

Appeal Decision

Site visit made on 23 May 2017

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 27 June 2017

Appeal Ref: APP/N5660/W/17/3168924
232 Gipsy Road, London SE27 9RB

- 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 Nasar Ali against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 16/03569/FUL, dated 13 June 2016, was refused by notice dated 12 August 2016.
 - The development proposed is change of use of the existing premises from a restaurant (Class A3) to a hot food takeaway (Class A5).
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Decision

1. I allow the appeal and grant planning permission for the retention of the change of use of the existing premises from a restaurant (Class A3) to a hot food takeaway (Class A5) at 232 Gipsy Road, London SE27 9RB in accordance with the terms of the application Ref 16/03569/FUL, dated 13 June 2016 and plan 4145/PL02 subject to the following conditions:
 - 1) The use hereby permitted shall only take place between the following hours:
1700 – 2300 Mondays to Sundays.
 - 2) Within three months of the date of this decision details of waste and recycling storage, including how cooking fats and oils are to be stored and collected, shall be submitted to and approved in writing by the Local Planning Authority. In accordance with the approved details the storage and collection arrangements shall be implemented and maintained thereafter.
 - 3) Within three months of the date of this decision details of how the property will be serviced shall be submitted to and approved in writing by the Local Planning Authority. In accordance with the approved details the servicing arrangements shall be implemented and maintained thereafter.
 - 4) Within three months of the date of this decision details of the provision to be made for cycle parking shall be submitted to and approved in writing by the Local Planning Authority. The cycle parking shall thereafter be implemented in full in accordance with the approved details and shall thereafter be retained solely for its designated use.
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Preliminary Matter

2. The change of use to hot food takeaway has already taken place and therefore in my formal decision I have used the description of development used by the Council in its decision notice as this more accurately describes the development.

Main Issues

3. The main issues are:
 - The effect of the proposed development on the lifestyles of local schoolchildren; and
 - the effect of the proposal on the vitality, viability and function of neighbouring retail units and the Gipsy Road / Gipsy Hill Local Centre.

Reasons

Lifestyles of Schoolchildren

4. The appeal site is a ground floor retail unit located on the southern side of Gipsy Road. It is within the Gipsy Road / Gipsy Hill Local centre which contains a range of local shops and services. The appeal site is located approximately 170 metres from Kingswood Primary School.
5. Policy ED7 of the Lambeth Local Plan, 2015 (the Local Plan) states that proposals for hot food takeaways (A5 uses) will not be supported if proposed within 400 metres of the boundary of a primary or secondary school. The Council is committed to reducing pupils' access to unhealthy food options thereby improving the health of its residents and reducing childhood obesity.
6. The use of the premises as an Indian takeaway is acknowledged by both the Council and the appellant to be less appealing to school children than other forms of hot food takeaway. However, a change to a takeaway selling other types of hot food could not be controlled if planning permission was granted for an A5 use. Nevertheless with hours of opening from 5.00pm until 11.00pm which could be controlled through a planning condition the likelihood of schoolchildren, particularly of primary age, using the takeaway would be considerably reduced. I consider that this would be effective in ensuring that the premises do not attract primary school children even if the premises were to change to an alternative A5 use. I also think that it would be very unlikely that the facility would be used by primary school children leaving school later than normal or waiting around the area until 5.00 when the takeaway opens. Moreover, I have also been advised that the previous restaurant use provided a takeaway service including during school hours.
7. I therefore find that subject to an appropriate condition to restrict the hours of operation the proposal would not conflict with the aims of Policy ED7 of the Local Plan in respect of managing the effect of hot food takeaways on the lifestyles of schoolchildren.

The Effect on Vitality, Viability and Retail Function

8. Policy ED10 of the Local Plan states that the Council will support and protect the role of local centres and local shops in meeting the day to day needs of

communities. It goes on to state that active frontage uses and particularly retail (A1) uses, will be encouraged and protected.

9. The Council acknowledged that in this case the previous use was not A1 retail and therefore the change of use to A5 would not undermine the vitality, viability and function of the local centre and I do not disagree with this conclusion.
10. I have taken account of the fact that the width of the active frontage use remains the same as for the previous use. Moreover, I consider that a hot food takeaway would provide an active frontage use, meeting the day to day needs of communities in line with Policy ED10 of the Local Plan.
11. The appeal scheme reduces the amount of space previously used as a restaurant by approximately 50 sq. m. However, it has not been demonstrated that this reduction in floor area would result in a negative impact on the viability, vitality and function of the retail unit, Gipsy Road or the Local Centre and I therefore find no conflict with Policy ED10 of the Local Plan.

Conditions

12. The Council did not suggest any conditions during the appeal process but referred to a number of possible conditions in the officer report. Consequently, conditions relating to these matters would not come as a surprise to the appellant or the Council. I have also considered them in the light of the advice in Planning Practice Guidance.
13. As the development has already been implemented the standard implementation condition is not necessary. I have specified the relevant drawing with which the scheme should accord in my decision as this provides certainty. I have also imposed a condition relating to hours of operation as this is necessary to manage the effect of the use on the health of local schoolchildren. A condition to manage arrangements for the storage and collection of waste and recycling is necessary in order to protect the living conditions of neighbouring residents in accordance with Local Plan Policy Q12 as is a condition to ensure that adequate servicing arrangements are provided. Finally a condition to provide cycle parking is necessary to promote sustainable transport and to accord with the London Plan and Policy Q13 of the Local Plan.

Conclusion

14. For the reasons above, and taking into account all other matters raised, the appeal is allowed and planning permission is granted subject to conditions.

Kevin Gleeson

INSPECTOR