
Appeal Decision

Site visit made on 21 September 2016

by Siobhan Watson BA(Hons) MCD MRTPI

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

Decision date: 5 October 2016

Appeal Ref: APP/H5390/W/16/3153569
31A North End Road, London, W14 8SZ

- 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 Zul Karim (Arearose Ltd) against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2016/00100/FUL, dated 8 January 2016, was refused by notice dated 9 March 2016.
 - The development proposed is restaurant with ancillary takeaway (Class A3) in order to regularise the use of the property.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Zul Karim against the Council of the London Borough of Hammersmith & Fulham. This application is the subject of a separate Decision.

Main Issues

3. The main issues are (i) whether the proposed development provides inclusive access; and (ii) the effect of the proposal on the living conditions of the occupiers of nearby residential properties.

Reasons

Inclusive Access

4. The appellant has submitted amended plans in an attempt to overcome the reason for refusal relating to access. In considering whether I should accept the amended plans I have considered the Wheatcroft judgement.¹ This established that the main, but not the only, criterion to consider is whether the development is so changed that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation.
5. The amended layout would require an extension to the rear which, not only would it be along the joint boundary but it would increase the floorspace of the building and reduce the yard area. I appreciate that the extension would be under the first floor over-sail but I still consider it to be an extension into the

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

yard. These are changes which should result in re-notification of neighbours. Therefore, I do not accept the amended plans and my decision is based on the plans upon which the Council made its decision.

6. The proposed floor plans show a small WC located off a narrow and turning passage. Therefore neither the route to the WC nor its size would be suitable for customers with wheelchairs or other mobility aids.
7. Consequently, the proposed development would not provide inclusive access. Therefore, it would conflict with Policy BE1 of the London Borough of Hammersmith and Fulham Core Strategy, 2011; Policy DM G3 of the London Borough of Hammersmith and Fulham Development Management Local Plan (LP); and Policies 1 and 3 of the LB Hammersmith and Fulham Planning Guidance Supplementary Planning Document, July 2013. These policies require design, including internal design, to be accessible and inclusive. The SPD specifically requires internal arrangements and toilets to be accessible to people with disabilities.

Living Conditions

8. The appellant insists that the take-away use would be “ancillary” to the restaurant use but no indication of the level of takeaway use has been submitted. He says this is because the takeaway operation would be so small as to not involve a material change of use from the proposed main A3 restaurant use. If that is the case, it is puzzling why there is any reference to take away use in the description of development, as following this logic, it need not be referred to at all. Therefore, I appreciate the Council’s concerns that the takeaway element might be material.
9. The premises are located within what appears to be a short parade of commercial premises. However, although the building next door has a shop-front, the Council say it is in residential use. I also note that there are residential properties on the upper floors of the parade. There are also dwellings opposite and in surrounding streets. The living conditions of these dwellings must be considered. However, the parade contains 2 pubs, one is next door and the other is next door but one. The latter is currently boarded up but this does not mean that it will not re-open. Given the existence of these late evening uses, the character of the area is already one of mixed use. Furthermore, the Council’s Environmental Protection Officer had no objections to the proposal. Even if the use were to be a mix of restaurant and takeaway, within this context and providing that appropriate conditions were to be used, such as those relating to opening hours, I do not consider that such a mixed-use would necessarily introduce an unacceptable additional level of noise to the area.
10. The Council comments that the existing fume extraction system might not meet current standards, however, that could be the case for many existing systems and is not a reason to withhold planning permission. Such matters can be controlled by condition. The Council has mentioned “vibration” in its decision but I have no evidence that the proposed use would result in disturbance due to vibration.
11. I therefore conclude that there would be no harm to the living conditions of the occupiers of nearby residential properties. Consequently, there would be no

conflict with LP Policies, DM H9 and DM H11 which seek to protect existing occupiers from pollution such as noise, fumes, vibration and smells.

Other Matters

12. The site is located within the Avonmore and Olympia Conservation Area. As no external alterations are proposed, and because the use is compatible with that of a row of commercial units, I consider that the proposal would preserve the character and appearance of the conservation area.
13. The Council has referred to LP Policy DM C5 which indicates that account will be taken of proximity to areas where children and young people are likely to congregate such as schools and parks. The premises are close to St James Independent School and Avonmore Primary School. It is unlikely that children from a primary school would be gathering around a takeaway and I have no information about what age group St James serves. Therefore, being close to these schools does not persuade me that a takeaway would be unacceptable. I also note that Marcus Garvey Park is behind the site but I have little evidence that this is a place for the gathering of young people who are likely to use the takeaway. In any event, Policy DM C5 does not go so far as to ban takeaways on this basis and I find no direct conflict with this policy. The Council has also referred to a Planning Guidance SPD in this respect, but I do not have a copy of it before me.
14. I have considered the representations from interested parties. I have no real evidence that the proposed use would result in increased levels of litter or vermin. I note comments in relation to parking but the Local Highway Authority made no objection to the proposal and I have no real evidence that there would be any harm to highway safety. I have considered all other matters raised but none outweigh the conclusions I have reached.

Conclusion

15. Whilst I find no harm to the living conditions of neighbouring residential properties, I do find significant conflict with the Council's objectives of ensuring that new development provides inclusive access. For this reason, I dismiss the appeal.

Siobhan Watson

INSPECTOR