



Appeal Decision

Site visit made on 21 May 2021

by Julie Dale Clark BA (Hons) DipTP MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2021

Appeal Ref: APP/T5150/W/20/3264659

Wembley Central Shopping Centre, 18B Central Square, High Road, Wembley HA9 7AJ

- 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 Milao Nawaz, MNSQ Ltd against the decision of the Council of the London Borough of Brent.
 - The application Ref 20/2391, dated 28 August 2020, was refused by notice dated 21 October 2020.
 - The development proposed is new takeaway requiring change of use from A1 to A5. Proposal includes new extraction.
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Procedural Matter

1. On the 1 September 2020 changes to the Use Classes Order came into effect which removed A1 and A5 Use Class and created a new Class E Use Class.¹ The previous A1 use now falls under the new Class E whilst a hot food take-away, the previous A5 use is now *Sui Generis*. For this appeal, the effect is that planning permission is still required for the proposed change of use but for ease of reference, I shall simply describe the proposal as the change of use from a shop to a hot food take-away, together with a new shop front and a fume extraction system.

Decision

2. The appeal is allowed and planning permission is granted for the change of use from a shop to a hot food take-away, together with a new shop front and a fume extraction system at Wembley Central Shopping Centre, 18B Central Square, High Road, Wembley HA9 7AJ in accordance with the terms of the application, Ref 20/2391, dated 28 August 2020, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) Before the use hereby permitted takes place, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in

¹ The Town and country Planning (Use Classes) (Amendment) (England) Regulation 2020 amended the Town and Country Planning (Use Classes) Order 1987.

accordance with that approval and retained for so long as the use continues.

- 3) The development hereby permitted shall be carried out in accordance with the following approved plans:-
- *Drawing Nos: 1.1; 1.2; 1.3; 1.4; and 1.6; and*
 - *Drawing No: 1.5 in so far as it complies with condition 2.*

Main Issue

3. I consider that the main issue is the effect of the proposal on the vitality and viability of Wembley Town Centre

Reasons

4. The Council's reason for refusal quotes just one policy, that is, Policy BE5 (a) of the draft Brent Local Plan. The Council has pointed out that the draft Local Plan was subject to examination in public in September and October 2020. As far as I can determine, the outcome of this is awaited before the Council embark on the final stage of public consultation. Whilst the Local Plan is at a fairly advanced stage, I am not totally clear as to what matters may still be subject to change. The Council has stated that Policy BE5 (a) has not been found unsound by the Local Plan Inspector but no details in the form of a letter or otherwise setting out the findings of the Examination in Public has been submitted and my understanding, based on the information submitted, is that further consultation is yet required before the Local Plan can be adopted. As a whole therefore, the draft Local Plan carries some weight due to its stage of preparation in accordance with the National Planning Policy Framework².
5. Draft Policy BE5 indicates that hot food takeaways will not be approved where they will result in the introduction of any new A5 use within the designated primary frontage of a town centre. The Council state that this policy is backed up by the Brent Town Centre and Leisure Needs Assessment (2018). A copy of this has not been submitted with the appeal documents so I cannot assess its significance for myself. Nevertheless, the Council has made it clear that it recognises a need to consolidate a vital retail core within Brent's town centre primary frontages and in addition limit the proliferation of takeaway uses in Brent's Town centres which contribute to high levels of obesity.
6. The appeal site is located within a primary retail frontage within Wembley Town Centre and forms part of a development facing an open pedestrianised area. It is described by the appellant as being vacant and at the time of my visit it was closed but with signage for 'Wembley Central Lettings'. At the time of my visit the area was busy and other than the appeal site, the other shops were open. Overall, the area seemed busy with few, if any, vacancies.
7. Whilst the appeal site is a ground floor unit with a frontage directly onto the pedestrianised area, it is a very modest unit of just 36m² and I can see no real harm in this single unit becoming a hot food takeaway in terms of the vitality and viability of Wembley Town Centre. I appreciate that the Council would wish to prevent retail units becoming hot food takeaways where the retail function is

² Ministry of Housing, Communities and Local Government National Planning Policy Framework, February 2019 (the Framework).

- potentially fragile but I saw none of this in this area and have no evidence to prove otherwise.
8. I understand the Council's wish to limit hot food take-aways in areas where there is considerable footfall in order to tackle the health problems associated with obesity but a busy Town Centre such as this also has the capacity to offer a range of healthy options. I have no evidence that this matter in itself would undermine the vitality and viability of this Town Centre and so I cannot justify withholding permission on this basis.
 9. The proposal includes a fume extraction system and some details are included in the submitted plans. However, the Council has suggested a condition requiring further details. Given that an appropriate fume extraction system is normally required for a hot food take-away, I have no reason to dispute the Council's suggestion for further details. There are residential properties in the area, including in the upper levels of the block comprising the appeal site, and I consider that a condition is reasonable and necessary in accordance with the Planning Practice Guidance³. I have amended the suggested wording in the interests of clarity.
 10. The Council also suggest a condition relating to noise from plant and associated ancillary equipment in order to prevent the transmission of noise and vibration to the nearest local residential units. Although there are upper level flats in this area, they are not immediately above the appeal site as the floor above comprises part of a larger retail outlet. From the information submitted, therefore, I can find no reason why plant emitting noise and vibration to nearby residents would be likely to harm the living conditions of nearby residents so as to justify imposing a condition.
 11. Furthermore, otherwise than as set out in this decision and conditions, it is necessary that the development is carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning.
 12. I have considered draft Policy BE5 (a) but do not consider that the emerging Local Plan is at a stage where I consider it to be a determining factor in my decision. I have considered all matters raised but none alter my conclusion. I conclude that the proposed change of use to a hot food take-away would not have a harmful effect on the vitality and viability of Wembley Town Centre. The appeal therefore succeeds.

J D Clark

INSPECTOR

³ Planning Practice Guidance, Published 6 March 2014 – Last Updated 23 July 2019.