
Appeal Decision

Site visit made on 31 May 2017

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 20 June 2017

Appeal Ref: APP/C5690/W/17/3170217

15 Lee High Road, London SE13 5LD

- 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 Bakht Jamal Safai against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/16/096750, dated 18 May 2016, was refused by notice dated 2 September 2016.
 - The development proposed is described as separation of shop into 2 units. Unit 1 will be a mobile phone repair shop and unit 2 will be a mini cab office. Unit 1 will take up 25% of the whole shop and unit 2 will take up 75% of the shop.
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Decision

1. The appeal is dismissed insofar as it relates to the use of the property as a Taxi Cab Office (Sui Generis). The appeal is allowed insofar as it relates to the mobile phone repairs and planning permission is granted for the change of use of 15 Lee High Road, London SE13 5LD to a Mobile Repair Shop (B1) in accordance with the terms of the application, Ref DC/16/096750, dated 2 September 2016, and the plans submitted with it, so far as they are relevant to that part of the change of use hereby permitted and subject to the following conditions:
 - 1) The change of use hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; Existing Plan; Proposed Plan and Existing and Proposed Elevation.
 - 2) The use of the premises as a mobile phone repair shop shall only be open for customers between the following hours:
08.00 – 20.00 Monday - Friday
08.00 – 18.00 Saturday and Sunday

Procedural Matters

2. The council changed the description of application Ref DC/16/096750 from that contained on the application form to 'the change of use of 15 Lee High Road, SE13 into Taxi Cab Office (Sui Generis) and Mobile Repair Shop (B1). This is a more accurate description of the proposal which I have therefore used in the determination of this appeal.
 3. I observed at my site visit that the change of use had already occurred and that the unit had been sub-divided to create an area designated for mobile phone repairs and an area designated as a taxi cab office. The Officer's Report
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indicates that the Council dealt with the application as being retrospective. I have no evidence to suggest that the sub-division of the unit has been otherwise undertaken than in accordance with drawing 'Proposed Plan' submitted with the application.

4. For the reasons that follow, I find that the use of the part of the premises as a mobile repair shop is severable both physically and functionally from the taxi cab office. Therefore I intend to issue a split decision in this case and grant planning permission for the change of use of part of the premises as a mobile repair shop.

Main Issues

5. The main issues are:

- The effect of the proposed development on highway and pedestrian safety.
- The effect of the proposed development on the living conditions of nearby residents with particular regard to noise and disturbance.

Reasons

Highway and Pedestrian Safety

6. The appeal premise comprises the ground floor of a two-storey mid-terraced property located on a parade with a mixture of retail shops and other commercial uses on both sides of the road, including hot food takeaways. The upper floors of the parade in which the unit is located are predominantly in residential use.
7. The property has frontage onto Lee High Road which forms part of the A20 and is a Transport for London 'Red Route' where parking is restricted. It is located opposite the junction of Lee High Road with Clarendon Rise. The road in the vicinity of the appeal property has three carriageway lanes, two in the direction of Lewisham to the west and one leading from the town centre to the east.
8. Lee High Road is heavily trafficked in both directions and the street is well used by pedestrians. From the evidence provided by the Council and from my observations at my site inspection, some taxis awaiting trade and those that are parked and vacated by the driver, park on Clarendon Rise in close proximity to the junction with Lee High Road. However, I was unable to determine whether these vehicles were operating on behalf of the appellant's business.
9. There are no pedestrian crossing facilities nor any pedestrian guard rails in the immediate vicinity of the appeal property. The nearest crossing facility is at the junction of Lee High Road with Belmont Street, a short walk to the west of the appeal property.
10. The use of the appeal property as a mini cab office has been the subject of two previous temporary planning permissions with the last one expiring on 3 July 2015 (Ref DC/12/81313). This contained a condition requiring that the permitted use of the premises as a mini cab office should be discontinued after this date and the use revert to its former use as an office (Use Class A2). The reason given for this condition was to allow the Council adequate time to assess whether the mini cab office would have a detrimental impact on the living conditions of the occupants of nearby properties and to ensure that the

use was not detrimental to the safe and free flow of traffic on Lee High Road. A condition was also imposed that prevented customer and driver waiting facilities from being provided on or outside of the premises.

11. The proposal seeks the continued use of part of the premises as a taxi cab office and part as a mobile phone repair shop. The Council indicate that prior to the expiration of the previous planning permission surveillance evidence suggested that patrons were regularly waiting in the office and on the street for collection by taxis undertaking pick-ups both outside of the office and on Clarendon Rise. The latter resulting in customers having to cross the busy Lee High Road to access a taxi.
12. In addition, the evidence suggests that taxis occasionally park in loading bays and on red and yellow lines both on Lee High Road and Clarendon Rise. As the business continued to operate after the expiration of the planning permission an Enforcement Notice was served requiring the cessation of the use of the ground floor of the premises as a mini-cab office. This notice was upheld, with corrections, following an appeal (Ref APP/C5690/C/15/3140532).
13. I note that the business has been subject to a recent change in ownership and that the application proposes a pre-bookable service only. However, the evidence provided is quite clear that the use has not operated as a mini cab office but more akin to a taxi rank. I also note that the Council has found that conditions restricting such use to a pre-bookable service only have proved difficult to enforce. Given the evidence provided, and taking into account the advice provided in paragraph 206 of the National Planning Policy Framework and the guidance contained in the section on 'Use of Planning Conditions' in the Government's Planning Practice Guidance (PPG), the imposition of a similar condition in this case would also be difficult to enforce and would therefore fail to satisfy the tests laid out in the PPG.
14. I have carefully noted the appellant's submissions on this matter and the assurances that drivers would not park in the vicinity of the office or pick up passengers there. However, this has clearly not been the case in the past. It seems to me that if the only purpose of the office was to remotely control cars, with only telephone bookings and no visiting patrons, there would be little purpose in having a presence in this particular location nor any need to have a reception area as shown on the submitted plans which I observed at my site visit has seating.
15. Given the location of the office close to the town centre and the fact that customers have regularly waited for taxis at the booking office in the past, it is likely that a number of customers would walk to the office to obtain a taxi. Consequently, notwithstanding the assurances of the appellant, in reality I consider it unlikely that drivers would never visit the office, not park nearby in the locality and not pick up customers from the office.
16. In addition to the above, I have also taken into account the heavily trafficked and strategic nature of Lee High Road, the limited availability of on-street parking on Clarendon Rise and Marischal Road and the past evidence of indiscriminate parking of taxis. These factors lead me to conclude that there is a clear risk that drivers between jobs would continue to call at the office and park their vehicle in the locality thereby adding to the considerable parking stress that already occurs in the area or indiscriminately parking in controlled parking zones. Furthermore there is a risk of taxis continuing picking up

customers in the vicinity of the office and therefore interrupting the free flow of traffic on Lee High Road. Such circumstances would be to the detriment of highway safety.

17. The Councils surveillance evidence clearly indicates customers walking from the premises to parked taxis on Clarendon Rise and crossing the busy road without using the pedestrian crossing facilities. Incidences of pedestrians crossing the road in the vicinity of the junction of Lee High Road with Clarendon Rise to access taxis would likely occur in the future. Given the highly trafficked nature of the road such movements would be detrimental to pedestrian safety.
18. Taking the above factors into account, the change of use relating to the taxi cab office would have an unacceptable and detrimental effect on highway and pedestrian safety and the free flow of traffic on Lee High Road. Consequently, it would conflict with Policy 14 of the Lewisham Core Strategy Development Plan Document 2011, DM Policy 21 of the Lewisham Development Management Local Plan 2014 (DMLP) and Policy 6.3 of the Consolidated London Plan 2015. These policies, amongst other things, require that proposals should not adversely affect the safety of the transport network and that planning permission for mini cab businesses will only be considered in locations where they would not be detrimental to the safety of other vehicle users, pedestrians and cyclists.
19. Given the small scale nature of the mobile phone repair shop and its proximity to the town centre it would likely be accessed by pedestrians only. In such circumstances I do not consider that the use of part of the premises as a mobile phone repair shop would cause demonstrable harm to highway or pedestrian safety. As such, there would be no conflict with the aforementioned policies in relation to this part of the use.

Living conditions

20. The occupiers of the residential accommodation above this parade already endure considerable traffic noise throughout a large proportion of the day due to the strategic nature of Lee High Road and the proximity of the appeal property to Lewisham Town Centre. I noted at my site visit that there was a flat, No 15A, above the appeal premises.
21. A taxi cab office operating over 24 hours in this edge of town centre site would likely involve telephones ringing and ensuing conversations between the operator, customers and drivers. This noise would be particularly noticeable at night when there would normally be a progressive decrease in background noise and when neighbours would have a reasonable expectation of a quieter environment and some degree of respite from the traffic noise.
22. There is also a risk that drivers between jobs might congregate near the site, leading to a perpetuation of intrusive noise and disturbance. I recognise that residents living within a mixed-use area may experience significantly higher levels of late-night activity compared to those in a wholly residential area. However, this does not justify the introduction of a use in the parade that would further erode their living conditions.
23. The appellant argues that, as the proposal is for a telephone call centre for booking, there would be no need for drivers or customers to visit the site and states that drivers awaiting their next customers would park their cars either at

- home or in various areas in south east London in close proximity to their previous drop-off. The appellant also argues that the previous condition could be imposed to prevent drivers and customers from visiting the appeal site.
24. However, despite the appellant's reasoning in this regard, for the reasons explained above I consider that such a condition would be impractical to monitor and would not be reasonable or enforceable, as drivers might well seek to visit the office for a number of reasons e.g. to wait between jobs; to use toilet facilities; or to collect paperwork. In addition, such a condition would not prevent drivers from parking nearby, even if they did not visit the premises. It would also be difficult in practice to prevent drivers from picking up customers in the vicinity of the office and thereby causing further noise and disturbance to the occupants of the neighbouring flats as a result of vehicle movements and the sudden, sharp noises arising from the slamming of car doors, revving of engines, radios and raised voices.
25. I therefore conclude, for the reasons stated above, that the proposed change of use to a taxi cab office would result in unacceptable noise and disturbance throughout the night for the occupiers of nearby residential properties. It would therefore be contrary to DM Policy 21 of the DMLP. This policy, amongst other things, indicates that the Council will consider planning permission for mini cab or taxi businesses only in locations where they would not have a detrimental effect on the amenities of the occupiers of adjoining property, including that caused by noise disturbance.
26. By contrast the proposed mobile phone repair shop would be a use that would be entirely compatible with adjacent uses in the parade and given its edge of centre location is likely to be subject to 'walk in' pedestrian trade. Given the nature of the proposed use and the small size of the proposed premises, I do not consider that the use as a mobile phone repair shop would cause any harm to the living conditions of nearby residents provided opening and closing times were reasonably comparable with those of other shops in the area.
27. I noted that the premises in the vicinity have a wide variation in opening hours. Whilst many, including the adjacent mini-market, appear to open seven days per week I have no evidence to suggest that any of these open through the night. Neither party has suggested any opening hours for such use. However, given the nature of adjoining uses and the passing trade walking to the town centre and the bus and railway station, it would not be unreasonable in this case for opening hours to be limited to those between 08.00 – 20.00 Monday – Friday and 08.00 – 18.00 Saturday and Sunday.
28. Subject to the imposition of a suitable condition prescribing such opening hours, I do not consider that the proposed use of part of the premises as a mobile phone repair shop would cause any harm to the living conditions of nearby residents.

Other matters

29. In reaching my view, I have taken account of the appellant's submissions in support of the proposal: that the facility would provide employment; that the new business would operate differently from the previous one; that only high quality drivers are used and that a separate door can be provided to the mobile phone repair shop. However, these factors do not alter my concerns. Nor do I consider, for the reasons above, that conditions could be imposed on that part

of the application relating to the taxi booking office to make this use acceptable.

Conditions

30. Although the Council has not suggested any planning conditions I consider that two are necessary. In the interests of certainty, I have imposed a condition relating to the approved plans that show the extent of the mobile phone repair area.
31. In order to protect the living conditions of nearby resident a condition is necessary that restricts the opening hours of the mobile phone repair shop. Although the appellant has stated that the mobile phone repair shop would not be subject to 24 hour opening, for the reasons explained above, I have restricted the opening hours to those shown in this decision.

Conclusion

32. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeal should be allowed insofar as it relates to the mobile repair shop (B1) and dismissed insofar as it relates to the Taxi Cab Office (Sui Generis).

Stephen Normington

INSPECTOR