



Appeal Decision

Site visit made on 1 April 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 April 2022

Appeal Ref: APP/U5930/W/21/3284449

211-213 High Street, Walthamstow E17 7BH

- 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 Jamil Mawji (Octavia Restaurants Limited) against the decision of Waltham Forest London Borough Council.
 - The application Ref 212362, dated 21 July 2021, was refused by notice dated 21 September 2021.
 - The development proposed was originally described as 'change of use of currently vacant, former retail shop (Class E(a) use) to a mixed restaurant and hot food takeaway (sui generis use), incorporating alterations to the rear elevation of the building and alterations to the existing entrances to the front elevation of the building, and the display of halo illuminated fascia signage and an internally illuminated projecting sign.'
-

Decision

1. The appeal is allowed and planning permission is granted for change of use of currently vacant, former retail shop (Class E(a) use) to a mixed restaurant and hot food takeaway (sui generis use), incorporating alterations to the rear elevation of the building and alterations to the existing entrances to the front elevation of the building, at 211-213 High Street, Walthamstow E17 7BH in accordance with the terms of the application, Ref 212362, dated 21 July 2021, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3278/PL011; 3278/PL012; 3278-PL099; 3278-PL100; 3278/PL110; Planning Statement; Site Location Plan (Undated).
 - 3) The use hereby approved shall only operate between the hours of 11am to 11pm on Mondays to Fridays, Saturdays, Sundays and Bank Holidays.

Preliminary Matter

2. The appellant indicates that a separate application was made for advertisement consent in respect of the illuminated signage referred to in the original description of development. Therefore, the Council did not assess proposed advertisements through this application, and I have proceeded on the same basis. As a result, I have omitted reference to signage in the formal decision.

Main Issue

3. The main issue is the effect of the proposal on the health and wellbeing of local residents, in particular schoolchildren.

Reasons

4. The appeal relates to a double width commercial unit located within the primary shopping frontage of High Street, Walthamstow. The unit is vacant, indicated to have most recently been in use as a retail shop. Since 2020, use classes have been updated, with both shops and restaurants now falling within Class E, and hot food takeaways now a *sui generis* use. The intended occupant of the unit is Taco Bell. The appellant confirms the proposal would be a genuine mixed use, with neither the restaurant nor the hot food takeaway being the primary use. As such, the proposal would be a *sui generis* use. However, the Council's main concern relates to the hot food takeaway element.
5. Policy CS13 of the Waltham Forest Local Plan Core Strategy (2012) (the CS) aims to create and develop healthy and sustainable places and communities by, among other things, reducing the proliferation of any land use which reduces people's ability to be healthy.
6. Policy DM23 of the Waltham Forest Local Plan Development Management Policies Local Plan (2013) (the DMP) sets out a number of scenarios where proposals for hot food takeaways will be resisted, including where it results in an over-concentration of such uses which is detrimental to the vitality and viability of a town centre, or where it falls within 400 metres of the boundary of an existing school, youth centre or park. The supporting text indicates that a main aim of the policy is to tackle concerns over community health and in particular childhood obesity.
7. The Council accepts that the proposal would not result in an over-concentration of hot food takeaways within the town centre, nor is harm alleged in respect of its vitality and viability. Indeed, I saw the High Street to be vibrant, with few vacant units and a wide array of retail uses predominating.
8. Rather, the Council points out that the appeal site is located some 180 metres from Walthamstow Town Centre Gardens, an urban park surrounded by the High Street, 17&Central Shopping Centre, Walthamstow Bus Station and Walthamstow Central Station. As a result, the Gardens form a busy through route between these key town centre facilities.
9. The appellant questions the rationale for including parks within Policy DM23, arguing that there is no clear correlation between a school and a park in terms of access by schoolchildren to unhealthy food options. The appellant also casts doubt on the use of the park by schoolchildren, given its distance from the nearest school. Nevertheless, the park does have an enclosed playground, benches and grassed areas for sitting, and is close to main transport connections likely to be well used by schoolchildren. Therefore, despite the appellant's misgivings, I see no reason to discount it as a park for the purposes of applying the aforementioned policies. Given the proximity of the park to the appeal site, it would not satisfy the distance requirements of Policy DM23.
10. However, Policy E9 of the London Plan (March 2021) sets out that hot-food takeaways should not be located within 400 metres walking distance from the entrances and exits of an existing or proposed primary or secondary school, but does not place any limitation in respect of parks or open spaces. My attention is also drawn to Policy 54 of the Council's emerging Local Plan, which would replace Policy DM23 and also omits reference to parks and open spaces. The Council argues that this policy may yet change following Examination in

Public. That may be so, but as drafted it aligns with the more recently adopted London Plan policy, which suggests to me a direction of travel away from restrictions on locating hot food takeaways close to parks. Ultimately, I do not place significant weight on the emerging policy, but I afford greater weight to London Plan Policy E9 over Policy DM23 given it is more recently adopted.

11. The Council argues that the site is within 400 metres of two schools, Mission Grove Primary School (South Site) and Emmanuel Community School (Primary). The Council has used a direct, 'as the crow flies' measurement, whereas the appellant argues that the actual walking distance should be used. In short, I agree with the appellant, as this reflects the wording of the London Plan policy and the fact that a straight line route could not be taken in reality. It is also the approach taken by other Inspectors in appeal decisions¹ referred to me.
12. Using this approach, the shortest route from both schools would appear to be well in excess of 400 metres. I note Emmanuel Community School is located on The Drive, not on Erskine Road as stated by the Council, which is Emmanuel Community Church. I am satisfied that neither school is within 400 metres walking distance of the appeal site, and no conflict would therefore arise with London Plan Policy E9. There would be technical conflict with Policy DM23 given Mission Grove School is less than 400 metres as the crow flies, but given the actual walking distances involved, there would be no conflict with the overall aim of the policy to prevent hot food takeaways from locating close to schools.
13. Beyond the physical proximity of Walthamstow Town Centre Gardens, the Council has not offered any specific evidence to demonstrate that the proposed use would target fast food sales at schoolchildren, or be more likely to appeal to schoolchildren than other fast food outlets in the vicinity. Instead, it is unlikely that primary school children would be able to visit the appeal site unsupervised during school hours. It is also pertinent that the Council accepts the use would not lead to an over-concentration of hot food takeaways within the town centre, which indicates to me that they are generally not a problem within the immediate area, and that the proposal would not lead to material harm to the health and well-being of local residents.
14. Overall, and notwithstanding the proximity of the site to Walthamstow Town Centre Gardens, I conclude that the proposal would not lead to harm to the health and wellbeing of local residents, including schoolchildren. Thus, I find no conflict with Policy E9 of the London Plan or with the overall aims of Policies CS13 of the CS and DM23 of the DMP to develop healthy and sustainable places and communities.

Other Material Considerations

15. The proposed use would constitute a town centre use under the National Planning Policy Framework, which duly encourages such uses to be located in town centres, as would be the case here. Positive re-use of the appeal site would accord with the aims of Policy CS14 of the CS to promote successful and vibrant centres throughout the Borough. The appellant further indicates that the use would generate up to 45 full and part-time jobs, providing tangible economic benefits which weigh in favour of the proposal.

¹ Appeal Refs: APP/N5660/W/17/3178462 and APP/L5810/W/18/3209684

16. The only physical alterations proposed are the addition of security doors and two louvre grills to the rear elevation, and replacement of one set of doors to the front with fixed glazing. The works to the rear would not be perceptible from the public realm, whilst those to the front would have minimal effect on the overall appearance of the units. Therefore, the proposal would not have a harmful effect on the character and appearance of the area. Illustrative details of proposed fascia signage are not for my consideration, as I understand a separate application for advertisement consent was submitted to the Council.

Conditions

17. I have had regard to the list of suggested conditions provided by the Council. Where necessary, I have amended their wording to ensure they meet the relevant tests for conditions set out in the Framework. The appellant has indicated their agreement to the imposition of the suggested conditions.
18. In addition to the standard time limit for implementation, a condition setting out the approved plans is necessary to provide certainty. It is also necessary to condition the opening hours of the business to protect the living conditions of neighbouring occupants.
19. However, I have not imposed the requested condition limiting the use of the premises to that sought, as permission would be granted for a sui generis use, meaning it would not be possible to enact a subsequent change of use without planning permission. Therefore, the condition is not necessary as control already exists.

Conclusion

20. For the reasons set out, I conclude that the proposal would accord with the aims of the development plan, taken as a whole, and there are no material planning considerations which indicate that permission should nevertheless be withheld.
21. Therefore, the appeal should be allowed.

K Savage

INSPECTOR