



Appeal Decision

Site visit made on 17 October 2017

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

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

Decision date: 13th November 2017

Appeal Ref: APP/E5330/W/17/3180790

15 Old Dover Road, Blackheath, London SE3 7BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Mohammad Zakir Hossain against the decision of Royal Borough of Greenwich Council.
 - The application Ref 16/4126/V, dated 12 December 2016, was refused by notice dated 1 February 2017.
 - The application sought planning permission for "change of use to restaurant (A3) including installation of shop front and rear ventilation system" without complying with a condition attached to planning permission Ref 14/2173/F, dated 22 October 2014.
 - The condition in dispute is No 2 which states that: "There shall be no take-away or home delivery service provided from the restaurant use hereby permitted without the written approval of the Local Planning Authority".
 - The reason given for the condition is: "To safeguard the amenities of neighbouring properties and in the interest of the free flow of traffic and pedestrian safety and the area generally, and ensure compliance with Policy E(a) of the adopted Core Strategy (with detailed policies), 2014".
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted for a change of use of the appeal premises to use as a restaurant in 2014, subject to a condition that prevented a takeaway or home delivery service. The appeal seeks permission to vary the condition to allow a takeaway service. The Council's decision notice indicates that a takeaway service operating from the premises would be detrimental to the amenity of surrounding residents.
3. Therefore, the main issue is the effect that varying the condition would have on the living conditions of surrounding residents with regard to noise and disturbance.

Reasons

4. The appeal building is located on Old Dover Road, within an existing shopping parade. The parade is largely occupied by shops, although there is a hot food take-away on the opposite side of the road. There is residential development above the commercial uses on both sides of the road, and in the surrounding streets.

5. The appellant predicts that there would be between 8 and 12 orders on a typical evening, although I appreciate this figure includes deliveries which are not sought in the appeal before me. There is on-street parking available in the vicinity and it is anticipated that the majority of customers would park in front of the restaurant or in nearby car parks. The Council's concern relates to increased noise and disturbance resulting from customers collecting their orders. This is likely to include vehicle noise on arrival and departure, car doors closing, car stereos and people talking.
6. The appellant's Noise Report¹ provides background noise levels, measured at the front (Old Dover Road) and rear of the building (Dornberg Close), during the evening period (19:00 – 22:00) on Saturday 22 and Sunday 23 April 2017. The report notes that the main source of existing background noise was from traffic, although plant noise was audible and there was some noise from high altitude aircraft. The Noise Report includes an assessment of vehicle noise, which was simulated to represent vehicle noise impacts at the nearest residential receptors. The results of the analysis show that the likely vehicle customer noise would be below the lowest background noise levels recorded. However, no account was taken for car stereos and dialogue, which may have a greater impact.
7. The appellant argues that the local residents are accustomed to noise from the road and commercial uses in the area. However, the proximity of the surrounding dwellings means that the occupants would be sensitive to noise and disturbance, especially as the Noise Report shows that background noise levels in the evening are relatively low.
8. I appreciate that there is an existing level of activity associated with the restaurant, but the proposed takeaway facility would generate a different type of activity that would be short term and is likely to be more frequent. As stated above, the Noise Report does not take account of car stereos or people talking. This type of activity may well occur as people will be waiting for their orders, and may not wait inside the restaurant. Despite being located within a semi-commercial area, the nature of the existing uses and the extent and location of residential development is such that residents could reasonably expect to enjoy an environment consistent with a residential area. The development would result in a level of noise and activity that would be inconsistent with the surrounding land uses, to the detriment of residents' living conditions.
9. The appellant has indicated that a one year temporary permission would be accepted in order for the impact of the takeaway facility to be assessed. However, the effects of the proposal and associated impact on local residents would be immediate. I appreciate that it is expected that the takeaway facility would remain ancillary to the main use, but this situation may change and customer visits could increase in future years. Consequently, I am not satisfied that a temporary condition would be appropriate.
10. I have considered the appellant's stated need to expand the business, and the local economic benefits but this does not outweigh the harm identified. I am satisfied that the disputed condition is necessary and reasonable and otherwise meets the tests of the National Planning Policy Framework.

¹ Ref 9404E Rev 3 dated 12 May 2017

Conclusion

11. I conclude that the variation of condition No 2 to allow a takeaway facility would have a significant adverse effect on the living conditions of neighbouring residents, with regard to noise and disturbance. This would be contrary to Policy E(a) of the adopted Core Strategy² and Policy 7.15 of the London Plan which seek, amongst other things, to avoid significant adverse effects on the amenities of adjacent occupiers resulting from noise.
12. For the reasons given above, the appeal is dismissed.

Debbie Moore

Inspector

² Royal Greenwich Local Plan: Core Strategy with Detailed Policies, July 2014