



Appeal Decision

Site visit made on 25 February 2020

by S Harley BSc(Hons) MPhil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 18th March 2020

Appeal Ref: APP/A5840/W/19/3242166
110 Wyndham Road, London SE5 0UB

- 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 Ruben Osie against the decision of the Council of the London Borough of Southwark.
 - The application Ref 19/AP/2136, dated 13 July 2019, was refused by notice dated 10 September 2019.
 - The development proposed as described on the decision notice is change of use from retail shop (A1) to hot food takeaway (A5) with an extractor flue added to the side elevation.
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Procedural Matter

1. The description set out above more accurately describes the proposed development than that stated on the planning application form and is therefore preferred for the purposes of this appeal decision.

Decision

2. The appeal is allowed and planning permission is granted for change of use from retail shop (A1) to hot food takeaway (A5) with an extractor flue added to the side elevation at 110 Wyndham Road, London SE5 0UB in accordance with the terms of the application, Ref 19/AP/2136, dated 13 July 2019, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Main Issue

3. The main issue is the effect of the proposed hot food takeaway on the health of young people.

Reasons

4. The development plan includes the Southwark Council Core Strategy 2011 (the CS); the Southwark Plan 2007 (the SP); and the London Plan 2016 (the LP). Saved policy 1.10 of the SP states that outside town centres, local centres and protected shopping frontages, development will only be permitted for a proposal for a change in use between A use classes¹ in certain circumstances.
5. The appeal site is a ground floor unit, currently vacant the last use being a shop, with residential above. It is in a parade of commercial uses in a mixed use area, but it is not in a protected shopping area or town centre. As there is

¹ Town and Country Planning (Use Classes) Order 1987 as amended

- another A1 retail shop use approximately 30-40 metres from the appeal site, the proposal would meet the requirements of Saved Policy 1.10(ii) which resists the loss of a retail shop unit where there are no others nearby.
6. The Council considers that an appropriate extraction system would adequately disperse cooking and odour/fatty fumes. Such a system, and its maintenance, could be secured by condition as could hours of operation appropriate to a mixed use area. For these reasons I find the proposal satisfies the requirements of Strategic Policy 13 of the CS and Saved Policies 1.10 (i) and 3.2 of the SP which seek to ensure that developments do not result in a loss of amenity to residents or the users/occupiers of adjacent premises such as the Church.
 7. Concern has been increasing about the effect of the availability of fast food on health in particular on the health of young people. The Framework and the National Planning Policy Guidance (the PPG) reflect these concerns, aiming to enable and support healthy lifestyles, including access to healthier food. Policy 7.1 of the LP seeks to ensure people live healthy and active lives and thus accords with the Framework and PPG in this respect.
 8. The PPG indicates local planning authorities can have a role by supporting opportunities for communities to access a wide range of healthier food production and consumption choices and, where justified, to seek to limit the proliferation of particular uses where evidence demonstrates this is appropriate, for example, near to locations where children congregate. Amongst other things it suggests that consideration be given to evidence indicating high levels of obesity, deprivation, health inequalities and general poor health in specific locations. No location specific evidence has been submitted about these matters in relation to this appeal.
 9. Paragraph 48 of the National Planning Policy Framework (the Framework) advises that weight may be given to relevant policies in emerging plans according to the stage of preparation, the extent of unresolved objections and consistency with the Framework. Policy E9 of the emerging new London Plan (the New LP) says that A5 hot food takeaway uses should not be permitted where these are within 400 metres walking distance of primary or secondary schools to facilitate a healthier food environment. This objective has been followed by Policy P45 of the New Southwark Plan Proposed Submission Version 2017 (the New SLP) which says that new hot food takeaways will only be permitted within protected shopping frontages subject to a number of criteria. The Council considers the most relevant of these to be whether the proposed location is further than 400 metres from any secondary school boundary.
 10. The appeal site is not within a protected shopping frontage. It is near to a number of schools and churches. There are an Indian; a Chinese; and a chicken takeaway within 5 – 10 minutes walking distance but I consider this number to be relatively small and not to amount to an over-concentration of the sorts of takeaways likely to be of particular attraction to young people. Such relatively low numbers help to ensure the impact on young people is likely to be relatively limited. The Council has provided little in the way of robust evidence to show that children attending the local schools and churches would be unduly influenced by the presence of a takeaway in this location. Reference is made to the Council's Healthy Weight Strategy Everybody's Business which sets out the case for multi-factional action to support the creation of a healthier

environment. However, this has not been provided so I cannot take it into account. In the absence of substantive evidence to the contrary I cannot confidently conclude the addition of a further takeaway would be likely to materially alter the present position in this instance.

11. I also recognise that different types of takeaway will have different health impacts and that fast food does not necessarily equate to unhealthy eating. In this context Policy E9 of the New LP says that where A5 hot food takeaways are permitted the use of a condition requiring the operator to achieve and operate in compliance with the Healthier Catering Commitment standard, should be considered. This is a voluntary scheme for food businesses developed by the Association of London Environmental Health Managers and the Chartered Institute of Environmental Health and supported by the Greater London Authority, Mayor of London office. On this basis I conclude that any resultant harm to the health of young people would not be so significant as to justify withholding permission and there would be no conflict with Policy 7.1 of the LP in this respect.

Other Matter

12. Access for the purposes of maintenance of extraction or ventilation equipment may rely on entering land owned by the adjacent Church. It would be for the relevant land-owners/occupiers to address this matter.

Planning Balance and Conclusion

13. I find no conflict with the development plan Strategic Policy 13 of the CS or Saved Policies 1.10 and 3.2 of the SP in respect of the loss of a retail unit or the effect on the amenity of occupiers and users of adjoining land and buildings. Similarly, as set out above, I find no substantive conflict with Policy 7.1 of the LP. I also note the material consideration that an earlier proposal was granted planning permission under the adopted CS and LP in 2016 planning Ref 16/AP/1807.
14. I have considered whether there are other material considerations that would indicate that the decision should not be in accordance with the development plan. There would be some conflict with Policy E9 of the New LP and Policy P45 of the New SLP but I cannot be certain that the Emerging Plans will be adopted in their current forms and I therefore attach relatively little weight to them. There would be some conflict with the PPG but I have insufficient evidence to indicate a particular problem with health matters in this particular location and I have not found a particular over-concentration locally of fast food takeaways.
15. Overall, I conclude these material considerations would not be sufficient in this case to lead me to conclude that the decision should be other than in accordance with the development plan. The appeal is allowed.

Conditions

16. The appellant has been given the opportunity to comment on the conditions proposed by the Council but a response has not been received. I have considered the conditions proposed by the Council in the light of the Framework and PPG and, where appropriate, I have revised the wording to more closely align with the guidance. As well as the standard time condition, a condition requiring compliance with the approved plans is necessary for the avoidance of doubt.

17. Conditions requiring the installation, retention and maintenance of the approved extraction/ventilation equipment and refuse/recycling facilities are required in the interests of public health. Conditions controlling noise levels from any plant, and associated ducting; limiting the transmission of noise into residential rooms sharing a party element with the premises; restricting motorised home deliveries; and restricting opening hours, as on the previous permission, are necessary in the interests of protecting the amenity of occupiers/users of adjacent land and buildings.
18. Approval of the colour of the external duct is required in the interests of the appearance of the area. The installation of a CCTV system is necessary in the interests of deterring the occurrence of crime and anti-social behaviour. A condition requiring compliance with the Healthier Catering Commitment standard is necessary to facilitate a healthier food environment.

S Harley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans/documents: Site Location Plan; 4311-01 Rev F, 4311-02 Rev E, General Layout for Extraction System; Plasma Clean Xtract System (documents), Silencer Details; Report on Matters Arising From Planning Meeting.
- 3) The use hereby permitted for hot food takeaway (A5 use) purposes shall not be carried on outside of the hours of 1:30pm to 10:30pm Monday to Friday and 12:00pm (midday) to 10:30pm on Saturday and Sunday.
- 4) The hot food takeaway use hereby permitted shall not include any motorised home delivery service at any time.
- 5) The rated noise level from any plant, together with any associated ducting, shall be 10 dB(A) or more below the measured LA90 level at the nearest noise sensitive premises. The method of assessment shall be carried out in accordance with BS4142:1997 'Rating industrial noise affecting mixed residential and industrial areas'. The equipment shall be installed and constructed in accordance with the above noise limits and be permanently maintained thereafter.
- 6) Prior to the commencement of the use hereby permitted, all of the extraction and ventilation equipment detailed in the application including the extract duct with tapered cowl and a copper activated carbon filter shall be installed and fully operational and shall be maintained as such thereafter. The equipment shall be in operation at all times cooking and associated activities are taking place.
- 7) Prior to commencement of the use hereby permitted details of noise attenuation such that adjoining rooms used for residential purposes shall have sound insulation of the party element sufficient to ensure that NR25 is not exceeded in the residential premises due to noise from the commercial premises shall be submitted to and approved in writing by the Local Planning Authority. The approved noise attenuation shall be completed prior to the commencement of the use hereby permitted and shall be permanently retained thereafter.
- 8) Prior to commencement of the use hereby permitted, details of the finish and colour of the external duct shall be submitted to, and approved by, the Local Planning Authority and the external duct shall be finished in accordance with any such approval given, and thereafter shall be retained as such.
- 9) The refuse storage facilities shown on the approved drawings shall be provided and available for use by the occupiers of the premises before the use hereby permitted is commenced and the facilities provided shall thereafter be retained and neither the facilities provided, or the space they occupy, shall be used for any other purpose. The refuse bins shall only be brought to the front of the site on the day of collection and shall be returned to the refuse storage area on the same day.²

² Conditions continue on the next page

- 10) Prior to commencement of the use hereby permitted, the premises shall be fitted with a CCTV system both inside and outside the premises and this shall be in operation for as long as the use continues to operate.
- 11) The hot food takeaway operator must achieve the Healthy Catering Commitment standard within 6 months from the first day of opening the hot food takeaway use hereby permitted, and must comply with the standard thereafter. Evidence that the operator has achieved the standard must be displayed on the premises as a minimum by the display of the Healthy Catering Commitment door/window sticker.

End of Schedule