The Planning Inspectorate

Appeal Decision

Site visit made on 17 April 2012

by P J Asquith MA(Hons) MA MRTPI

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

Decision date: 8 May 2012

Appeal Ref: APP/B4215/A/12/2169151
136 Burton Road, West Didsbury, Manchester, M20 1JQ

- 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 Gopal Dangol against the decision of Manchester City Council.
- The application Ref. 097537/FO/2011/S1, dated 4 October 2011, was refused by notice dated 22 December 2011.
- The development proposed is described as the change of use from former retail shop and pine furniture workshop to A3 use (restaurant) ground floor, including the installation of a kitchen extraction system duct.

Procedural Matter

1. It is clear that improvement works to the rear single-storey structure of what is described as a concrete garage have been carried out with re-roofing and recladding. Plans showing this work were not originally submitted with the application but at the request of the Council were subsequently provided shortly before the application now the subject of this appeal was determined. From the evidence provided it is apparent that these works were not considered as part of the change of use application and that the Council has asked for a separate application to be made relating to these. For the avoidance of doubt I have considered the proposal solely as described in the fourth bullet point above.

Decision

2. The appeal is allowed and planning permission is granted for the change of use from former retail shop and pine furniture workshop to A3 use (restaurant) ground floor, including the installation of a kitchen extraction system duct at 136 Burton Road, West Didsbury, Manchester, M20 1JQ in accordance with the terms of the application, Ref. 097537/FO/2011/S1, dated 4 October 2011, subject to the conditions set out in the attached schedule.

Main Issues

3. I consider there to be two main issues in this case: first, the impact of the proposal on the living conditions of nearby residential occupiers with particular reference to noise and general disturbance, and smell from cooking odours; and secondly, the impact of the scheme on the appearance and character of the Albert Park Conservation Area within which the premises are situated.

Reasons

Residential amenity

4. The currently vacant appeal premises comprise a three-storey, end-terrace property fronting Burton Road with a rear single-storey element backing onto a service access running to the rear of terraced housing in Leopold Street. They lie within what is a local centre along Burton Road characterized by a mix of retail, commercial, food and drink outlets and residential uses.

5. The appellant suggests that the proposed restaurant would cater for 50 covers within the main body of the building, with cooking, preparation and storage taking place in the single-storey rear element. The Council's concerns in terms of impact on residential amenity relate to the potential noise and disturbance that could arise from activity generated late in the evening.

6. In addition to the terraced housing backing onto the site there is modern flatted accommodation over a convenience store to the immediate north-east and terraced housing facing the site across Burton Road. I have no doubt that much custom would be likely to be drawn to the restaurant on foot from the surrounding residential areas and other patrons may use local bus services and the nearby metro. However, inevitably some customers would arrive and depart by car or taxi and their comings and goings and on-street parking would have the potential for causing noise disturbance for nearby residents within Burton Road. That said, the immediate area is already one of considerable mixed uses with the adjacent supermarket open until 23.00 and there are other restaurants and nearby public houses and bars that would point to the area being already one in which late evening activity is commonplace.

7. Furthermore, Burton Road at the time of my visit in mid-afternoon on a weekday was a busy thoroughfare. Whilst traffic volumes will undoubtedly fall in the evenings it is in my view more than probable that existing traffic noise is still likely to dominate into the late evening within Burton Road, the more so with traffic slowing and pulling away at the lights-controlled crossroads with Cavendish Road close to the appeal site. In addition, those living within such an area might be expected to be somewhat more tolerant of noise and activity in the late evening than those living within a more uniformly residential neighbourhood.

8. The appellant has indicated that he would be prepared to accept the more restrictive opening hours suggested by the Council than those put forward in the application. These would permit opening until 23.30 Sundays to Thursdays and until midnight on Fridays and Saturdays although he would prefer being allowed to remain open until 01.00 on Fridays and Saturdays, which is the currently permitted opening times of the restaurant at 140 to 144 Burton Road within the same terrace. In my view such restrictions, together with the imposition of other suggested conditions relating to refuse disposal, door and window opening and deliveries and servicing, would ensure a reasonable level of protection for nearby residents from late night-time disturbance both from within the premises and the arrival and departure of customers. A 23.30 closure during the normal working week would be reasonable and, to be equitable with other nearby establishments, a later closing of 01.00 on Fridays and Saturdays would be acceptable.

9. Although the Council does not raise the matter, some concern has been voiced by a local resident about the potential nuisance that might arise from cooking smells from the restaurant. It is proposed that cooking odours would be vented from the kitchen area in the rear section of the premises using a modern system incorporating filters and silencers, with the vent terminating above eaves level on the three-storey element. Modern ventilation/extraction systems, if installed and operated in accordance with the manufacturer's instructions, in my experience can be effective in eliminating most cooking odours. As such, and bearing in mind the absence of expressed objection from the Council's officer in relation to environmental health, I do not consider the possibility of nuisance from the escape of residual cooking odours would be such as to cause any significant harm to nearby residents' living conditions.

10. I therefore conclude on this first issue that the proposal would not have any significantly detrimental impact on the living conditions of nearby residents. As such, it would not be contrary to the thrust and intent of Policies H2.2, DC10 and DC26 of the Unitary Development Plan for Manchester (UDP) which all have the protection of residential amenity as an aim.

Impact on the Conservation Area

11. The Albert Park Conservation Area is extensively drawn, primarily encompassing areas of detached, semi-detached and terraced housing of the late Victorian era though the immediate area within which the appeal premises are situated is more mixed, incorporating some modern development. The proposal shows a flue for the ventilation/extraction system from the restaurant fixed externally to the rear gable elevation of the three-storey section of the premises. It would be screened from many public viewpoints although it would be a clearly-visible feature from the service roads to the side and the rear of the terraced housing in Leopold Street and from the flats and housing that back onto this area.

12. I consider that even if the flue was to be painted to blend more readily with the brickwork of the building, because of its overall length it would represent a somewhat intrusive element. However, the appellant has indicated that it would be feasible to internalize much of the flue within the building and for it to discharge at the main roof level. This, in my view, would be a far more visually acceptable solution and could be made subject to a suitable condition. As a consequence, such a solution would have a neutral effect on the appearance and character of the conservation area, these attributes would thereby be preserved and there would be no material conflict with Policies H2.2 or DC18 of the UDP, the latter seeking to preserve and enhance the character of conservation areas. Furthermore, allowing the proposal would permit the building to be brought back into active use, enlivening this part of Burton Road and this in itself would be beneficial in terms of the appearance and character of the conservation area.

13. I have taken account of all other matters raised, including comments made by the West Didsbury Residents' Association and the one local resident who commented at the application stage. Whilst noting the Residents' Association's representations and helpful suggestions as to conditions that it considers should be imposed in the event of permission being granted, I do not consider it necessary to restrict the number of covers in the restaurant as the size of the premises themselves is likely to impose its own limitation. However, I agree that the external yard area associated with the premises should not be

available for use by customers since congregation there could give rise to noise and general disturbance for the occupiers of the adjacent residential flats. Subject to this and the other conditions already referred to, the wording of which I have modified where necessary having regard to Circular 11/95 *The Use of Conditions in Planning Permissions*, I consider the scheme to be acceptable and the appeal should succeed.

P J Asquith

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The use hereby permitted shall not commence until a scheme for the storage (including segregated waste recycling) and disposal of refuse has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented as part of the development and shall remain in operation whilst the approved use subsists.

3) The use hereby permitted shall not be open to customers outside the following times: Sundays to Thursdays 11.30 to 23.30, Fridays and Saturdays 11.30 to 01.00.

4) Notwithstanding the submitted details the use hereby permitted shall not commence until details of a scheme for the provision of an extract/ventilation system, including details of the method of treatment of emissions and filters to remove odours, have been submitted to and approved in writing by the local planning authority and the equipment has thereafter been installed. Such a system shall be retained, operated at all times when the restaurant is in use and shall be maintained in accordance with the manufacturer's instructions.

5) Deliveries, servicing and collections, including waste collections to and from the premises, shall be restricted to the following times: Monday to Saturday 07.30 to 20.00, with no waste collections on Sundays or Bank Holidays.

6) No refuse or glass shall be disposed of in outside receptacles between the hours of 21.00 and 08.00.

7) All windows shall be kept closed at times that the premises are open to the public. Doors to the restaurant shall be fitted with automatic closing devices which shall be fully operational and remain so whilst the restaurant is open to customers.

8) The outside yard area shall not be accessible to customers except for the purposes of emergency egress.