



Appeal Decision

Site visit made on 26 January 2021

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2021

Appeal Ref: APP/M5450/W/20/3259367

11 Village Way East, Rayners Lane, Harrow, HA2 7LX

- 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 Santhampillai Anthonipillai against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/2139/20, dated 24 June 2020, was refused by notice dated 19 August 2020.
 - The development proposed is the use of the ground floor shop unit as a hot food takeaway outlet as an extension to the adjoining restaurant at no. 13 Village Way East.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the submission of the appeal application, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, amending the Town and Country Planning (Use Classes) Order 1987 have come into force. These amendments revoke the previous Class A uses and create a new broad 'Commercial, business and service' use, under Class E. Hot food takeaways do not now fall within any use class, meaning that changes to and from these uses will be subject to full local consideration through the planning application process.
3. Despite that, the new regulations require that applications submitted prior to those changes coming into effect be determined by reference to the use classes which applied when the application was made. As such, the decision refers to those now revoked use classes.
4. It appears from my site visit that a change of use has already taken place at the appeal site. However, as the layout I saw on site differs from that shown on the drawings submitted for this appeal, I have given that change no weight in my decision on the appeal before me.

Main Issue

5. The main issue is whether or not the site is an appropriate location for the development proposed having regard to its proximity to a primary school.

Reasons

6. The appeal proposes to use an existing unit, in Use Class A2 at the time of the application as a hot food takeaway (Use Class A5) outlet for the adjoining restaurant. The site lies within a commercial and retail area, and there are a number of other food and takeaway units nearby. The pedestrian entrance to Longfield Primary School is, according to the Council, 350m from the site. The main entrance to the school is 450m from the site. I agree with these measurements.
7. Policy E9 of the draft London Plan 2019 (the dLP) states that a successful, competitive and diverse retail sector will be supported, but also seeks to manage the number of hot food takeaway uses, particularly within a 400m walking distance of school entrances. This policy does this in recognition of obesity being one of the greatest health challenges facing the capital, particularly amongst school age children. The dLP acknowledges that the causes of obesity are wide ranging but highlights the proliferation of hot food takeaways and their attractiveness to school age children as an important contributory factor. The policy applies to both primary and secondary schools and does not distinguish between their primary or secondary entrances. As the policy specifically refers to the walking distance between schools and hot food takeaways, I consider it entirely appropriate to measure the distance from the site to a pedestrian access for the purposes of policy compliance as in this case.
8. The appellant has suggested that Policy E9 of the dLP be afforded little weight owing to the status of that plan. Having had regard to paragraph 48 of the National Planning Policy Framework (the Framework), the status of the dLP and its examination, I am satisfied that the policy is capable of having great weight in the determination of this appeal.
9. Moreover, the policy is consistent with guidance in the Framework which requires policies and decisions to achieve healthy places which themselves enable and support healthy lifestyles. The Framework particularly supports this where it would address identified local health and well-being needs, as identified in the supporting text to Policy E9.
10. The aim of Policy E9, the way in which it has been applied by the Council in this decision, and its consistency with the Framework is in my view, given further weight by the explanation of the Ministry of Housing Communities and Local Government in the Explanatory Memorandum to The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, which highlights that hot food takeaways can give rise to important local considerations, as set out in the supporting text to Policy E9 and the policy itself.
11. I do not consider the suggestion that primary age children tend not to walk to school lessens the weight which should be applied to this policy, as I have been provided with no substantive evidence to support it.

12. I accept that the lawful use of the appeal site is already a non-retail one, and that there is no in-principle objection to the loss of the currently vacant A2 use at the site. I also note the comments around the particular nature of the food offer from the applicant. However, neither the policy nor the use class allows for, and I do not have substantive evidence to make, a distinction between the relative health benefits of different types of hot food.
13. As such, the proposal would introduce a hot food takeaway within 400m of the entrance of a school, in conflict with Policy E9 of the dLP which seeks to control such uses in order to attempt to create a healthy food environment, as well as guidance in the Framework on enabling and supporting healthy lifestyles. The site would not therefore be an appropriate location for the development proposed having regard to its proximity to a primary school. There are no relevant material considerations of such weight to indicate that a decision be taken other than in accordance with the development plan.

Conclusion

14. For the reasons given above I therefore conclude that the appeal should be dismissed.

S Dean

INSPECTOR