



Appeal Decision

Site visit made on 12 January 2021

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th February 2021

Appeal Ref: APP/U5930/W/20/3253932

54 Old Church Road, Chingford E4 8DB

- 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 Shah (Hasnam Investments Ltd) against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 200680, dated 26 February 2020, was refused by notice dated 21 May 2020.
 - The development proposed is described as "Ground floor change of use A1 to A5 with rear external extract plant and ducting. New shop front. First floor 1 bedroom (2 person) Flat".
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the submission of the appeal, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations), 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. 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.

Main Issues

3. The main issues in this appeal are:
 - whether or not the site is an appropriate location for the development proposed having regard to health and its proximity to a primary school, and;
 - the effect of the development on the retail function, vitality, and viability of the South Chingford District Centre.

Reasons

Location

4. The proposal seeks to change the use of a vacant unit that was last within an A1 (retail) use to an A5 (hot food takeaway) use. Policy DM23 of the London Borough of Waltham Forest Development Management Policies Local Plan 2013 (the Local

Plan) states, amongst other things, that the Council will resist proposals for a hot food takeaway where it is within 400m of the boundary of an existing school, youth centre or park. There is no dispute between the parties that the appeal site is within 400m of Larkswood Primary Academy. Consequently, the proximity of the proposed development would place it in conflict with Policy DM23 of the Local Plan.

5. However, the appellant argues that the takeaway would open from 1700 hrs with food preparation taking place between 1500 and 1700 hrs. Therefore, the premises would not be open when the school closes at 1500 hrs. However, the application forms state that the opening hours for the premises would be between 1500 and 2300 hrs. Moreover, whilst a school day can finish at 1500 hrs, and the opening hours of the premises could be controlled through a planning condition, many schools continue to use their playing areas and sports facilities for after school events and also have extended learning after normal school hours along with evening events. Consequently, I have no evidence before me to confirm that there would be no overlap between the opening of the takeaway and the use of the school beyond 1500 hrs.
6. Furthermore, I am not persuaded that the proposed takeaway would not be used by unaccompanied primary school children as I have not been provided with any substantive evidence to support that premise. Moreover, the purpose of the business would be to generate business, and this could be by encouraging new customers to the site. In any case, I observed at my site visit that the location of the takeaway is very close to, and is a convenient walk from, the school.
7. Thus, the proposal would not be a suitable location for a hot food takeaway with particular regard to health. It would be in conflict with Policy DM23 of the Local Plan and Policy CS13 of the London Borough of Waltham Forest Core Strategy 2012 (the Core Strategy) which seek, amongst other things, to require developments to consider how it will contribute to improving health.

Town Centre

8. The Council confirm that the appeal site is located within the South Chingford District Centre Primary Shopping Frontage where Policy DM25 of the Local Plan sets out the approach to maintaining and enhancing the vitality and viability of the district's town centres. The policy seeks to safeguard and strengthen District Centres to fulfil their primary role of providing convenient and accessible shopping facilities.
9. Part A of Policy DM25 of the Local Plan stipulates that the Council will seek to ensure Class A1 retail uses predominate on ground floors and that other uses will be permitted where i) the proposal will not result or contribute to the proportion of non-retail uses in the relevant frontage exceeding 30% of its total length. The Council has recorded that the appeal site comprises one of nine units that form 54-86 Old Church Road and a total of six of the nine units are within A1 use, one is within A2 use and the remaining two are sui generis. Therefore, the existing level of retail units within the group would account for 66%, in excess of the 30% of the units not being within an A1 use. The change of use of the appeal site would result in the loss of a further A1 retail unit, increasing the prevalence of non-retail units within the District Centre. Furthermore, the Council also argue that the development would result in more than 5% of the group of units being within an A5 use. Thus, the development would also be in conflict with Part C of Policy DM23 of the Local Plan.
10. However, Part A of Policy DM25 of the Local Plan refers to the primary shopping frontages of Walthamstow and the District Centres within Schedule 5 and the

Policies Map. Therefore, it is clear that Policy DM25 pertains to a number of District Centres, of which South Chingford is one and regard must be given to the “*relative frontage*” of that District Centre. In addition, although Part C of Policy DM23 separates shopping frontages to those that consist of primary, secondary, and retail parades, footnote 23 states that the calculation should relate to “*all the primary frontage that exists within the relevant centre*”.

11. Therefore, to my mind, the relative frontage would include all properties that make up the District Centre as identified within Schedule 5 and the Policies Map. Therefore, the 5% and 30% limits as set out within Policies DM23 and DM25 of the Local Plan respectively, relate to the District Centre of South Chingford as a whole and not just the group of properties that comprise Nos 54-86 Old Church Road.
12. Consequently, when considering the District Centre as a whole, the appellant’s survey reveals that the change of use of the appeal site would not result in conflict with Part A i) of Policy DM25 or indeed Part C of Policy DM23. In the absence of any substantive evidence to the contrary, the proposed change of use and subsequent loss of a single A1 retail unit would not result in the proportion of non-retail uses exceeding 30%, nor an overconcentration of properties being within A5 use, along the total length of the South Chingford District Centre.
13. Thus, the development would not be in conflict with Policy CS14 of the Core Strategy and Policies DM23 and DM25 of the Local Plan which seek, amongst other things, to manage town centre uses to promote successful and vibrant centres.

Other Matters

14. The appellant suggests that Policies within the Local Plan are not consistent with the National Planning Policy Framework (the Framework). However, I find that they are consistent with guidance in the Framework which requires policies and decisions to aim to achieve healthy places which themselves enable and support healthy lifestyles. The Framework particularly supports this where it would improve health for all sections of the community, as identified in the supporting text to Policy DM23 of the Local Plan.
15. I acknowledge that the development could contribute to the night-time economy, that the high street is facing changes and that the Covid-19 pandemic is also having an effect on the high street. However, neither this nor any other material consideration that has been advanced outweighs the harm that I have identified above. I also recognise the appellant’s commendations for his existing food outlets within other parts of the city and that it is intended to only offer healthy food. However, I am not persuaded that planning conditions, such as a personal permission for the appellant, could control the type and quality of food sold from the premises.
16. The appellant also states that the property may now change to other uses under the Regulations. However, whether or not planning permission is required for an alternative use is not a matter before me as other mechanisms exist to resolve such issues.

Conclusion

17. For the reasons given above, and having regard to the development plan when read as a whole, the appeal is dismissed.

Graham Wyatt

INSPECTOR