



Appeal Decision

Site visit made on 28 July 2020

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 August 2020

Appeal Ref: APP/R5510/W/20/3245404

Maplestones, 2 Glebe Avenue, Ickenham UB10 8PA

- 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 Mr Rodney Flood against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 2771/APP/2019/2018, dated 13 June 2019, was refused by notice dated 9 August 2019.
 - The application sought planning permission for the change of use of ground floor from solicitor office (Use Class A2) to hot food takeaway (Use Class A5) involving alterations to front elevation and installation of extract duct without complying with a condition attached to planning permission Ref 2771/APP/2019/1247, dated 11 June 2019.
 - The condition in dispute is No 5 which states that the premises shall not be used for the preparation or sale of food outside the hours of: 08.00 to 23.00 Mondays – Saturdays, 10.00 to 18.00 Sundays, Public or Bank Holidays.
 - The reason given for the condition is to safeguard the residential amenity of the occupiers of adjoining and nearby properties in accordance with Policy OE3 of the Hillingdon Local Plan: Part Two Saved UDP Policies (November 2012).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of ground floor from solicitor office (Use Class A2) to hot food takeaway (Use Class A5) involving alterations to front elevation and installation of extract duct at Maplestones, 2 Glebe Avenue, Ickenham UB10 8PA in accordance with the application Ref 2771/APP/2019/2018 dated 13 June 2019, without compliance with condition No 5 previously imposed on planning permission Ref 2771/APP/2019/1247, granted on 11 June 2019 by the Council of the London Borough of Hillingdon, but otherwise subject to the conditions listed in the schedule at the end of this decision.

Procedural Matter

2. The Council has confirmed that since issuing its decision, some of the policies that were referred to in the refusal notice (Policies OE1 and OE3) have been withdrawn and are no longer part of the adopted development plan for the area. They now rely on Policy DMTC 4 of the London Borough of Hillingdon Local Plan Part 2: Development Management Policies (adopted 16 January 2020) (LPP2). This, however, has not affected my conclusions as the essence

of the new broad policy is clear in that new development will be required to ensure no unacceptable loss of amenity to nearby properties.

Background and Main Issue

3. Planning permission for the change of use of the appeal property to a hot food takeaway (Class A5) was granted in June 2019¹. Amongst other matters, a condition was imposed restricting opening hours of operation to between 08:00 to 23.00 Monday to Saturday and 10.00 to 18.00 on Sunday and Public or Bank Holidays. In this case the appellant is seeking a further extension of the opening hours to between 10.00 to 23.00 on Sundays and Public or Bank Holidays. No change to the permitted hours of opening on Monday to Saturday is proposed.
4. At the time of my visit it was evident that the appeal premises is still operating as a solicitors office and there was no evidence of the change of use being implemented nor any work relating to the takeaway use having commenced.
5. The main issue for the Appeal is the effect that varying the opening hours for the hot food takeaway would have on the living conditions of neighbouring residents from increased noise and disturbance.

Reasons

6. The appeal premises, currently a solicitor's office, is located within a parade that includes shops, commercial services and existing hot food takeaways on the ground floor. The parade faces onto Long Road where there are existing on street parking bays directly in front of the commercial premises. The upper floors of the units largely consist of flats. Further dwellings are located close by on Glebe Avenue, Long Road and facing the busy B466.
7. The B466 carries a significant level of traffic and I would expect this to continue late into the evening given that it is one of the main roads leading into the centre of Ickenham. I noted during my site visit that a number of the premises in the parade, including existing takeaways, operate opening hours that extend into the evening, including Sundays. The general activity from these commercial uses would include customers chatting and cars manoeuvring into the parking bays along Long Road. This together with the proximity of the surrounding roads creates a high level of background noise adjacent to the appeal site.
8. As there is already noise, movement and parking in the locality during the hours applied for, there is little discernible difference to the living conditions of nearby residents as a result of the proposal. I have noted the suggestion from a neighbouring resident that the appeal takeaway should close at 22.30, however, this marginally earlier closing time would be unlikely to result in any significant change to the activity and sound levels expected around this time.
9. No specific evidence has been put forward of any existing disturbance having been caused by customers visiting the neighbouring hot food takeaway shops during the evenings. Furthermore, I am mindful that the Council's Environmental Protection officer has not issued any comment in respect of the opening hours proposed.

¹ Local Planning Authority Ref 2771/APP/2019/1247

10. Against this background I do not consider that the full terms of the current condition are necessary. A replacement condition in accordance with the terms proposed is, however, required to avoid night-time disturbance.
11. Therefore, I conclude that the proposed extension of opening hours would not cause significant or demonstrable harm to the living conditions of nearby residents, with particular regard to noise and disturbance. I therefore find no conflict with Policy DMTC 4 of the LPP2. This amongst other things supports proposals providing they would not cause unacceptable disturbance or loss of amenity to nearby properties by reason of noise.

Other Matter

12. The appeal site is located within the Ickenham Conservation Area. However, the Council has not raised any issues with regard to the effect of the proposal on the conservation area. I find no reason to disagree, and I am satisfied that the character and appearance would be preserved.

Conclusion

13. I therefore allow the appeal, varying condition 5 to include an extension of the opening hours that would relate to the hot food takeaway to between 10.00 and 23.00 on Sundays and Public/Bank Holidays. The amended hours of opening are necessary to ensure the living conditions of neighbouring occupiers are not harmed. There is insufficient information before me as to whether or not the other conditions originally imposed remain relevant or whether they have been discharged. This is a matter between the main parties. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the original planning permission in these circumstances. Therefore, I have re-imposed the other conditions, while amending the time limit and compliance with plans conditions to better reflect the relevant guidance.
14. For the reasons given above I conclude that planning permission should be granted subject to the conditions as set out in the attached schedule.

R. E. Jones

INSPECTOR

Schedule of Conditions

1. The development to which this permission relates must be begun not later than the expiration of three years from 11 June 2019.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, 12/2664/1, 12/2664/2, 12/2664/3, 12/2664/4, 12/2664/5, 12/2664/6, 12/2664/7, 12/2664/8, 12/2664/9, 12/2664/10 and 12/2664/11.
3. No chimney, extraction vent/system or any air conditioning equipment shall be used on the premises until a scheme for the control of noise and vibration emanating from the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented before the development is occupied/use commences and thereafter shall be retained and maintained in good working order for so long as the building remains in use.
4. The development shall not begin until a scheme for the control of noise transmission to the adjoining dwellings and premises has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include such combination of sound insulation and other measures as may be approved by the LPA. Thereafter, the scheme shall be implemented and maintained in full compliance with the approved measures.
5. The premises shall not be used for the preparation or sale of food outside the hours of: 08.00 to 23.00 Mondays – Saturdays and 10.00 to 23.00 Sundays, Public or Bank Holidays.
6. The premises shall not be used for deliveries and collections, including waste collections other than between the hours of 08.00 and 18.00, Mondays to Fridays, 08.00 to 13.00 Saturdays and not at all on Sundays and Bank and Public Holidays.

End of Schedule