The Planning Inspectorate

# Appeal Decision

Site visit made on 2 March 2020

**by T J Burnham BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26th March 2020**

**Appeal Ref: APP/C5690/W/19/3243380**
**171 New Cross Road, London SE15 5DG**

- 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 R Sugunakumar against the decision of the Council of the London Borough of Lewisham.
- The application Ref DC/19/113769, dated 3 September 2019, was refused by notice dated 15 November 2019.
- The development proposed is a change of use on ground floor from A1 to A3/A5.

## Decision

1. The appeal is dismissed.

## Procedural Matter

2. The proposal also includes an extraction system to the rear of the property. The Council have not raised concern in relation to this and I have no reason to disagree.

## Main Issues

3. The main issues are whether the proposal would support healthy lifestyles, particularly with regard to proximity to schools and the effect of the proposal on the vitality and viability of the District Centre.

## Reasons

4. The proposal seeks to change the use of the premises which is located on the busy A2 road within the New Cross and New Cross Gate District Centre from its current retail use to a restaurant and hot food takeaway.

*Proximity to schools*

5. Citing concerns in relation to the impact of hot food takeaway shops on human health, in particular children's health, Policy 18 of the Lewisham Development Management Local Plan (2014) (DMLP) states that planning permission will not be granted for hot food takeaway shops that fall within 400 metres of the boundary of a primary or secondary school. This is referred to as the exclusion zone.

6. The Council note that the appeal site is within 400 metres of a number of schools and the appellant accepts that the site is within the exclusion zone. The proposal would therefore fail to promote healthy lifestyles for children. Although the appellant seeks to downplay the hot food takeaway element of

the proposal, the evidence does not indicate that this provision would form only a small part of the business. The existing shop unit is not excessive in size and the proposed plans show a large amount of its floorspace would be lost to a storage/stockroom and toilet and a service counter. This would leave very limited room for any significant number of tables to serve the restaurant use.

7. I conclude on this issue therefore that the proposal would introduce a hot food takeaway within the exclusion zone and for this reason the proposal would be contrary to Policy 18 of the DMLP. Further, the proposal would also fail to accord with the aims of the National Planning Policy Framework which at paragraph 91 states that planning decisions should enable and support healthy lifestyles, especially where this would address identified local health and well-being needs such as promoting access to healthier food.

*Vitality and viability of the district centre*

8. The site is within the New Cross/New Cross Gate District centre although not within either the primary or secondary frontage. The area is highly commercial in nature, although the uses within this run of premises are mixed and include a post office with convenience retail store occupying a double unit immediately next door, an estate agent, a café and a hairdresser.

9. Part 4 of Policy DM14 indicates that applications for a change of use from a ground floor shop (Class A1) will be considered, amongst other things, where the character, attractiveness, vitality and viability of the centre as a whole is not harmed. The supporting text indicates that in such locations, a much more flexible approach to change of use will be encouraged.

10. Core Strategy Policy 6 of the Core Strategy Development Plan Document (2011) (CSDPD) seeks to protect local shopping facilities from change of use where there is an economic demand for such services. Policy 17 of the DMLP amongst other things permits restaurant uses where they would not detrimentally affect the vitality of the shopping area.

11. The evidence indicates that the proposal has resulted from an ongoing decline in the retail use, resulting in financial loss, although the evidence is relatively limited in this respect. However, given the mixed commercial nature of the area, I do not consider that the character, attractiveness, vitality and viability of the centre as a whole would be harmed as a result of a change from retail, particularly where the policy approach is more flexible outside of the primary and secondary retail frontages.

12. I do not therefore find the proposal contrary to Policy 6 of the CSDPD, Policies 14 and 17 of the DMLP nor policies 4.7 and 4.8 of the London Plan (2016) which amongst other things seek to support a vibrant and diverse retail sector.

**Other Matters**

13. I note that the proposal would not have an unacceptable impact in terms of smell and noise and that a full extraction system is proposed. My attention has also been drawn to other planning and appeal decisions. However, none of these appear relate to a use involving hot food takeaway and I have therefore afforded them limited weight.

**Conclusion**

14. Taking all matters into account, the appeal should be dismissed.

*T J Burnham*

INSPECTOR