



Appeal Decision

Site visit made on 2 February 2020

by Roy Curnow MA BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th March 2020

Appeal Ref: APP/F5540/C/19/3234851
481 London Road, Isleworth TW7 4BX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr J Loyal against an enforcement notice issued by the Council of the London Borough of Hounslow ('the notice').
 - The enforcement notice, numbered ADV/2019/00065, was issued on 29 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use from a restaurant (Use Class A3) to a takeaway (Use Class A5).
 - The requirements of the notice are: (1) Cease the use of the premises as a Takeaway (Use Class A5); (2) Remove the illuminated fascia sign to the front of the property; and (3) Remove all resultant debris from the land.
 - The period for compliance with the requirements is 3 months after the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by replacing "four" with "ten" in the first reason for issuing the notice at section 4. Subject to this correction the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

2. The notice alleges a material change of use (mcu). Amongst the reasons for issuing the notice, reference is made to the breach of planning control having occurred within the last 4 years. However, the correct period for a mcu is ten years. From the evidence before me, I am able to correct the notice to read ten years without causing injustice to either party.

Ground (a) appeal

Background

3. The appeal site consists of the ground floor of a three-storey building that stands in a small parade alongside the busy London Road. Like its neighbours, the building has a commercial use at ground floor level with residential accommodation above. Its ground floor is used as a hot food takeaway, whilst others in the parade are in a mixture of retail, takeaway and café uses.

4. A brief resume of the planning background of the site is required for the purposes of clarity. The appellant suggests that the use of the property as a hot food takeaway is lawful by reason of a planning permission granted by the Council in 1998 (Council reference 0707/481/P3). This allowed for its use as a hot food takeaway. This fell within Class A3 of the Town and Country Planning (Use Classes) Order 1987 (UCO). At that time, Class A3 was defined as 'Use for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises'. Thus, it allowed for the property to be used as a restaurant or a takeaway. The evidence shows that the property was used as a restaurant from 2000 until 2018.
5. The UCO was amended¹ in 2005. Amongst the terms of this amendment were the introduction of a new use class for hot food takeaways (Class A5) and the limitation of Class A3 to restaurants and cafes to the sale of food and drink for consumption on the premises. As the property was in use as a restaurant at that time it, thus, fell within the new Class A3. As there is no permitted change of use² from Class A3 to A5, planning permission was required for the change of use that has occurred at the appeal site.
6. Therefore, and notwithstanding the small area of seating at the front of the property, I have no reason to conclude that the building was not in an A5 use when the notice was issued.
7. I might have considered the above matters as a Ground (c) appeal, "that those matters (if they occurred) do not constitute a breach of planning control". However, as the outcome would be the same neither party has been prejudiced by my addressing the matter in this manner.

Main Issues

8. The main issues in this appeal are the effect of the proposal on:
 - The character and appearance of the locality, including the Spring Grove Conservation Area (SGCA), by reason of an illuminated fascia sign;
 - The living conditions of the occupants of nearby dwellings, by reason of noise and disturbance; and
 - The health of the local community.

Character and appearance

9. The site lies within the quite extensive SGCA. From my visit I found this to be characterised in the main by fairly spacious suburban residential streets, within which are several large education establishments and a large court complex. The grounds of these institutions reinforce the feeling of spaciousness across much of the SGCA. The site lies towards the south-eastern edge of the SGCA that, due to London Road, the parade and a railway line, has a far busier character than most of the SGCA.
10. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCAA) sets out the statutory requirement for assessing the effects of development in a conservation area, namely that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of

¹ Town and Country Planning (Use Classes) (Amendment) (England) Order 2005/84 art.2(2)(b) (April 21, 2005)

² Within the Town and Country Planning (General Permitted Development) (England) Order 2015

that area. This requirement is reflected in the terms of Policy CC4 of the Hounslow Local Plan 2015-2030 (HLP).

11. The majority of the commercial properties in the parade have illuminated fascia signs. The manner of illumination varies, but there are several that are internally illuminated in a similar manner to that on the appeal site.
12. However, as the fascia sign at the appeal site consists of an illuminated panel running the width of the frontage above an area of illuminated lettering, it is noticeably deeper than those on other properties in the parade. Furthermore, although I have not been given details of the sign's luminescence, the lettering on the lower part of the sign appeared markedly brighter than that of other signs on the parade. Thus, the sign causes harm to the character and appearance of the host building and its surroundings. Thus, the change of use of the property.
13. For the reasons set out above, I conclude that the change of use, of which the illuminated sign is a part, is harmful to the appearance of the locality, including the SGCA. It thus fails to pass the statutory test and conflicts with HLP Policy CC4. I have taken into account the provisions of the development plan so far as they are material³. HLP Policy CC1 requires proposals to have regard to their context and character of the surroundings, this is reflected in the guidance on signage in HLP Policy CC5. Therefore, the appeal proposal conflicts with these policies.

Living conditions

14. This and my third main issue were also the main issues in an appeal against the refusal of planning permission for the same development, as is sought in the appeal before me. The appeal was dismissed.
15. Whilst there may be a degree of disturbance arising from the use of the appeal site as a restaurant, its use as a takeaway involves a greater number of comings and goings. The appellant has not provided evidence of opening hours, but I am aware that takeaways do much of their business later into the evening. Thus, the use generates noise and disturbance when noise from traffic to the front of the site may be reduced and when residents may expect a reasonable level of peace and quiet. Due to the close-knit relationship with residential properties on the upper floors of the parade, the activities associated with the takeaway will lead to greater noise and disturbance of residents of nearby properties to the detriment of living conditions.
16. Although there are two other takeaways in the parade, these do not mitigate the harm to neighbours' living conditions arising from the introduction of the takeaway use at the appeal site. The result is, rather, that the harm to the living conditions of the occupants of nearby dwellings is exacerbated.
17. I am not persuaded that the development results in an unacceptable increase in the concentration of hot-food takeaways, in relation to the impact on neighbouring properties referred to in the Council's case. In this regard, I have not been provided with a locally defined threshold against which such an allegation might be considered. Whilst I have been provided with a table showing a number of takeaways in the area, most are sufficiently distant from

³ I do not find the terms of HLP Policy CC2, which relate to urban design and architecture, are relevant to this issue

the site to ensure that there is no cumulative ill-effect arising to neighbours of the appeal site. Furthermore, I do not find that the use conflicts with Policy 3.2 of the London Plan (LP), Policy E9 of the Emerging London Plan (ELP) and HLP Policies CC1 and CI3 with regards to this main issue as they relate to matters of context and character as well as healthy lifestyles, rather than the living conditions of residents.

18. Notwithstanding that there have been no official complaints regarding noise from the site, my finding on this matter is, for the reasons set out above, that the takeaway use causes harm to the living conditions through noise and disturbance of the occupants of nearby dwellings. In this regard it is, therefore, contrary to the terms of the National Planning Policy Framework (the Framework) that seek to promote residents' health and well-being.

Healthy community

19. The Framework promotes healthy communities and makes reference to access to healthier food. This reflected locally in Policies 3.2 of the LP and C13 of the Hounslow Local Plan (HLP), which seek to improve and promote healthy lifestyles to help reduce health inequalities and ensure that development proposals contribute to the health and well-being of the local community where possible.
20. Evidence suggests that hot food takeaways are a contributory factor to obesity, and that takeaway food is particularly appealing to children. In the light of this, amongst the terms of Policy E9 of the emerging London Plan is that proposals containing A5 hot food takeaway uses should not be permitted where they are within 400m walking distance of an existing or proposed primary or secondary school. The Panel report into the London Plan has been published and the Plan has been subsequently updated. Given its advanced stage, it is a material consideration that carries substantial weight.
21. The Council's statement suggests that two secondary schools, Bolder Academy and Isleworth and Syon schools, are within 400m walking distance of the appeal site. However, the evidence given in Appendix 4 to the statement contradicts this. It sets out that the walking distances are 0.3 miles and 0.4 miles, respectively. These equate to more than 480m and 640m, respectively. Both are considerably above the distance in LP Policy E9. West Thames College is within the 400m walking distance but is not subject to the terms of LP Policy E9, as it is not a primary or secondary school.
22. I have not been provided with substantive evidence to demonstrate how the proposal will lead to a significant impact on the health of the community compared to the established use of the site as a restaurant, which could serve much the same food as a takeaway.
23. Therefore, there is insufficient evidence before me to conclude that the proposal will lead to material harm to the health of the local community. Therefore, I do not find that the proposal conflicts with HLP Policies CC1 and CI3, London Plan Policies 3.2 and 4.8, Policy E9 of the emerging London Plan nor the terms of the Framework related to this issue.

Other matters

24. The advice given by the Council before and after the submission of the planning application is not a matter for me in this appeal. I have taken account of the

appeal site's accessible position within a parade that has a mixture of uses and is close to residential areas, as well as the service the business provides. However, these do not outweigh the harm that I have identified.

Conclusions and Planning Balance

25. Although I do not find that the takeaway would lead to material harm to the health of the local community, neither this nor the other material considerations, outweigh the significant harm and conflict with policy I have identified, with regards to neighbours' living conditions and the character and appearance of the area.

Decision

26. For the reasons given above I conclude that the appeal should not succeed. I have upheld the enforcement notice with a correction and refused to grant planning permission on the deemed application.

Roy Curnow

INSPECTOR