



Appeal Decision

Site visit made on 19 June 2019

by Lynne Evans BA MA MRTPI MRICS

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

Decision date: 2 August 2019

Appeal Ref: APP/H5390/W/19/3225904

138-140 King Street, Hammersmith, London W6 0QU

- 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 Domino's Pizza UK & Ireland Limited against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref: 2019/00084/VAR dated 14 January 2019, was refused by notice dated 25 March 2019.
 - The application sought planning permission for change of use of the property from Restaurant (Class A3) to Hot Food Takeaway (Class A5); installation of new shop front to replace unauthorised shop front without complying with a condition attached to planning permission Ref: 2010/00137/FUL dated 17 March 2010.
 - The condition in dispute is No. 8 which states that: *No organised delivery of food in connection with the take away hereby approved shall take place from the premises using motor vehicles (which include motorcycles, mopeds and motor scooters).*
 - The reason given for the condition is: *No provision has been made for the parking of vehicles off-street in connection with a delivery service. Any such vehicles would be likely to park on the public highway which would prejudice the free flow of traffic and public safety contrary to Policy TN13 of the Unitary Development Plan, amended 2007.*
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Decision

1. The appeal is allowed and planning permission is granted for change of use of the property from Restaurant (Class A3) to Hot Food Takeaway (Class A5); installation of new shop front to replace unauthorised shop front at 138-140 King Street, London W6 0QU in accordance with the application Ref 2019/00084/VAR dated 14 January 2019 without compliance with condition number 8 previously imposed on planning permission Ref 2010/00137/FUL dated 17 March 2010 and subject to the following conditions:
 - 1) The use of the premises hereby approved shall not be permitted between the hours of 01.00 and 10.00 hours, Mondays to Sundays.
 - 2) The external noise level emitted from plant, machinery or equipment at the development hereby approved shall be lower than the lowest existing background noise level by at least 10dBA as assessed according to BS4142: 2014 at the nearest and or most affected noise sensitive premises, with all machinery operating together.

- 3) No deliveries nor collections/loading nor unloading shall occur at the development hereby approved other than between the hours of 08.00 and 20.00 Monday to Sunday.
- 4) No removal of refuse nor bottles/cans to external bins or areas of the development hereby approved shall be carried out other than between the hours of 08.00 and 20.00 on Monday to Sunday.
- 5) Details shall be submitted and approved in writing by the Council of a suitable cleaning schedule and/or maintenance contract for the extract system and odour control system. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
- 6) No organised delivery of food in connection with the take away hereby approved shall take place from the premises using motor vehicles (which include motorcycles, mopeds and motor scooters, but exclude Electrically Assisted Power Cycles which meet the requirements for such vehicles in the Department for Transport Information Sheet: *Electrically Assisted Pedal Cycles (EAPCs) in Great Britain Revised November 2015* (or as subsequently amended)).
- 7) The stall risers and pilasters on the shopfront hereby approved shall be constructed in timber.

Main Issue

2. The main issue in this appeal is whether the variation of the condition to allow the use of electrically assisted pedal cycles (EAPCs) would prejudice the free flow of traffic and public safety.

Reasons

3. The appeal property is an end of terrace property on the north side of King Street, a busy street with shops and services on both sides of the road and within Hammersmith Town Centre. The property is currently vacant, although the information provided by the Appellants confirms that the change of use permission has been implemented and the premises used as a hot food take away (Class A5). Although the Appellant refers to an accessway along the eastern site boundary which serves a private car park area, there is no off-street parking area directly related to the appeal property.
4. King Street is generally heavily trafficked with high levels of pedestrian footfall. The pavement directly outside the property is relatively narrow, and further restricted in width by street furniture. King Street is one way with all motor vehicles (including buses) travelling in a westerly direction. There is a cycle lane immediately outside of the property separated from the main highway, enabling cyclists to travel in an easterly direction. In the general vicinity of the appeal site, there are sections of single and double yellow lines as well as restricted loading bays together with lengths of on-street permit holders/pay & display parking bays with cycle stands on the pavement. At my site visit and although only a snapshot in time, I saw spare capacity in terms of cycle stands and parking bays within close proximity to the appeal premises. Furthermore, the anticipated peak times for deliveries to take place, on the evidence provided, would be likely to be during evenings, when some of the on-street parking restrictions are lifted.

5. The condition in dispute does not prevent deliveries from taking place from the premises but restricts the use of motor vehicles which are defined to include motor cycles, mopeds and motor scooters. The Appellants are seeking to use EAPCs. Whilst this appeal is not a formal determination of whether or not EAPCs are a form of motorised vehicle, I have had regard to the evidence presented by the Appellants regarding the requirements under the Department for Transport Information Sheet: *Electrically Assisted Pedal Cycles (EAPCs) in Great Britain Revised November 2015*. The Appellant has confirmed that the proposed EAPCs to be used would fully comply with the stipulations set out in the Information Sheet.
6. There is information before me about proposals to seek both short term as well as overnight storage accommodation for the bikes including the use of the loading area at the nearby Kings Mall Shopping Centre. However, no specific commitments have been made at the time of the appeal submission and I am therefore unable to take these proposals into account.
7. Although there is no certainty, the number of EAPCs undertaking deliveries has been estimated, based on other nearby similar operations, at 6-10 per hour. This would appear to be a relatively modest number in relation to general traffic levels observed along King Street. The proposed EAPCs would be able to use the existing public cycle stands in the general vicinity of the appeal premises. It cannot be guaranteed that each bike rider would always use the existing cycle stands. However, I am satisfied from my site visit and the information before me that there is a choice of cycle stands convenient to the appeal premises, albeit that some would necessitate crossing King Street. There is no restriction on the use of the cycle stands in the vicinity of the site.
8. I have had regard to the accident data provided by the Appellants. Whilst there have been a number of accidents involving cyclists and pedestrians, these have been classed as slight and a number appear to be the result of human error. I agree with the conclusion drawn by the Appellants that there appear to be no safety issues with the existing infrastructure in the area surrounding the appeal premises.
9. Given the number of cycle stands in the vicinity of the site, I do not agree with the Council's contention that the vehicles would be likely to park on the public highway and the Council has given no reason for or evidence to support this assertion. King Street is a busy and heavily trafficked street but there is no evidence before me to suggest that the form of transport proposed, including the likely number of EAPCs operating at any one time, would prejudice the free flow of traffic and public safety. There is also no evidence why this form of transport would be unacceptable compared with other non-motorised forms of vehicles, such as pedal cycles, which are not prohibited under the terms of the existing condition.
10. I am therefore satisfied that the variation of the condition to allow for deliveries by EAPCs would not prejudice the free flow of traffic and public safety. There would be no harm with Policy T1 of the Hammersmith & Fulham Local Plan (2018) (Local Plan) or Section 9 of the National Planning Policy Framework (Framework), both of which seek to ensure highway safety and not exacerbate parking pressures. Both Policy T1 of the Local Plan and the Framework are supportive of increasing the opportunities for cycling and electric charging infrastructure.

Other Considerations

11. The appeal property lies within the designated heritage asset of the King Street (East) Conservation Area, which is the name of the Conservation Area provided in the Officer's report. The Conservation Area Map provided refers to it as the Hammersmith Town Hall Conservation Area. Section 72 (1) of The Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of such areas. The building is also a locally listed Building of Merit, a non-designated heritage asset.
12. The Conservation Area includes both sides of the busy retail and commercial King Street extending to the south around the Town Hall. Given the existing nature of the road in terms of its mix of commercial uses and busy with traffic, the proposed variation of the condition to allow the use of EAPCs for deliveries from the appeal premises would have no impact on the character and appearance of the building itself or the character or appearance of the Conservation Area. I am therefore satisfied that the proposed variation of the condition would preserve the character and appearance of the Town Hall Conservation Area (King Street (East) Conservation Area) as well as the locally listed building. The Council also raised no concerns in these regards.
13. A request has been raised in the consultation responses at the application stage that cycles and riders be as quiet as possible. The original permission included various conditions in respect of hours of use and these will be repeated in this permission.

Conditions

14. The Appellants have sought for the condition to be amended specifically to allow EAPCs to be used for deliveries. I agree with the proposed wording but for the avoidance of doubt propose to define EAPCs by reference to the Department of Transport Information Sheet (or as subsequently amended). As this information has been provided to me by the Appellants, I do not consider that this amendment to the wording would prejudice them or the Council.
15. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under Section 73 of the Town and Country Planning Act 1990 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. In this specific regard I note that a subsequent permission was granted under the Council's reference 2018/00989/FUL for alterations to the existing shop front and installation of extract duct, air conditioning unit and cold room compressors, but there is no indication that this subsequent permission amends any of the conditions on the earlier permission.

Conclusion

16. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

L J Evans

INSPECTOR