



Appeal Decision

Site visit made on 2 July 2019

by R Lankshear BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2019

Appeal Ref: APP/L5810/W/19/3226665 72 High Street, Whitton TW2 7LR

- 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 P A Steer Settlement Trust against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 18/3206/FUL, dated 19 September 2018, was refused by notice dated 1 February 2019.
 - The development proposed is described as 'change of use from vacant bank (Class A2) to a hot food takeaway (Class A5); installation of extraction/ventilation equipment and other external alterations'.
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Decision

1. The appeal is allowed and planning permission is granted for Change of use from a bank (Class A2) to a hot food takeaway (Class A5); installation of extraction/ventilation equipment and replacement shopfront at 72 High Street, Whitton TW2 7LR in accordance with the terms of the application, Ref 18/3206/FUL, dated 19 September 2018, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by P A Steer Settlement Trust against the Council of the London Borough of Richmond-upon-Thames. This application is the subject of a separate Decision.

Procedural matters

3. The description of development that appears in the banner heading above is taken from the planning application form. The Council's decision notice refers to the description of development as 'Change of use from a bank (Class A2) to a hot food takeaway (Class A5); installation of extraction/ventilation equipment and replacement shopfront.' This more accurately describes the proposal and I have therefore determined the appeal on this basis. This is reflected in the decision above.
4. The National Planning Policy Framework (the Framework) was revised on 19 February 2019 and this post-dates the Council's refusal notice. I have determined this appeal in accordance with the Framework.

Main Issues

5. The main issues are the effect of the proposal on i) highway and pedestrian safety with particular regard to adequacy of parking and ii) character and appearance with regard to the nature of the use and adequacy of parking.

Reasons

Highway safety

6. The appeal site is a ground floor commercial unit that is currently vacant, that I am informed was most recently used as a bank (A2). The unit falls within the established shopping parade of Whitton High Street and benefits from access from a service road to the rear. On-street parking is available adjacent to the vehicular carriageway although this is the subject of various restrictions. These include time limits on High Street immediately to the front of the property limiting parking to 2 hours between 8:30-16:30 Monday -Saturday and unrestricted outside of these times. Loading and disabled parking bays are also provided within the immediate area. There are different types of restrictions elsewhere on Whitton Road, and on adjoining streets including limited restrictions on Tranmere Road to the north. It is acknowledged however that the roads to the east of Whitton Road are covered by the Twickenham Event Day Controlled Parking Zone (CPZ).
7. The appeal proposals seek the change of use of the building to class A5 hot food takeaway including the provision of extraction equipment and alterations to the shop frontage. The submitted drawings also indicate that parking for 3 moped delivery vehicles would be accommodated to the rear of the property accessed from the rear service road.
8. Any retail or commercial use of the building would generate a parking demand, and the Council note that the visitation levels by patrons if retained as a bank '*would be comparable, and likely more significant*'. From the details before me, the Council's concerns relate to parking for delivery drivers and not to customers or staff frequenting the premises or deliveries to the store. Whilst noting the provision of 3 moped spaces to the rear yard, the Council indicate that there would be a shortfall of up to 5 on-site parking spaces at peak times. In the absence of a parking survey submitted with the original application, they contend it has not been demonstrated that the proposals would not result in unacceptable parking strain. The submitted details indicate that peak business times for the takeaway operator would be between 6pm and 9pm and this has not been disputed by the Council.
9. A parking survey has been submitted in support of the appeal that concludes that the site falls in a location where there is available on street parking capacity within 200m of the appeal site, including during the anticipated peak hours, that would accommodate the anticipated levels of staff and delivery parking required by the proposed use. The Council have not provided a quantified assessment of available parking within the area and have not disputed the findings of the parking survey submitted by the appellant. Noting this and having observed parking levels at the site at different times of the day, I have no reason to disagree with the findings of this assessment.
10. The limits of parking restrictions within the vicinity of the site and concerns over uncontrolled parking outside of restricted hours are noted. However, given

the short-term use of spaces by delivery vehicles and restrictions on parking duration during peak demand periods, I consider that there are provisions to control the nature and length of parking particularly during peak demand periods on High Street. Whilst noting the proximity of the site to the Twickenham Event Day CPZ and the indicated Public Transport Accessibility Level (PTAL) of 2, there is no objective evidence before me to indicate that the proposals would result in an unacceptable deficit of on-street parking provision to the detriment of highway or pedestrian safety.

11. It has been brought to my attention that since the date of the refusal notice that there has been consultation with regard to amended CPZ boundaries and that Experimental Traffic Orders may be utilised to amend the current parking restrictions within the vicinity of the site. Whilst I acknowledge that this may be the case, little detailed evidence has been provided and I must assess the appeal on the basis of the current, established situation, and as such I attribute this little weight.
12. Concern has been raised with regard to increased use of the rear lane by delivery vehicles and potential highway and pedestrian safety issues resulting from this. I note that the rear lane already provides access to a car park and rear servicing areas of the host row of shops with users gaining access across the pedestrian footway on Tranmere Road. I consider that the proposals would not result in a significant increase in intensity of the use of this lane or result in an unacceptable highway or pedestrian safety risks over and above the current situation.
13. I conclude that the proposal would not result in unacceptable demand for on-street parking and that there would be no significant demonstrable risk to highway or pedestrian safety. I therefore find no conflict with the highway safety objectives of Policy LP45 of the adopted London Borough of Richmond upon Thames Local Plan (LP)¹. I have also had regard to paragraph 109 of the Framework noting that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety.

Character and appearance

14. The site falls within an established commercial high street that includes a number of restaurants and hot food takeaways. The use of vehicular bays adjacent to commercial premises on this road, by vehicles associated with the use of such premises would not in itself be uncharacteristic. Noting that it has not been evidenced that there would be a shortfall of parking, given the transient nature of the alleged harm and considering the prevailing use of High Street, I find that the use of parking bays or the rear lane by delivery vehicles would not compromise the visual amenity of the street scene.
15. As such I find that the proposals would not be at odds with the character and appearance aims of policies LP1 and LP8 of the LP which seek, amongst other things, to ensure that development is not visually intrusive and respects and contributes to local environment and character.

¹ Adopted July 2018

Other matters

16. A number of matters have been raised by objectors to the planning application and subsequently by interested parties with this appeal. These include concerns regarding noise and disturbance and impact upon living conditions from plant and machinery and delivery vehicles; absence of a service and delivery plan; hours of operation; staffing numbers and over-concentration of A5 uses undermining viability and vitality of the High Street.
17. Details of the requirement for and specification of plant and machinery and noise insulation measures, have been provided in support of the proposals, considered by the Council and no objection raised. Having considered this, I consider that subject to provision of additional details and installation of measures required prior to the beneficial use, that living conditions of neighbouring residential occupiers can be adequately safeguarded. This can be dealt with by way of condition.
18. Having regard to details provided by the Council with regard to the existing number of hot food takeaways within Whitton centre and having observed this on my site visit, I consider that the proposals would not result in an over-concentration of such uses nor given its current lawful use (A2) result in the loss of retail floor space. As such I consider that the proposals would not unacceptably impact footfall within the centre or undermine the vitality or viability of the high street.
19. In terms of noise and disturbance resulting from the hours of operation and delivery vehicles, the appeal proposals relate to a change of use of a unit within an established shopping centre that already includes late night activities, including deliveries. Whilst noting the proposals may result in an intensification of delivery vehicles frequenting the centre, noting its position within an established shopping centre including other businesses with similar operating hours, I consider that I have no detailed evidence before me to demonstrate that the proposals would result in a considerably worse impact than currently exists. Furthermore, further details of servicing and delivery can be adequately controlled by way of condition.
20. Concern is also raised with regard to the proximity of the site to local schools and issues of health and wellbeing. Having regard to policy LP30 of the LP, that seeks among other things to manage new fast food takeaways within 400 metres of schools, the Council suggest that a condition restricting over the counter sales and collection orders by customers during term times may be attached to any consent. This condition has been agreed by the appellant. As such I consider that this can be adequately dealt with by way of condition.
21. Concerns are also raised regarding antisocial behaviour and increased litter. Whilst noting this, given the lack of detailed evidence to substantiate these concerns I do not find they alter or outweigh my conclusions with regard to the main issues.
22. Both parties make reference to a nearby application for a similar form of development, although I am not familiar with the full details of this case. In any event, I have determined the appeal on its individual planning merits and the details of the nearby application do not alter or outweigh my conclusion on the main issue.

Conclusion

23. For the above reasons and having regard to all other matters raised, the appeal is allowed.

Conditions

24. I have had regard to the Council's suggested conditions and the comments of the appellant in response. In addition to time commencement and approved plans conditions, I have attached conditions relating to materials in the interests of visual amenity. In the interests of health and wellbeing and noting the agreement of both parties to such conditions, I have attached a condition controlling operating hours and restricting customer opening hours during school term times albeit with amended wording to ensure that this is enforceable.
25. I have also attached conditions restricting the use; operational hours; requiring further details of mechanical services/plant, odour control, refuse facilities and noise transmission in the interests of living conditions of neighbouring residential properties. The delivery condition and noise level restriction originally suggested by the Council under conditions 6 and 12 respectively have been amended following agreement from both parties. I have however amended the deliveries condition to correspond with the restrictions of working hours for staff within condition 5.
26. Having regard to both parties' comments with regard to the servicing and delivery plan submitted by the appellant, I consider that additional information is required and have attached a condition requiring further details of servicing and deliveries in the interests of highway safety.

Robert Lankshear

INSPECTOR

Schedule of Conditions

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of this permission.

2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

- Purified Air Specification Report (Version Received on 29/10/2018)
- Planning, Design and Access Statement (Version Received on 30/10/2018)
- Proposed Ventilation System Report (Reference B10432-AEW-PJ003283-XX-SP-0001)
- Proposed Ventilation System Report (Reference B10432-AEW-PJ003283-XX-SP-0002-[A]) (Version Received by Council on 29/10/2018)
- Email from Agent (Received by Council 29/10/2018)
- Email from Agent (Received by Council 30/10/2018)
- Email from agent (received by Council 10/01/2019)
- Plant Noise Assessment 18/0510/R1
- B10432-AEW-PJ003283-00-DR-0001
- B10432-AEW-PJ003283-00-DR-0003A
- B10432-AEW-PJ003283-XX-DR-0002
- B10432-AEW-PJ003283-XX-DR-0004
- B10432-AEW-PJ003283-XX-DR-0005 A
- B10432-AEW-PJ003283-XX-DR-0006 B
- *Appeal Statement of Case (Transport) (Received at Appeal APP/L5810/W/18/3226665)*

3. No new external finishes (including fenestration), including works of making good, shall be carried out other than in materials shown on drawings hereby approved.

4. Customers shall only be permitted on the premises between the hours of 11:00 and 23:00 outside of the term times of Nelson Primary School and St Edmund's Catholic School. During the term times customers shall only be permitted on the premises between the hours of 11:00 to 12:00 and 16:30 to 23:00 hours on Monday-Fridays and 11:00 and 23:00 on Saturdays and Sundays.

5. Staff shall only be permitted on the premises between the hours of 10.30 and 23.30 Monday-Sunday.

6. No deliveries /loading /unloading /servicing of the development (with the exception of collection by delivery drivers within the hours of operation specified by condition 5) hereby approved shall be carried out on the premises before 07:00 and after 22:00 and between the hours of 08:00-10:30 and 15:00-19:00 on any day.

7. No refuse or waste material of any description shall be left or stored anywhere on the site other than within a building or refuse enclosure.

8. The premises shall only be used as an A5 hot food takeaway use and for no other purpose (including any other purpose in Class A5 of the Schedule to the

Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

9. Prior to the use of the premises hereby approved, a service management plan identifying the size, number and frequency of vehicles to be used for the servicing of the premises to the rear of the property, times during off-peak hours and duration of deliveries/collection and staff responsibilities in connection with the enforcement of the service management plan; shall be submitted to and approved in writing by the Local Planning Authority. The use shall thereafter be carried out in accordance with the approved details.

10. Prior to the use of the premises as approved, the mechanical services plant including heating, ventilation and air conditioning (HVAC) and kitchen extraction plant hereby permitted shall be installed in strict accordance with the details provided in the acoustic report submitted by Cole Jarman reference 18/0510_R1 dated 20/09/2018, specifically noise emission limits in Table T4 and vibration mitigation measures detailed in section 5.3.2 of the report. The plant shall thereafter be retained as approved.

A commissioning acoustic test and report shall be undertaken, in order to demonstrate that noise emissions limits detailed in the Plant Noise Assessment reference 18/0510_R1 have been achieved. The results of the test shall be submitted to and approved in writing by the LPA within 3 months of the commencement of the beneficial use of the premises as approved.

11. Prior to the use of the premises hereby approved, details of a scheme for the extraction and treatment of fumes and odours generated from cooking or any other activity undertaken on the premises (in accordance with the recommendations of Annex C Proposed Ventilation System document reference B10432-AEW-PJ003283-XX-SP-0002-[A]) (Version Received on 29/10/2018) shall be submitted to and approved in writing by the local planning authority. Any equipment, plant or process approved pursuant to such details shall be installed prior to the first use of the premises and shall be operated and retained in accordance with the approved details and operated in accordance with manufacturer's instructions.

12. A scheme for the sound insulation of the party ceiling between the restaurant and any structurally adjoining residential properties (including calculations) shall be submitted to and approved in writing by the local planning authority and fully implemented in accordance with the approved details before the use, hereby permitted, commences. The works and scheme shall thereafter be retained in accordance with the approved details and no alteration to the ceiling which undermines the sound insulation integrity of the partition shall be undertaken.

The sound insulation scheme will need to demonstrate that transmitted noise levels to the residential properties will not exceed the level detailed in the table below:

Table: - Internal Guideline Level
Mixed Use Development Floors/Ceilings

Within habitable room of residential properties NR 25 (Leq, 15 min)