
Appeal Decision

Site visit made on 29 September 2020

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: Monday, 07 December 2020

Appeal Ref: APP/L5240/W/20/3254176

7 Woodville Road, Thornton Heath, CR7 8LH

- 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 Denton Benjamin against the decision of the Council of the London Borough of Croydon.
 - The application Ref 00087/FUL, dated 9 January 2020, was refused by notice dated 5 March 2020.
 - The development proposed is conversion of shop from A1 use to A5 use.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the suitability of the area for an A5 – hot food takeaway – use having regard to the site's location and the density of A5 uses in the area; and
 - the effect of the development on the living conditions of surrounding residential occupiers by reason of the waste generated by the proposed use and the noise and disturbance caused by the comings and goings.

Reasons

Suitability of the area for an A5 use

3. The appeal site is comprised of a vacant shop unit, located close to other hot food takeaways, shops, restaurants and residential uses. Woodville Road itself begins in the District Centre of Thornton Heath, however it quickly assumes a residential character.
4. The local plan, the Croydon Local Plan 2018, (CLP), applies a structured approach to uses it will allow in the Croydon Metropolitan Centre, District Centres and local centres. All the different levels of 'centres' identified by the Council have different requirements when assessing proposals for new A5 uses.
5. In District Centres for example, whilst the policies allow for new A5 uses, there are controls over the percentage of units that can be occupied by A5 uses, and controls preventing clusters of A5 uses developing. A structured approach is also followed when assessing the suitability of all uses in secondary frontages, primary shopping areas and in the rest of the centre. Therefore, it is clear that the Council is following an approach which recognises the contribution and

impact that different types of uses have on the main shopping areas of the Borough and in what concentrations.

6. It has defined the area where the appeal site is located as 'edge of centre'. From my observation at the site visit it is clear that the area represents a transition between the District Centre and the residential part of Woodville Road. Therefore, an 'edge of centre' designation set out in the development plan is appropriate for the location of the appeal proposal.
7. In 'edge of centre' locations Policy DM8 of the CLP is relevant. The purpose of DM8 is to maintain and increase the vitality and viability of the District shopping centres. It does this by seeking to restrict certain uses and encourage others in 'edge of centre' locations. The way this is to be achieved is set out in Table 5.11. Specifically, Table 5.11 prevents the change of use of premises to new A5 uses where the current density of A5 uses is above the national average. It also uses this policy approach to restrict A5 uses in order to encourage healthy eating, especially by children.
8. The Council has identified that the Thornton Heath Ward, where the appeal site is located, currently has a density of A5 uses which stands at 104 per 100k population. The Council state, and have produced evidence to demonstrate, that the national average is 88 per 100k population¹. Therefore, the density in the ward appears to be above the national average. The appellant has not disputed these figures.
9. Policy DM8 specifically applies to 'edge of centre' locations. It follows that wards at the edges of centres are likely to have District Centres or parts of District Centres within them. Therefore, the average in these wards will include areas at a higher density of A5 uses than the national average, as well as areas with lower densities in their residential areas.
10. Moreover, it is likely that people, including children, will be passing through these edge of centre locations in order to access the housing areas beyond them. Therefore, the application of Policy DM8 will assist in achieving one of its overall aims that of to encourage healthy eating, especially by children by restricting access to hot food takeaways in these areas.
11. The appellant has argued that an A5 use would be acceptable opposite the appeal site as that lies within the District Centre and is within 10m of the appeal site. However, the policy that applies to A5 uses in District Centres does seek to control the location and density of A5 uses in order to protect the retail character of these areas. Therefore, and without full knowledge of the area opposite the appeal site, it is not certain that an A5 use would be acceptable in this location. Moreover, as I have set out above, the area where the appeal site is located is appropriately designated as an 'edge of centre' area, where specific policies regarding A5 uses apply.
12. The appellant also refers to a sequential approach which is applied to A5 uses in 'edge of centre' locations. However, it is clear from the explanation given in table 5.11 that the sequential approach is only engaged in areas where the density of A5 uses is below the national average. It has been established that the edge of centre location within which the appeal site is located has a density

¹ Government's Briefing Paper, "obesity and the environment briefing: regulating the grow of fast food outlets" referred to by the Council.

of A5 uses which is above the national average. Consequently, this part of table 5.11 referred to by the appellant is not relevant to this appeal.

13. I have also had regard to the appellant's intention to ensure that the premises is accredited in accordance with the Council's Eat Well Croydon scheme. However, it is clear from table 5.11 that this is only relevant where the density of A5 uses is below the national average. This is not relevant in this case.
14. I find that the appeal proposal is in conflict with Policy DM8 of the CLP in that it would lead to the provision of an A5 use in a ward where the density of A5 uses exceeds the national average.

Living conditions

15. There are dwellings immediately adjacent to the appeal property and the majority of Woodville Road is predominantly residential. However, given the sites proximity to the District Centre and the presence of other restaurant and takeaway uses in the area, it is unlikely that another such use in the area, even if it were offering deliveries, would make a material difference to the living conditions of the adjacent residential occupiers in terms of noise and disturbance. This is typical in areas which act as a transition between vibrant town centres and the residential areas around them, such as edge of centre locations.
16. Moreover, a hours of operation condition, such as that suggested by the appellant would prevent any noise generated by the use having an effect on living conditions when background noise levels in the area are likely to be lower.
17. In terms of the likelihood of litter and other waste being generated by the proposed use I consider that this could be dealt with through the imposition of appropriate conditions or other mechanisms should planning permission be granted.
18. I therefore find that subject to appropriate conditions and controls the appeal proposal could comply with the relevant requirements of Policy DM23 of the CLP.

Other Matters

19. I note that the appellant has argued that the change of use will operate in conjunction with the adjacent restaurant at 9-11 Woodville Road and that a separate takeaway service is needed in order to deal with the circumstances brought about by the Covid 19 pandemic. However, it is clear to me that there is nothing to prevent a takeaway service from operating out of the existing restaurant. Therefore, whilst I have had regard to this argument, it does not outweigh the conflict I have found between the proposal and the CLP.
20. I have had regard to the letters of support the proposal has received and the contribution of the person operating the existing restaurant to the local community. However, the proposal is clearly in conflict with the CLP and therefore these representations and the arguments they make do not outweigh the harm caused by the proposal.

Conclusion

21. The CLP is a recently adopted local plan and contains policies that are relevant to the appeal proposal. Whilst recent changes to the permitted development regime have allowed premises in A1 use to be converted to a wider range of uses these changes do not affect the appeal proposal. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals for development should be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the appeal proposal is in conflict with the relevant policy of the development plan. I have had regard to the matters put forward by the appellant, however and for the reasons set out above I dismiss the appeal.

Peter Mark Sturgess

INSPECTOR