



Appeal Decision

Site visit made on 11 February 2019

by N Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th July 2019

Appeal Ref: APP/C5690/W/18/3213695
303 New Cross Road, London, SE14 6AS

- 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 Nader Nasirzadeh against the decision of London Borough of Lewisham.
 - The application Ref DC/18/106780, dated 06 April 2018, was refused by notice dated 13 August 2018.
 - The development proposed is change of use from A3 (restaurant) to mixed use A3/A5 (restaurant & takeaway).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: (i) whether the proposed use of the site would be acceptable, with regard to its relationship with local schools; and (ii) whether any impacts on the highways network would be acceptable, with regard to the parking and manoeuvring of vehicles associated with the proposed use.

Reasons

The use of the site as a takeaway

3. The appeal site is currently used as a restaurant. The appeal proposal seeks to also use the premises as a takeaway. DM Policy 18 of the Development Management Local Plan 2014 (DMLP) aims to reduce what it describes as negative impacts associated with hot food takeaways, including by preventing them within close proximity to schools. Areas within 400 metres of schools are described as 'exclusion zones' for the purposes of the policy.
4. The Council has described that the site would be within 400 metres of three local schools. Whilst the Appellant disputes this, they have not provided detailed evidence as to why, and it was clear to me on my visit that there was at least one school a short walk away from the site.
5. The Appellant has described in detail how the business that operates from the site is committed to delivering healthy food options to its customers and they have provided evidence to support this. I have no reason to think that this is not the case. However, if planning permission is granted for the appeal scheme, other takeaway businesses would be entitled to operate from the site,

irrespective of whether such future occupiers took the same approach to healthy eating as the current operator. As such, my assessment is based on whether the proposed use, rather than the proposed operator would be acceptable.

6. The Appellant has identified that the supporting text to DMLP Policy DM18 describes that it should only apply to proposals where the primary purpose is the sale of hot food to takeaway, which they say would not be the case here.
7. Whilst the current use of the site is not a hot food takeaway use, any planning permission would allow for an emphasis on either an A3 or A5 use. Circumstances, and thus the primary use of the premises could change in the future due to a change in priorities, market conditions or occupier. There is also no evidence before me to suggest that planning conditions could successfully ensure that a hot food takeaway use could not become the primary purpose for a business operating at this site.
8. The appellant has directed to me towards other A5 uses in the area, which they say the Council has permitted. There is not adequate detail before me as to those sites to strongly influence my decision on this case, which should be determined on its own merits.
9. As such, I conclude that the proposed use of the site would not be acceptable, with regard to its relationship with local schools. The proposal would conflict with DM Policy 18 of the DMLP because it would result in a premises capable of being used as a hot food takeaway within close proximity to local schools, in conflict with aspirations to increase healthy lifestyles and reduce obesity, particularly in children.

The highways network

10. The Council contend that the appeal proposal does not provide adequate information relating to how parking and manoeuvring of collection vehicles associated with the proposed use would take place.
11. There is no evidence before me to suggest that the introduction of an A5 use would result in substantially more vehicular trips to or from the site than the existing restaurant use would. Both the parties agree that the site has excellent public transport connectivity and as such, it is reasonable to conclude that most people would visit the site on foot.
12. Whilst there is nothing before me to indicate that a 'delivery' service is proposed, if it was, there appeared to me to be fairly substantial restrictions preventing on-street parking on the roads around the site. Such restrictions would apply equally to delivery drivers or riders.
13. However, based on the evidence before me, I am satisfied that the parking and manoeuvring arrangements for the appeal site and its proposed use would likely be acceptable and consistent with Core Strategy Policy 14 of the Core Strategy Development Plan Document 2011 which seeks, amongst other requirements, to ensure sustainable and safe traffic movements. The Council has identified DMLP DM Policy 28 in its second reason for refusal, but this appears to relate to contaminated land rather than parking arrangements.

Other matters

14. The Council has identified that the site is within the setting of the Grade II Listed Old Town Hall and within the Deptford Town Hall Conservation Area (CA). As such, I have had regard to the special duty placed on decision makers in sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Council considers that the proposal would not harm setting of the listed building or the character and appearance of the Conservation Area. I agree with their view given the existing use of the site and its surroundings which include a range of uses.
15. I have carefully considered all of the matters raised by the Appellant, including the benefits of supporting diversification to promote economic development, but I do not consider that they outweigh the conflict that I have identified with the Development Plan when taken as a whole.

Conclusion

16. Whilst I have found that the traffic implications of the scheme would be acceptable, this is outweighed by my finding that the location of the site in the context of its proximity to local schools would not be. Accordingly, I conclude that the appeal is dismissed.

N Smith

INSPECTOR