
Appeal Decision

Site visit made on 13 April 2021

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2021

Appeal Ref: APP/W5780/W/20/3249769

Address Unit 1, Kensway House, 388 High Road, Ilford, IG1 1TL

- 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 Uddin Borhan against the decision of the London Borough of Redbridge.
 - The application Ref 2933/19, dated 9 July 2019, was refused by notice dated 11 October 2019.
 - The development proposed is a change of use from D1 to pizza shop (A5).
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The appeal application form clearly states that the site address is 'Unit 1'. The officers report on the appeal application begins by stating that "Unit 1 Kensway house is currently in use as a barbers (A1) unit however the application refers to unit 2 which is (sic) also currently has an A1 travel agency use". At my site visit I was able to assess the accuracy of the address. Looking at the plans of the proposal, it is clear that the development is intended to be within the middle unit; that is the unit between the barber's shop and the ark Education Centre with the entrance to the flats above. Furthermore, this unit is clearly marked on the fascia as 'Unit 1'. This unit currently has a fascia that announces the business occupier as 'Insurex' and 'Claimex', insurance and accident management respectively. The importance of this is that it is necessary to be clear about the physical site that any planning permission may relate to.
3. Further, to avoid any misunderstanding, changes to use classes were made in The Town and Country Planning (Use Classes) (Amendment)(England) Regulations 2020. However, regulation 4 of that Order requires (in brief) that any for planning application submitted prior to 1 September 2020, that referred to uses or use classes which were specified in the Schedule to the Use Classes Order on 31 August 2020, that application must be determined by reference to those classes.

Main Issues

4. The main issues in the case are i) the siting of an additional hot food takeaway on the area, in relation to schools in the immediate vicinity; and ii) the effect on residential property, particularly in terms of odour and air pollution.

Reasons

5. Unit 1 Kensway house is currently in use as described in paragraph 2 above. The proposal site is located within a small group of units containing a mixture of A1 (or A2 depending on the date of observation) and D1 uses, and is positioned below flatted residential development on the upper floors. The site is not part of a designated retail parade or shop frontage.
6. The starting point is the development plan and its policies. Part 1 of Policy LP11 of the Redbridge Local Plan 2015-2030, adopted in March 2018, deals specifically with hot food takeaways, in the following terms:
"The Council will resist the proliferation and over concentration of hot food takeaways in the borough by:;
 - (a) Requiring each new unit to be separated from any existing A5 unit or group of units by at least two non A5 units;
 - (b) Resisting proposals for A5 uses that fall within 400m of the boundary of an existing school, youth centre or park;
 - (c) Resisting proposals that have an unacceptable impact on highway safety;
 - (d) Resisting proposals that have an undue impact on residential amenity in terms of noise, vibrations, odours, traffic disturbance, litter or hours of operation;
 - (e) Resisting proposals that operate in inappropriate hours of the day;
 - (f) Resisting proposals that do not provide effective extraction of odours and cooking smells; and
 - (g) Resisting proposals that do not provide adequate on site waste storage and disposal of waste products."

The effect on the character of the area and the existing uses in the immediate vicinity, having regard to nearby schools

7. In terms of the first issue, the council states that there are no other A5 units within this row of shops/uses nor its adjoining parade of shops. However there is an existing takeaway use in the opposite retail parade. Policy LP11 (b) resists hot food takeaways within 400m of a school, youth centre or park. The reason for this policy of carefully managing the proliferation for hot food takeaways within the borough is the high obesity levels of young children (39% of 10-11-year-olds are overweight or obese as of 2014/15). The appeal site would be located 380m from the premises of Isaac Newton Academy School, and 310m from SS Peter & Paul's Catholic Primary School. Thus there is a clear policy objection to the proposed use.
8. Against this, for the appellant reference is made to a survey of shop premises within a 400m radius of the school locations identified by the council. It is said that this reveals the number of shop premises on main road thoroughfares is approximately 7,000, and the proportion of takeaway uses is approximately 20%. I find that I can place little reliance on this, since there is no indication of the nature of this survey. But if it represents reality, 1 in 5 shop premises is in use as a takeaway. If this proportion is correct, it does suggest that Policy LP11 has a strong basis. The appellant also points out that there is a choice of food available within the locality covering a wide spectrum of cost and category of food, which is not restricted to fast food.
9. In any event, Policy LP11 is part of a reasonably recently adopted local plan, and there is nothing to indicate to me that it is in any way out of date as far as

the issues in this appeal are concerned. It is clear that the appeal site is within 400m of 2 schools and therefore the intended use conflicts with policy, without any substantial mitigating matters being advanced.

The effect on residential property, particularly in terms of odour and air pollution

10. In respect of this issue, the council states that the proposed flue would be positioned 1m above the eaves of the existing flats in the upper-floors of Kensway House, without any separation from the habitable room windows. The proposed flue would thus be likely to cause significant detrimental harm to the users of the upper floors from odour and air pollution. Countering this, the appellant suggests that this is a matter that could be dealt with by way of a condition, since there are extraction and ventilation systems being installed countrywide that exist alongside neighbouring residential uses without harmful effects.
11. The appellant's point is undoubtedly true. But it is probable that, in the majority of cases, that result follows from careful control by the local planning authority. In my experience, satisfactory control in respect of kitchens producing takeaway food, such as pizzas, requires careful matching of odour control with the particular kitchen equipment. In turn, this equipment needs to be matched with acoustic control to ensure that noise levels relate satisfactorily with ambient background noise levels. That being said, there is no reason why this should not be controlled by a condition, such that if a satisfactory odour and noise level control cannot be submitted to and approved by the local planning authority, the development cannot proceed. Therefore I do not find that this issue stands in the way of planning permission being granted.

Conclusions

12. An additional hot food takeaway on the area, within 400m of 2 schools, Isaac Newton Academy School and SS Peter & Paul's Catholic Primary School, is clearly in conflict with Policy LP11, which is contained in the adopted local plan for the borough. This amounts to substantial harm that justifies the refusal of planning permission. The other refusal reason could be dealt with by a condition, if the principle of the development was otherwise acceptable. Since I have found that the principle is not acceptable, the appeal will be dismissed.

Terrence Kemmann-Lane

INSPECTOR