



Appeal Decision

Site visit made on 4 January 2021

by Tim Wood BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 January 2021

Appeal Ref: APP/L5810/W/20/3258940

369 Upper Richmond Road West, East Sheen, London SW14 7NX

- 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 L Silva against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 20/1306/FUL, dated 13 May 2020, was refused by notice dated 7 August 2020.
 - The development proposed is described as change of use from retail (A1 Use Class) to restaurant and take-away (A3 and A5 Use Classes) including the installation of a flue extraction system.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the application was made to the Council and refused by it, the '*Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020*' came into force (on 1 September 2020). The effects of this includes the alteration/amalgamation of certain Use Classes as well as the exclusion of some uses from any use class. The transitional arrangements make it clear that proposals which were made by application prior to 1 September will be considered in relation to the Use Classes relevant at the time that the application was made. I shall comment on the relevance to this appeal within by reasoning below.

Main Issues

3. The main issues in this appeal are;
 - The effects of the loss of retail use on the vitality/viability of the retail area
 - The potential health effects of the proposed use in relation to its proximity to schools
 - The effects of odour/fumes on the living conditions of neighbours.

Reasons

Loss of Retail

4. This ground floor retail premises is located within an area defined as a Key Shopping Frontage, within the Council's Local Plan (LP). Policy LP 26 of the LP

states that within Key Shopping Frontages, proposals which result in the loss of floorspace with use class A1, will be resisted. The policy adds that, where a proposal is not otherwise supported by Policy LP 26, evidence of a full and proper marketing exercise will be required; it sets out such requirements in its appendix 5.

5. It is clear that the proposal involves the loss of retail floorspace, which is contrary to Policy LP 26. The appellant has submitted a Marketing Report which indicates that the property has been marketed for retail use. However, the Council is critical of the evidence submitted, in relation to its requirements as set out in appendix 5. In particular, it is noted that the appellant's submissions do not confirm the dates of the marketing exercise so there is no way of confirming that the Council's normal requirement has been met. In addition, there is no specific evidence of the number of viewings made, the number of offers (and for what uses) and the levels of those offers. In the absence of such details, I consider that it has not been suitably demonstrated that a full and proper marketing exercise has been undertaken and so an exception to the normal requirements of Policy LP 26 has not been justified.
6. In relation to the changes brought about by the Regulations set out above, if the proposal were to be made after the 31 August 2020, the use of the premises as a restaurant would not need planning permission. However, the changes now exclude the use as a take-away from any use class and so the proposal as a whole would still require planning permission as a mixed use is proposed. Whilst I have to consider the appeal in relation to the use classes that existed before 1 September 2020, the alterations made by the Regulations are capable of being a material consideration for this appeal. However, as the proposed change of use would still require planning permission due to the part-use as a take-away, I consider that these recent changes made by the Regulations are not sufficient to outweigh the conflict with Policy LP 26 as set out above.

Health Effects

7. Policy LP 30 states that the Council will manage proposals for new fast food takeaways located within 400 metres of the boundaries of a primary or secondary school in order to promote the availability of healthy foods. The justification for the policy states that childhood obesity amongst school age children is a concern as evidence suggests that obese children are more likely to be obese adults and are at an increased risk of developing further health difficulties. Access to fast food takeaways can influence the ability of individuals to adopt healthy lifestyles and have the potential to undermine healthy eating initiatives that may be in place at the school. Therefore, this policy focuses particularly on managing access to fast food takeaways in close proximity to schools. It adds that the Council will consider proposals for fast food takeaways located within 400 metres of the boundaries of a primary or secondary school with regard to the nature of the proposal, its contribution to healthy food availability and its relationship to the existing provision of A5 outlets.
8. The policy does not seek to define what may be considered to be healthy food or not. However, in general terms it seems to me that a take-away serving, amongst other things, pizzas, could encourage undesirable eating habits which Policy LP 30 seeks to prevent. Therefore, in my judgement, the onus would be

on the appellant to justify the proposal by providing sufficient information to enable an informed judgement to be made in this respect. The very general information provided would not be sufficient for such a judgement to be made.

9. In addition, the appellant's suggestion of a condition to prevent delivery to a school or serving school pupils would be very difficult to enforce and would prove impractical. As a consequence, I consider that the proposal has failed to satisfy this requirement of Policy LP 30.

Odours/Fumes

10. Policy LP 10 of the LP seeks to protect the environment and people from, amongst other things, the effects of odours and fumes. In this respect it states that any such effects should be mitigated and that the Council will require: an impact assessment where necessary; the type and nature of filtration to be used; the height and position of any chimney or outlet; promotion and use of new abatement technologies. In addition, the Council has published a Supplementary Planning Document in relation to the possible effects and controls of hot food premises, amongst others.
11. The appellant has submitted an Odour Assessment which examines the likely nature of odours and their effects on the locality. Although the Council have disagreed with just one of the number of scored assessments (that being in relation to the proximity of nearby residents), the overall category of scoring is agreed as being an overall risk assessment of 'High'. As a result, the appellant has submitted details of a scheme to provide a suitable level of mitigation, which would be intended to provide sufficient abatement in line with the 'Control of Odour and Noise from Commercial Kitchen Exhaust Systems' (DEFRA, 2005). The Council criticises the appellant's submissions as they state that the appellant's submissions do not include any technical detail for the system other than general marketing information and no detail is supplied in respect of DEFRA compliance. They add that it is not possible to determine if the proposed odour abatement is acceptable and in the absence of satisfactory information, the applicant has failed to demonstrate that the proposed ventilation system would not be harmful to neighbouring amenity.
12. In my view, the appellant has properly identified the relevant source and level of likely odours and has proposed a scheme which would be designed to mitigate any unacceptable effects. Whilst the full technical details of the scheme which is identified by the appellant have not been included, I consider that, if permission were to be granted, a suitable condition could be included which would require that such details should be provided and approved by the Council. The Council has not suggested that such a scheme would be impossible to provide here and has also included a similar condition as a preferred condition, if I were to allow the appeal. I am satisfied that this matter could be suitably controlled such that the living conditions of neighbours would not be unacceptably affected, and so that the development would comply with Policies LP 8 and LP 10.

Conclusion

13. The proposal would give rise to conflict with the development plan, as set out above. I have considered the case put forward by the appellant but consider that there are no matters sufficient to outweigh this conflict, including the

changes made in relation to the Use Classes. Therefore, the appeal is dismissed.

S T Wood

INSPECTOR