

Appeal Decision

Site visit made on 25 April 2017

by A A Phillips BA (Hons) DipTP MTP MRTPI

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

Decision date: 12 May 2017

Appeal Ref: APP/G5750/W/16/3161447

345 Barking Road, East Ham, London E6 1LA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Nadeem Nasir against the decision of the Council of the London Borough of Newham.
 - The application Ref 16/02297/PRECOU, dated 15 July 2016, was refused by notice dated 14 September 2016.
 - The development proposed is a change of use from A1 to A3 and installation of new flue extract and ventilation in the rear.
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Decision

1. The appeal is dismissed.

Main Issues

2. I consider the main issue to be:
 - i. Whether the proposal falls within the provisions of permitted development under Schedule 2, Part 3, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 2015 GPDO) for a change of use from A1 to A3, having particular regard to whether the proposed use can be considered to be A3; and
 - ii. If so, whether or not approval should be given with respect to a determination of the odour and hours of operation impacts and the impacts of the siting, design or external appearance of the facilities to be provided with respect to odour.

Reasons

3. The proposed ground floor plan shows the long and narrow space would have a relatively large serving counter close to the entrance to the unit with a large canopy hood, gas burners and carbon filter with odour and fume extraction equipment. A total of eight tables are shown to provide seating for up to twenty four people. A disabled toilet is shown within the area accessible to customers. To the rear of the unit there would be a freezer room, food preparation area, another small kitchen and a WC.
 4. Rather than appearing to be an A3 restaurant or café the layout suggests that the proposed use is more like a mixed restaurant/café with a hot food take-
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away, which would be a mixed A3/A5 use. The appellant has provided insufficient evidence to clearly demonstrate how the proposal would operate or how it meets the requirements of under Schedule 2, Part 3, Class C of the 2015 GPDO.

5. Schedule 2, Part 3, Class C of the 2015 GPDO allows for the change of use from a '*retail, betting shop or pay day loan shop or casino to restaurant or café*', but there is no provision for there to be a change of use to an A5 use or indeed a mixed A3/A5 use. Consequently, based on the information provided and as a matter of fact and degree the proposal does not fall within the requirements of this particular part of the 2015 GPDO and cannot be assessed under the prior approval process. A specific planning permission for it would be required.
6. Therefore, in this particular case there is no need to make a determination on the prior approval matters.

Other matters

7. The appellant has identified other cases where planning permission has been granted in the Borough. However, I understand that these were for planning permission for a change of use from A1 to A3 rather than under prior approval procedures. The appeal decision to which my attention has been drawn also relates to a full planning application. As such, they have little bearing on this appeal.
8. The appellant has also expressed concern about how the Council dealt with the planning application, with particular reference to consultation procedures and the availability of documentation to consultees. However, that is not a matter for this appeal.
9. Furthermore, reference has also been made to a number of policies in the development plan, which would only be of relevance had the proposal required further determination under the second main issue.

Conclusion

10. Therefore, for the reasons given above and taking into account other matters raised I conclude that the appeal should be dismissed.

Alastair Phillips

INSPECTOR