SPD.

Main Issue

3. Whether any harm to the living conditions of neighbouring residents, by virtue of the proposed loss of off-street car parking spaces and the proposed delivery times, would be outweighed by the benefits of the scheme.

Reasons

Planning Policy

4. The appeal site lies within the District Town Centre (DTC) of Lordship Lane. The Council accepts that the proposal would accord with LP policy 2.15, which includes a requirement to sustain and enhance the vitality and viability of town centres, and LP policy 3.3 which aims to increase housing supply. The Council also accepts that the scheme would accord with CS policies aimed at providing new homes (CS policy 5) and supporting jobs and businesses (CS policy 10).
5. Amongst other things, 'saved' policy 5.6 of the Southwark Plan (SP) requires proposals to minimise the number of car parking spaces, take into account Public Transport Accessibility Levels (PTAL) and the impact of overspill parking.

Under 'saved' SP policy 3.2, permission will not be granted where it would cause a loss of amenity, including noise disturbance, to neighbouring residents.

6. I concur with both main parties that all of the above development plan policies are broadly consistent with the provisions of the National Planning Policy Framework ('the Framework'). All of these policies and the emphasis now on maximum parking standards represent a significant material change in circumstances since the previous appeal for an extension to the existing retail store was dismissed in 1992 (Ref. T/APP/A5840/A/91/194804).

Car Parking

7. The proposal would include the loss of an existing short stay, pay-and-display car park (17 spaces) within the DTC. Like many other parts of London, this is an area that suffers from 'parking stress'. From all of the evidence before me, including the letters of representation from some neighbouring residents and from what I saw during my visits, there is very limited spare capacity for on-street parking within the adjacent residential streets of Chesterfield Grove and Ashbourne Grove. I appreciate the difficulties some residents have in finding a parking space. Development that would increase the demand for on-street car parking within these streets would be likely to further inconvenience existing residents and, in broad terms, detract from their living conditions (amenity).
8. During my visits the vast majority of spaces within the pay-and-display car park were available. However, I recognise that this is likely to vary throughout the day and week and I note from the appellant's parking survey that at certain times the car park is almost full. Whilst there is no certainty as to who uses the car park, the locked gates at night and the short stay suggest that they are likely to be those shopping in the existing retail store (Iceland) and/or visiting other retail/commercial outlets in the DTC.
9. On behalf of the appellant, I was informed that the lease on the existing retail store finishes at the end of January 2014. If the appeal were to be allowed, the intention would be for Marks and Spencer (M&S) to occupy the enlarged retail premises. I note the appellant's argument and the representations from some of those supporting the scheme that this would enhance the attractiveness of this DTC. Those acting on behalf of the appellant have also informed me that the proposed 'Simply Food' outlet would be aimed at customers walking to the site and travelling by bus rather than car. The site has a PTAL of 4 (medium) and the proposed loss of the car park could assist in 'persuading' some shoppers/visitors to travel to this DCT by alternative means of transport than the car. If this were to arise it would accord with the thrust of CS strategic policy 2 and aspects of SP policy 5.6.
10. However, it is very far from certain that this modal shift would occur and, given the largely unrestricted parking in the above noted neighbouring streets, some customers could continue to drive to the DTC and compete for the few available on-street parking spaces. This 'overspill' parking could include disabled drivers who would not be catered for as part of the proposals. In addition, some incoming occupiers of the proposed flats may not be deterred by the 'parking stress' and could choose to own a car and also compete with existing residents for on-street car parking spaces. This would exacerbate the parking difficulties for neighbouring residents and, in so doing, harm their amenity and conflict with SP policies 3.2 and 5.6.

11. It has been argued that the existing car park could be closed without requiring planning permission. I also understand that in the past there have been one or two incidents of anti-social behaviour within the car park. However, in all likelihood, the appellant and/or those operating the existing retail premises would have more to gain by retaining this facility for use by customers. These retail premises remain in use¹ and the closure of the car park is not a fallback position available to the appellant. Evidence² also indicates that a resumption of office use in the upper parts of the building is unlikely. No fallback position therefore exists in respect of any parking demand from office use.
12. Recent changes to permitted development rights³ could afford the appellant the opportunity of converting the existing office space into residential units without requiring planning permission. However, it is unlikely that 8 units of the size proposed would be provided in this way. This is also not a fallback position available to the appellant. Nevertheless, two flats already exist and have the potential to generate a demand for car parking spaces. With this in mind, the Council's calculation that a demand for 3 parking spaces, from a net increase of 6 residential units, is reasonable.
13. Both main parties have agreed that if permission were to be granted a condition could be attached to an approval requiring membership of a Car Club for a period of three years. If incoming occupiers of the flats were offered this membership it could persuade them to not own their own motor car and to continue with such membership at the end of the three year period. This would be necessary to assist in reducing the demand for on-street parking. However, whilst those acting on behalf of the appellant argued that such a condition was not strictly necessary they also informed me that it could be difficult to enforce. I agree on the enforcement issue and note that at 'application stage' the appellant suggested that this could be addressed by way of a planning obligation. Whilst my decision does not turn on this matter, the suggested condition would not comply with the provisions of paragraph 206 of 'the Framework'.

Delivery Times

14. At present there are no planning restrictions regarding existing delivery times to the appeal premises. However, there has been a history of complaints from neighbouring residents regarding morning deliveries. I understand that this resulted in the Council's Environmental Protection Team investigating the matter and acting as mediator between the residents and the current leaseholder. As a consequence, an informal agreement appears to have been settled upon whereby no deliveries by articulated lorries occur before 08:00 hrs (Mon-Sat). I also understand that no deliveries are made on a Sunday.
15. The appellant is seeking⁴ to undertake deliveries between the following hours: 07:00⁵ – 22:00 (Mon-Fri); 07:00 – 21:00 (Sat) and; 08:00 – 18:00 (Sun). In many town centres restricting deliveries to these hours would be unlikely to result in any harmful noise disturbance. However, in this instance, the

¹ There is no suggestion they would become unoccupied other than for a temporary period should a change in leaseholder arise.

² Various marketing/viability reports submitted on behalf of the appellant.

³ The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013

⁴ Based upon M&S's requirement to deliver fresh food, amongst other things, to the premises on a daily basis.

⁵ Initially, the appellant specified deliveries from 06:30 hrs (week days) but put forward the later 'start time' in an attempt to overcome the Council's concerns regarding noise disturbance.

- service/delivery yard abuts the gardens/curtilages of a number of residential properties. Some of these properties also have windows and habitable rooms in close proximity to the service/delivery yard.
16. Given the mix of residential and commercial uses in this part of the DTC, careful consideration needs to be given to balancing the requirements of retailers, such as those which rely on providing a daily supply of fresh produce to customers, whilst ensuring that those already living alongside do not suffer unacceptable noise disturbance and a harmful erosion of their living conditions.
 17. Many people living within or on the edge of town centre locations are likely to be awake and getting ready for work or returning from work/social events during the weekday (Mon-Fri) delivery hours sought by the appellant. It is not unreasonable therefore to expect some noise and activity from commercial premises during this period. Whilst the 07:00 hrs delivery start time during this part of the week would be earlier than the current informal agreement it would be unlikely to interrupt sleep patterns or result in serious noise disturbance for neighbouring residents. I note that the Council is agreeable to this earlier start time for deliveries.
 18. Although working patterns have changed over time many people continue to enjoy a 'slower start' at the weekend, especially on Sunday mornings when a 'lie-in' and a period of quite relaxation can reasonably be expected. Whilst noting the appellant's noise survey and other acoustic evidence, I share the concerns of the Council and some neighbouring residents regarding the proposed weekend delivery times. Even if limited to a single lorry, any such delivery during the first hour, i.e. commencing at 07:00 hrs start on a Saturday and at 08:00 hrs on a Sunday, would be unacceptable on this site.
 19. Even with the best endeavours of a retailer such as M&S⁶, in all likelihood, the noise associated with delivery vehicles arriving at, manoeuvring within and departing from the site from 07:00 hrs on a Saturday and 08:00 hrs on a Sunday, including the inevitable noise of vehicles being unloaded, would be very likely to interrupt sleep patterns and cause significant noise disturbance for a number of neighbouring residents. Whilst the level of noise associated with deliveries during this part of the morning may not exceed World Health Organisation guidelines, it would be unacceptably disruptive to those living alongside and would seriously erode their living conditions. This would conflict with the provisions of SP policy 3.2.
 20. I note the fallback position available to the appellant in respect of deliveries to the existing retail premises. However, the proposal entails a considerable enlargement of the existing building. This could result in an increase in the number of deliveries. Moreover, from the history of complaints made to the Council and the representations received at application and appeal stages, there is little doubt in my mind that if deliveries were to be undertaken before 07:00 hrs (Mon-Fri) and/or at the start of the weekend delivery times sought by the appellant (or earlier) the end result would entail the serving of an abatement notice. No useful purpose would be achieved by granting planning permission in the knowledge that action would eventually have to be taken to cease 'unneighbourly' activities on the site.

⁶ Having regard to M&S's Delivery Code of Practice

Benefits

21. 7 full time jobs and 50 part-time jobs would be provided by the scheme. These jobs could also be relatively well-paid when compared to the wage structures of some other retailers. However, the existing retail operator also provides employment and those acting on behalf of the appellant were unable to specify how many full and part-time jobs exist. Whilst job creation is important, it is not possible to make any meaningful comparison. Furthermore, whilst I do not doubt M&S's interest in the site, circumstances could change and another retailer⁷ with a different business plan could occupy the premises.
22. The proposal would support the retail function of the DTC. However, the same is also true of the current retail activities taking place from the site. This would also be the case if another retailer occupied the premises.
23. The proposal would increase the supply of housing within the Borough. The appellant's architect has also given thoughtful consideration to improving the appearance of a rather 'tired' looking building. In addition, the new 'green' roof would enhance biodiversity interests. As I have already noted above, the scheme would also accord with aspects of the development plan. My findings in respect of these matters weigh in support of granting permission.

The Planning Balance

24. The benefits of the scheme would outweigh the harm to the living conditions of neighbouring residents in respect of car parking. However, when the harmful noise disturbance is also weighed the balance tips against an approval.

Other Matters

25. There is evidence before me to indicate that lorries turn both left⁸ and right⁹ into the site entrance and both directions on departure. Whilst there is no guarantee that delivery vehicles would arrive and depart from Lordship Lane, the appellant has demonstrated that if lorry drivers chose this route their vehicles would be able to enter and leave the site in a forward gear. Whilst there would be very limited space for lorries to manoeuvre, the Council has not raised any highway issues. Although I note the damage to the entrance bollards, the exact causes are unclear. Vehicles manoeuvring within the site would be slow moving and would be able to see any pedestrians that could be present when deliveries occur. In the absence of any technical evidence to refute the appellant's and Council's assessments, it would be difficult to justify withholding permission on highway safety grounds.
26. The proposal would be designed so that the upper floors of the extension would be set back from the adjoining dwelling at 82a Lordship Lane. This would avoid any overbearing effect and harmful loss of light. A privacy screen would also be erected adjacent to the common boundary to avoid any serious overlooking or loss of privacy. During one of my visits I was able to see into the rear garden and down into the rooflights of this neighbouring dwelling. The proposal would not exacerbate this situation. Noise from the equipment/plant could be controlled by way of a planning condition and other conditions could

⁷ Those acting on behalf of the appellant informed me that more than one retailer was interested in the site.

⁸ Some of the letters of objection.

⁹ Whilst not disputing that some lorries turns left into the site, the appellant's highways consultant informed me that he had only observed lorries turning right into the site and exiting towards Lordship Lane.

be used to avoid any harmful disturbance to important tree roots growing within the site. Any breach of private covenants or infringement of property rights would be a separate matter for the respective parties.

Overall Conclusion

27. Given all of the above, I conclude that the appeal should not succeed.

Neil Pope

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr R Jones	Partner, Planning Perspectives LLP
Ms S Weeks	Associate Partner, Planning Perspectives LLP
Mr A Savell	TTP Consulting
Mr J Murfitt	Sharps Redmore Acoustic Consultants

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Davies	Senior Planning Officer
Mr M Prickett	Environmental Protection Team
Mr C Loveday	Transport Team

LIST OF DOCUMENTS SUBMITTED AT THE HEARING:

Document 1	Bundle of applications drawings.
Document 2	Appeal decision Ref. T/APP/A5840/A/91/194804.
Document 3	List of suggested planning conditions.
Document 4	Further suggested planning conditions.