
Appeal Decision

Site visit made on 16 June 2014

by Isobel McCretton BA(Hons) MRTPI

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

Decision date: 5 August 2014

Appeal Ref: APP/E5900/A/14/2217680
3-5 Globe Road, London E1 4DT

- 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 Sainsbury's Supermarkets Ltd against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref. PA/13/01811, dated 22 July 2013, was refused by notice dated 24 October 2013.
 - The development proposed is change of use of ground floor from Class B1 to class A1 and external alterations comprising new customer entrance door, replacement windows to frontage and new means of escape to the rear. Creation of a new on-street loading bay.
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Decision

1. The appeal is dismissed

Main Issues

2. The main issues are:
 - The effect on the vitality and viability of the Stepney Green Neighbourhood Centre;
 - the effect on highway safety and the free-flow of traffic; and
 - the effect of the proposed development on the character and appearance of the host building and the Stepney Green Conservation Area.

Reasons

3. The appeal property is situated, within the Stepney Green Conservation Area on the western side of Globe Road, close to the junction with the A11/Mile End Road. The area is of mixed character. To the south is Stepney Green underground station, to the north a block of flats and to the west, on the opposite side of the road, is a public house/betting shop and small café. Along Mile End Road and extending southwards into Whitehorse Road is the Stepney Green Neighbourhood Centre (SGNC), as defined in the adopted Core Strategy¹, which contains a mix of uses including small convenience and comparison shops.

¹ Local Plan Core Strategy Development Plan Document 2025 adopted September 2010

4. The building is a 2-storey brick-built structure with a single storey rear addition and a small service yard to the rear, accessed from Globe Road. It was previously used as offices and storage but has been vacant since around 2012. It is proposed to change the use of the ground floor to a convenience store (around 429m² gross floorspace/261m² net retail space) trading under the 'Sainsbury's Local' format. There would be a new entrance door and changes to the ground floor fenestration on the Globe Road frontage. The existing entrances on each end of the building would be retained to give access to the upper floor which would remain in business use.

Vitality and Viability of the SGNC

5. A Market Analysis Report was submitted with the planning application which was reviewed by consultants acting for the Council (the PBA report). The Council accepts that the marketing requirements of policy DM15 of the Managing Development Document² (MDD) have been met, and that the loss of the ground floor employment floorspace is acceptable in this case.
6. Core Strategy policy SP01(1) defines the town centre hierarchy in the Borough. The Neighbourhood Centres contain a range of shops, including essential uses that serve a local catchment area. Policy SP01(2) seeks to ensure that the scale and type of uses within the town centre area is consistent with the hierarchy, scale and role of each town centre. This is illustrated in Figure 20 which shows that, for neighbourhood centres, these are '*local shops, convenience store, and community/social facilities*'. Policy SP01(2d) sets out that one of the ways this will be achieved is by promoting mixed-use and multi-purpose town centres with a mix of unit sizes and types (including smaller unit sizes) to assist in the creation of vibrant centres that offer a diversity of choice, and meet the needs of communities.
7. The appellant maintains that the proposed store would be small-scale and would serve the local area. Being only metres from the main road and easily accessed, it would effectively operate as part of the centre and is intended to serve the walk-in 'top up' shopping needs of the local residential population. It is stated that the regular customer base would be drawn from the surrounding residential streets, plus passing trade from those who may need to top up on daily essentials as they travel between home and work.
8. The appeal site lies outside the defined SGNC. MDD policy DM02(2) states that development of local shops outside town centres will only be supported where, among other things, there is demonstrable local need that cannot be met within an existing town centre and that they are of an appropriate scale to their locality. The appellant argues that this policy should not be applied to this proposal for a store of around 429m², as the policy refers to protecting 'local shops' which are defined, for the purposes of part (2) of the policy, as having a gross floorspace of no more than 100m². Nevertheless, the supporting text also states that the policy '*seeks to manage the risk of larger retail shops coming forward outside of designated centres. This could not only threaten the vitality and viability of the borough's town centres but could also have a negative effect on existing local shops (often local independent businesses) which are serving the needs of the local community*'. Given the concern of the policy about the effect of larger shops on Neighbourhood Centres I consider that the need for and impact of the proposed store must be assessed.

² Local Plan Managing Development Document (MDD) adopted April 2013

9. It is argued that there is no requirement in the National Planning Policy Framework (the Framework) to demonstrate a need for additional retail floorspace. That is so. However the MDD, which forms part of the development plan, was adopted after the Framework was published. It was found to be sound and so can be considered to be up to date. Although the appellant has not directly addressed need, it is maintained that the proposed store would significantly improve the quality of facilities on offer at present in the locality, increase choice and competition and contribute to more sustainable shopping patterns.
10. Nevertheless, no gaps in provision in the centre have been identified. Indeed, the appellant's 'health check' of the SGNC shows that it has a range of convenience stores with a Co-op store of a similar size to that proposed just beyond the junction with Globe Road, a smaller Costcutter on Whitehorse Lane and 3 small grocery stores. There is no suggestion that any of these are deficient or over-trading and no indication that the proposed store would provide anything currently lacking in the current retail offer. Nor is there any indication, given the fact that the company has an outlet at 220-223 Mile End Road, just over 500m from the appeal site, why the company needs a further store in this area. There is also no substantiated evidence, given that it would draw on the catchment already served by the range of stores in the SGNC, that more sustainable shopping patterns would result.
11. It is common ground that the proximity of the site to the defined centre means that it can be considered as 'edge of centre' in terms of the Framework. The Framework requires that a sequential test is applied to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan as in this case. Similarly, policy 4.7 of The London Plan (2011) concerns retail and town centre developments. The policy effectively requires the scale of the proposal to be assessed in relation to the size, role and function of the centre, the sequential test to be applied and an assessment of the impact to be undertaken.
12. The appellant has set a 500m radius local catchment i.e. around a 5 minute walk from the appeal site as representing the area from which most of its trade would be drawn. This area includes the Whitechapel District Centre and the Ben Johnson Neighbourhood Centre, though the appellant points out that as most of the retail units in those centres are outside the 500m catchment they were not included in the sequential test. The PBA report suggests that because of the overlap of catchment areas, it would have been reasonable to include these centres and hence assess floorspace available in the development which includes the Ben Johnson Centre. I note that for the purposes of the health check and impact assessment carried out, these centres were included, reinforcing the point in PBA report that the catchment areas overlap.
13. Only 2 vacant sites were identified, both very much smaller than the proposed unit. The appellant maintains that this means that there is no sequentially preferable site available, but the PBA report identifies floorspace available in the Ben Johnson Centre and also raises questions as to the appellant's flexibility in format. I am therefore not convinced that it has been satisfactorily shown that the sequential test has been properly met.
14. There was disagreement between the main parties as to whether, given the size of the proposed store, it was necessary to carry out an impact assessment.

The Framework requires an impact assessment if a local threshold is exceeded (which the Council claims is the case but the appellant disputes). Notwithstanding this, The London Plan requires an assessment and one was in fact submitted by the appellant in support of the application. The Framework sets out that such assessments should be proportionate to the development proposed. The two criteria to be considered are impact on vitality and viability and impact on investment.

15. There is no suggestion that other investment in the SGNC would not go ahead if the appeal proposal were to be implemented. However, while the appellant estimates that the store would take around 11% of the top up shopping turnover from the catchment, the PBA report casts doubt on the figures, considering that the estimate is too low. While some of the concern comes down to PBA's misinterpretation of the appellant's statement in this respect, I consider that there is, nonetheless, insufficient explanation as to how the figures have been derived and analysis as to the impact of the likely impact of the proposed store on existing shops in the centre, especially in future years.
16. The proposed store would effectively expand the SGNC northwards away from the main shopping area as it exists at present. As set out above, the centre is currently served by a range of convenience shops. Although the appellant claims that it would attract more trade to the centre, it is not clear from where this would be drawn if trade at existing shops were not to be harmed. If the trading position of the other shops was damaged then there would be a detrimental effect on the centre as a whole because of the new store outside the centre, which policy DM02 seeks to avoid. Although the proposed new store would enable retail spend to be retained in the local area, in my view it has not been fully shown that the development of a store of this size would not undermine the retail offer in the designated centre, including the small businesses which make up the majority of shops within the centre along the main road.
17. I therefore conclude that it has not been demonstrated that there would not be a detrimental effect on the vitality and viability of the SGNC.

Highway Safety and Free-Flow of Traffic

18. Globe Road is a local distributor road. There are traffic signals at the junction with Mile End Road just to the south of the appeal site, a bus stop opposite the appeal site and another on the same side of the road, about 24m to the north. Also on the eastern side to the north of the site there are on-street parking bays. Mile End Road is part of the Transport for London (TfL) Road Network with 'red route' restrictions which extend round the corner into Globe Road as far as the appeal site. There are parking and loading restrictions between 07.00-19.00 Monday – Saturday along Globe Road.
19. Because of the size of the lorries used to service the store, it is not possible to use the small rear service yard for deliveries. It is proposed that all deliveries would take place from the western side of Globe Road immediately to the north of the proposed store. Here the pavement widens considerably and it is proposed to create a recessed loading bay 15m long, south of the bus stop, which would accommodate a maximum delivery vehicle size of 11.2m. Goods would be transferred by trolleys along the pavement to the shop door. There would be likely to be one main delivery from a Sainsbury's distribution centre per day, four deliveries/day from external suppliers (e.g. for bread and

- newspapers) and one weekly delivery of high end value goods (e.g. cigarettes). These deliveries would normally be in the early morning, and outside the morning and evening peak period. Return vehicles from the main depot delivery would take food waste and recyclable materials, thereby reducing the number of servicing trips. The proposal also includes a Delivery and Servicing Plan.
20. The Council was concerned that, despite the provision of the loading bay, delivery lorries would obstruct traffic in Globe Road to the detriment of the free-flow of traffic and pedestrian safety. Accordingly, a revised plan for the loading bay was submitted by the appellants (120598/A/03B) which the Council's Highways and Transportation section has had the opportunity to assess. I therefore do not consider that any interests would be prejudiced by my consideration of this amended layout.
21. The Council has a number of objections to the proposed loading bay. The width of the proposed bay has been widened to 2.4m so that 2 buses or large vehicles could pass each other on the carriageway while a lorry is being unloaded, even if the parking bays on the opposite side of the road are in use. This would maintain the flow of traffic, but means that there would be a consequent narrowing of the footway. However, a pavement of at least 2.78m in width would remain and, even in the narrower section of pavement outside the appeal site itself where trolleys would be used, there would be an unobstructed width of 2.5m. The appellant has carried out pedestrian surveys and analysed pedestrian comfort levels using TfL's Pedestrian Comfort Level Assessment. The comfort rating with the loading bay in place would be at least 'A' and, even if pedestrian flows doubled as a result of the presence of the store, it would 'A-' or better.
22. The Council maintains that the proposed loading bay would remove the pedestrian desire line along Globe Road. Observations of officers from the Highways and Transport department seem to conflict with the information in the appellant's submissions in this regard. Whatever the current desire line is along this side of Globe Road, it seems to me that any diversion as a result of the loading bay would not be significant and, more importantly, an adequate width of footway would remain.
23. The bay would be outside residential properties and the Council argues that there could be harm to residential amenity, especially if servicing were to be carried out in the early morning. However loss of amenity was not one of the reasons for refusal. Moreover, this is a busy thoroughfare where vehicle movement and noise is part of the ambient environment. No evidence has been adduced to show that noise levels would increase to an unacceptable as a result of the proposed loading bay and on-street loading in the early morning, before the start of the parking restrictions, could take place anyway.
24. The company has no record of accidents at other stores where trolley movements along the footway have to take place when loading and unloading is taking place and it is not an uncommon practice in urban areas such as this. The Council has not produced any substantiated evidence to refute the appellant's findings and I am satisfied, particularly given the likely timing and frequency of deliveries to the store, that pedestrian safety would not be compromised.

25. The loading bay would necessitate an amendment to the Traffic Management Order for the area and it could not be reserved for the exclusive use of the store occupier. The appellant states that an Isotrak system is used so that stores know more or less when to expect the delivery vehicle. If the loading bay were not available the driver would have to park elsewhere until such time as a delivery could be made. Although the Council argues that this could be some distance away and means that trolleys may be left on the footway until a lorry could be parked in the bay, the Delivery and Servicing Plan, compliance with which could be required by condition, precludes this. As previously mentioned, outside the restricted times, loading could, in any event, legally take place from the highway.
26. There is also concern that the bay would be used as an informal drop off/pick up point for people using the underground station on the corner of Globe Road. Even if this occurred it is a matter of enforcement in the same way as loading on the highway, but is unlikely to be at times when deliveries would be most likely to take place.
27. The Council also argues that a lorry parked in the proposed loading bay would mean that people waiting at the bus stop would not have a clear view of approaching buses. However this is a demand stop where drivers would be looking out for potential passengers, and also, having just turned into Globe road would not be travelling at any great speed.
28. Overall I am satisfied that the proposed servicing arrangements would not be detrimental to vehicular and pedestrian safety and the free-flow of traffic along the highway. The proposal would not conflict materially with MDD policy DM20 which requires that development is properly integrated with and has no unacceptable impacts on the capacity and safety of the transport network.

Character and Appearance/Conservation Area

29. The appeal site is on the north eastern edge of the Stepney Green Conservation Area which is based on the area previously known as Mile End Old Town. This is a 2-storey, building built of yellow London stock bricks. The front façade is symmetrical with an entrance door at each side and a 12-pane Crittal window at first floor level above, and 6 Crittal windows at ground (20-pane) and first floor(16-pane) level within a recessed area of brickwork, detailed at the level of the ground floor cills by a row of rounded engineering bricks. It is proposed that one of the windows would be replaced with a single sliding automatic door and the remaining ground floor windows would be elongated and replaced with aluminium framed single pane windows above a rendered 'stall riser'.
30. With uncharacteristic roller shutters over the existing doorways (one of which is shown as being retained), and mesh security grilles over the ground floor windows, the building does not, currently, make a positive contribution to the character and appearance of the Conservation Area. Nonetheless, even though it is not listed, it is a historic building of some character, redolent of past industry in the area in the middle of the last century. The rhythm and symmetry of the building would be retained but, regardless of the quality of the materials proposed, the changes to the fenestration would be out of keeping with the design and character of the original building. The single plate glass windows would appear incongruous when seen in conjunction with the small-paned Crittal windows which would remain at first floor level, and their

elongated form, cutting through the lower brickwork detailing to an artificial rendered plinth, would detract from the character of the building.

31. Overall I conclude that the changes would not preserve or enhance the character or appearance of the Conservation Area but would harm it. The scheme would not accord with policies 7.4, 7.6 and 7.8 of The London Plan, Core Strategy policies SP10 and SP12 and MDD policies DM24 and DM27 which, together, seek to ensure that development is of the highest quality design, positively responds to its setting and preserves the architectural quality, character and setting of the Borough's heritage assets.
32. The Framework sets out that great weight should be given to the conservation of heritage assets. Where there is harm to a heritage asset which is less than substantial harm, as in this case, the public benefit of the proposal must be taken into account. I acknowledge that the proposal would bring about the repair and re-use of a vacant building within the Conservation Area, but I have found that the proposed use could be detrimental to the vitality and viability of the SGNC. As such, I do not consider that there are public benefits which outweigh the harm to the heritage asset.

Conclusion

33. While I have found the proposed servicing arrangements to be acceptable, there is insufficient evidence to show that the vitality and viability of the SGNC would not be harmed and there would be harm to the character and appearance of the Conservation Area which is not outweighed by public benefits. The Framework contains a presumption in favour of sustainable development, but this has three dimensions – social, economic and environmental. Given my conclusions above, the economic and environmental aspects of sustainable development would not be met.
34. For the reasons given above I conclude that the appeal should be dismissed.

Isobel McCretton

INSPECTOR