
Appeal Decision

Site visit made on 12 October 2020

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2020

Appeal Ref: APP/L5240/W/20/3250896
227 Coulsdon Road, Coulsdon CR5 1EN

- 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 Battal Sayan of Belmor Solutions Limited against the decision of the Council of the London Borough of Croydon.
 - The application Ref 19/04852/FUL, dated 14 October 2019, was refused by notice dated 6 March 2020.
 - The development proposed is change of use of ground floor A1 retail unit to A5 (hot food takeaway) and installation of extract ducting at rear.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application form seeks a grant of planning permission and consent to display advertisements, but the Council's decision notice relates only to the former. The appeal is against the refusal of planning permission and my determination is made on that basis.
3. Subsequent to the Council's decision, the Town and Country Planning (Use Classes) Order 1987 was amended. The Regulations provide that where a planning application referring to the old system of use classes is submitted prior to 1 September 2020 that application must be determined by reference to those use classes. Nevertheless, the parties have had the opportunity to comment on the implications of the changes for their respective cases.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of nearby residents, with particular reference to odour, noise and general disturbance.

Reasons

5. The appeal site comprises a vacant ground floor retail unit within a parade of shops with two storeys of flats above. The proposal is for change of use of the unit to a hot food takeaway to open six days a week (Monday to Saturday) from 1100 to 2100. Cooking operations would take place towards the rear of the premises, with a new extract duct exiting the rear wall and continuing up the wall of the building to terminate 1 metre above the eaves.

6. Specification details of the extraction system have been provided and the Council's Environmental Health Service deems these to be acceptable. When maintained in accordance with the manufacturer's instructions, the system should reduce cooking odours. However, it is always difficult to eliminate odours completely, and in my experience it is not unusual for smells to linger in the vicinity of takeaway premises.
7. The flats above the parade are occupied independently of the business premises below. The first floor units have terraces at the rear which serve as their only form of external amenity space. During my visit it was evident that several of the terraces are actively used for sitting out and relaxation. The relationship of these residential uses to commercial activity is a sensitive one, and I am conscious that even a small increase in noise or odour could have a significant impact on the quality of life of neighbours.
8. The extract duct would run across the terrace, alongside windows in the flats above No 227 and close to windows in adjacent flats. The high terminus of the flue would help with odour dispersal and anti-vibration mountings would prevent the transmission of low frequency noise into the flats. A boxed flue enclosure would provide additional sound insulation. However, the proximity of the ducting to residential occupiers would make it impossible to eradicate the risk of intrusive smells. The adverse impacts would be greatest in warm weather when the windows are likely to be open and the terraces in use.
9. The appellant is intending to operate a pizza shop. Pizza has a lower odour and grease loading than other forms of takeaway food. However, permission for A5 use would not preclude other takeaway food establishments in future. I have not been directed to any reliable mechanism for ensuring that the premises do not alter their offer to a more odorous type of food.
10. The Council refers to an appeal decision¹ relating to a proposed hot food takeaway at 231 Coulsdon Road which lies in the same shopping parade. The Inspector identified the potential for disturbance from the manoeuvring and parking of vehicles, slamming of doors and playing of vehicle radios and music systems. Additional concerns were raised regarding disturbance from the arrival and departure of customers on foot, and the possibility of congregation of young people for whom such facilities can be an attraction and which some might consider intimidating and annoying. The sites are directly comparable and therefore the previous appeal decision is a material consideration to which I have attached substantial weight.
11. The application for No 231 sought opening until 2300. The proposal is for the appeal premises to close at 2100. Although this would avoid late night noise there is still the potential for disturbance, including from general comings and goings at the rear of the property associated with deliveries. I noted that at least one of the shops in the row (a convenience store and off licence) is open into the middle part of the evening. However, takeaway uses have a different character to retail outlets and create the potential for a greater level of activity which would detrimentally impact the living conditions of residents.
12. I am mindful that Policy DM6 of the Croydon Local Plan 2018 (CLP) is broadly supportive of new A5 uses within shopping parades. The occupants of flats in such locations might be expected to be more tolerant of noise and activity than

¹ APP/L5240/A/08/2088624

those living in a wholly residential area. Nevertheless, proposals must comply with CLP Policies DM10 and DM23 in relation to the need to protect the amenities of neighbouring properties. In this particular case, I conclude that the impacts on living conditions of nearby residential occupiers would be unacceptable.

13. The decision notice refers to CLP Policy SP4 and Policies 7.4 and 7.6 of the London Plan. However, these are not directly relevant to the matters in dispute.

Other Matters

14. The proposal would bring a vacant unit back into use and in doing so it would enhance the vitality and viability of the area. However, the weight I attach to this consideration is limited by the absence of any marketing evidence to demonstrate that attempts have been made to find a new retail occupier. I am mindful that the options for non-retail uses have been widened by the recent introduction of a Commercial, Business and Service Use Class. There is no substantive evidence to show that alternative options have been explored.
15. Although the new Use Class would enable the premises to be used as a café or restaurant without needing planning permission, the nature of these uses is such that customer activity is less likely to cause noise or disturbance. Permission would be required for an extraction flue in connection with other hot food uses and consequently I do not accept that there is a genuine fallback position that is likely to come about in the event of the appeal being dismissed.
16. The appellant is an experienced operator of food and drink businesses and wants to be a good neighbour. However, customer behaviour is outside of his control and I must also take account of what may happen beyond his tenure particularly as regards future operators of the premises.
17. The proposal would not result in more than 50 percent of the ground floor of such units within the entirety of the parade falling outside the A1 Use Class. My attention is also drawn to an adjacent café and a fish and chip shop elsewhere in the local area. I further note the appellant's intention to join the Eat Well Croydon Scheme. Whilst I have taken these factors into account, they do not outweigh my conclusions on the main issue.
18. Objectors are concerned regarding the adverse effects of litter on their local environment. An increase in the deposition of rubbish could be a consequence of permitting a takeaway, but this could be mitigated using a condition requiring the provision of litter bins as part of a waste management strategy. As such, litter is not a determinative issue.

Conclusion

19. For the reasons given above and having regard to all other matters raised, including the appellant's intention to operate an electric scooter for deliveries, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR