



Appeal Decision

Site visit made on 14 March 2011

by P W Clark MA MRTPI MCMi

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

Decision date: 22 March 2011

Appeal Ref: APP/V5570/A/10/2141070
2B York Way, London N1 9AA

- 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 Ossama Wagdi against the decision of the Council of the London Borough of Islington.
 - The application Ref P100224, dated 21 January 2010, was refused by notice dated 12 October 2010.
 - The development proposed is change of use to a hot food take away (A5 use class) and installation of new shopfront including awning along with extract ducting.
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Decision

1. I dismiss the appeal.

Procedural matter

2. I have taken the description of development from the Council's decision notice rather than the application form because it is both more complete and more concise.

Main Issues

3. There are two. The Council is concerned with the effects of the proposal on the living conditions of neighbouring residents. A sufficient number of members of the public are concerned with the effects of the proposal on the character and appearance of the Kings Cross Conservation Area for me to regard this also as a main issue.

Reasons

Living conditions of neighbours

4. There are two aspects to this issue. One is the potential effect of the proposal on neighbours by reason of cooking smells. The other is its effect in terms of noise and disturbance as a result of the hours of opening proposed.
5. There is no information about the location of residential neighbours. The floor immediately above the premises is in use as part of the McDonalds restaurant also operating at the ground floor premises to the south. Immediately adjacent to the north is a shop at ground floor. It does not appear that the premises immediately abut any residential use which would require protection by sound insulation against the transmission of noise through party walls or ceiling.

6. Doorbells at numbers 2A and 8A are labelled "flats", so it appears that there are residential units in the vicinity, albeit not sharing a party wall or floor with the premises. The proposal would allow for much of the shopfront to be opened during trading hours. In effect the hot food take-away would operate as an open stall. Kebab machines would cook food close to the street. Unless the extract ventilation system is sufficiently powerful to draw fumes and cooking smells in away from the street, there is a likelihood of an adverse effect on any nearby residential property which takes its ventilation from the street.
7. There is no information about the specification or capacity of the extract ventilation proposed, so I am unable to be confident that this proposal would have the capacity or effectiveness to avoid an unacceptable effect on nearby residential properties. There is no information to show that the extraction equipment would be fitted with effective filters for removing smells. Although extract ducting is shown, there is no information to show that this would be resiliently mounted so as to ensure that no noise or vibration would be transferred to any residential property through the walls of the building. Photographs show that the duct terminates in a cap. I am not convinced that this form of flue termination would allow an adequate volume of exhaust air to be dispersed so as to ensure that all cooking smells are drawn away from the street.
8. The proposal is for the use to remain open until 2 am each morning. Local residents are concerned that this use, operating at those hours, would attract late night drinkers and clubbers leaving litter and causing noise and disturbance to local residents. The site is immediately opposite Kings Cross railway station which generates a considerable volume of comings and goings well into the small hours. It is at the junction of several main roads which carry a considerable volume (both in quantity and in audibility) of traffic.
9. I note that most nearby upper floors appear to be fitted with double glazing which would provide some acoustic protection against street noise. Although other refreshment facilities in the immediate vicinity on Pentonville Road and York Way advertise closing times variously as 20.00, 20.30, 21.00, 22.00 and 23.30, McDonalds, which shares the same building as the appeal proposal and is a much larger unit, displays a late night licence allowing it to open until 5am each morning. In this context it is unrealistic to take the view that the proposal would have more than a minimal effect on residents' noise environment.
10. In the absence of information about the qualities and capabilities of the extraction system, I conclude that the proposal would have an unacceptable effect on the living conditions of nearby residents in terms of odour and smell. It would therefore be contrary to policy Env17 of the Islington Unitary Development Plan which seeks to avoid such effects. It would have no discernible effect on their living conditions in terms of noise and disturbance.

Character and appearance

11. Much of the character of the Kings Cross conservation area results from the austere appearance of its early nineteenth century, Georgian-inspired architecture. Recent regeneration activity has emphasised their clean lines and lack of ornament by clearing away accrued grime and alterations. As the Council notes in its committee report, the shopfront proposed is a simple, wooden construction which does not detract from this character. Commercial

uses, including others similar to the proposal, are prevalent on the ground floors of this and adjoining buildings so the use proposed would not be out of character.

12. The appeal premises effect a transition between the alignments of two adjoining buildings, projecting forward from the façade of number 2 York Way so as to align with the more advanced building line of the terrace to the north. However, the metal canopy proposed would not be consistent with a transitional element because it would project still further onto York Way and so become a feature in its own right, out of scale and unrelated to any surrounding building. The Council suggests that it would be possible to deal with this by a condition requiring its omission, were I minded to allow the appeal. I concur but dismiss the appeal in any event for other reasons. I conclude that with the deletion of the metal awning, the proposal would preserve the character of the Kings Cross Conservation Area.

P. W. Clark

Inspector