



Appeal Decision

Site visit made on 10 November 2021

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 January 2022

Appeal Ref: APP/A5840/W/21/3274917

131 Jamaica Road, London, SE16 4SH

- 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 Mrs S Sivashanker against the decision of the London Borough of Southwark.
 - The application Ref 20/AP/3850, dated 30 December 2020, was refused by notice dated 23 April 2021.
 - The development proposed is described as change of use of retail (E use class) into restaurant (E use class) including installation of extraction flue system to rear.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Permission has previously been refused to a similar application for a change to a mixed restaurant and take-away use with installation of an extraction flue.

Main Issues

3. The main issues are (a) whether the proposed use would be contrary to Paragraph 92 of the National Planning Policy Framework (the Framework) in seeking to “*enable and support healthy lifestyles*” and (b) the impact of the ventilation system on the living conditions of nearby residents.

Reasons

Proposed use

4. The appeal relates to a mid-parade shop unit with 3 floors of dwellings above. Whereas the previous application had included a take-away, the current proposal does not, specifying just a restaurant use within Use Class E. The application form indicates the existing use to be a vacant retail shop. Planning permission would not be required for use as a restaurant as both retail and restaurant uses fall within Class E. The proposal therefore does not include a change of use, but permission is required for the extraction flue system.
5. The Council does not dispute this but contends that the premises would operate mainly as a Sui Generis (Hot food takeaway) as it would not be viable to operate solely as a restaurant with the limited seating provided. The submitted plans shows just 11 seats. However, the proposal is not for a set number of seats or layout of furniture. The shop unit is not large, about 54 square metres in area, but it would be possible to fit many more than 11 seats as demonstrated at the café at no.125, a similar sized unit in the same parade.

6. Class E(b) is for “*the sale of food and drink principally to visiting members of the public where consumption of food and drink is mostly undertaken on the premises*”. There is nothing in the proposal to indicate that the use would be other than within this Class. Whilst I acknowledge the Council’s concerns about childhood obesity, this is not a concern that can be raised against the lawful use of the site. The proposal would not be contrary to Paragraph 92 of the Framework in seeking to “*enable and support healthy lifestyles*”. Nor would there be conflict with Policy E9 of the London Plan (2021) in this regard.

Living conditions

7. A low level extract system is proposed that would discharge at the rear of the shop unit directly below an external walkway, bound by low walls interspersed with sections of railings, serving first floor flats. Entrance doors and windows to the flats face the walkway. The flats at 62 and 63 Spenlow House would be very close to the extract. There are similar walkways above to the upper floors. Residents on all floors would be vulnerable to nuisance from cooking odours.
8. The proposal is accompanied by an Odour and Flue Assessment (December 2020). This sets out a risk assessment based on the DEFRA ‘Control of Odour and Noise from Commercial Kitchen Exhaust Systems’ (2005). Whilst the assessment acknowledges a very poor dispersion rate arising from the low level discharge, it understates the proximity to receptors as the nearest flats would be less than 20m from the kitchen discharge. The proposal refers to cooking pizzas, which are judged to be low in terms of grease loading but does not exclude other cooking with a higher grease loading. In my judgement, the assessment’s total rating requirement is unduly low; but it nonetheless recognises that a high level of abatement is needed.
9. The Assessment recommends a pleated panel filter for initial grease and particle removal, followed by two ozone systems and filtration activated carbon panels for final odour removal. Technical specifications are appended but not detailed on the appeal plans. The appellant has requested the use of planning conditions for measures to safeguard the amenity of nearby residents. But such is the proximity of the extract to the nearest residents that I am not persuaded that a satisfactory level of mitigation can be achieved and sustained, particularly if the system is not regularly maintained. Comparison is made to an allegedly similar extraction system at the rear of the café at 125 Jamaica Road. But this is an end of parade unit and the extract discharges more to the flank of the building where there are no windows to the flats above.
10. The proposal would conflict with Policy 13 of the Southwark Core Strategy (2011) and with Saved Policies 3.1 and 3.2 of the Southwark Plan (2007) which promote high environmental standards including in relation to air pollution and impacts on adjoining occupiers.

Conclusion

11. Any economic benefits arising from the proposal for the local economy would be outweighed by its adverse impacts on neighbours’ living conditions. For the reasons given above the appeal should be dismissed.

Rory MacLeod

INSPECTOR