



Appeal Decision

Site visit made on 25 August 2022

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 OCTOBER 2022

Appeal Ref: APP/E5330/W/21/3285774

162 Bexley Road, Eltham SE9 2PH

- 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 Jack Worth against the decision of Royal Borough of Greenwich Council.
 - The application Ref 21/0811/F, dated 3 March 2021, was refused by notice dated 2 June 2021.
 - The development proposed is change of use from Class E vacant shop into Sui Generis (take-away) with installation of an extraction system to rear and new shop front.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The Council's sole reason for refusal relates to the loss of retail space and the overconcentration of hot food takeaway premises. However, a number of comments raised from third parties have referred to the proximity of the appeal site to school entrances and the requirements of policy E9 of the London Plan 2021.
3. On that basis, the main issues are:
 - Whether the site is an appropriate location for the development proposed, having regard to its proximity to schools; and
 - The effect of the proposal on the vitality and viability of a Neighbourhood Parade.

Reasons

Proximity to Schools

4. Policy E9(D) of the London Plan specifies that development proposals containing A5 takeaway uses should not be permitted where these are within 400m walking distance from entrances and exits of an existing or proposed primary or secondary school. The explanatory text for policy E9 refers to the creation of a healthy food environment to address issues of childhood obesity, and restricting the proliferation of hot food takeaways around schools.
5. Reference has been made to the proximity of the appeal site to school entrances, including an entrance to the secondary school of Crown Woods

School. The appellant has provided a map extract which depicts a pedestrian route from that entrance to the appeal site which is in excess of 400m. I also note that the Council's officer report states that the appeal site falls outside the restriction area, although it refers only to primary schools rather than secondary schools.

6. However, the appellant's indicated route is relatively convoluted, and I saw that there was a more direct route via pedestrian crossings and dedicated footways. Comments from third parties also specify that the appeal site falls well within the 400m bracket, which reflects my own observations. On the basis of what I have seen and read, the appeal site is within 400m walking distance of the school entrance, and the proposal would therefore conflict with policy E9(D) of the London Plan.
7. Policy E9(D) specifically refers to "...A5 hot food takeaway uses...". However, the previous Class A uses have been revoked¹ and a new broader Commercial, Business and Service use has been created as Class E. Hot food takeaways do not now fall within any use class, and are therefore considered to be Sui Generis. Nevertheless, changes to and from this Sui Generis use will still be subject to planning control, and the change in the use class status of hot food takeaways does not therefore undermine the aims of policy E9.
8. I conclude that the proposed hot food takeaway would be within 400m walking distance of a secondary school entrance, and would therefore conflict with policy E9(D) of the London Plan. The proposal would also be contrary to the National Planning Policy Framework (the Framework) with regards to promoting healthy communities, and enabling and supporting healthy lifestyles and access to healthier food. Due to the conflict with local and national planning policy on this main issue, the site would not be an appropriate location for the development proposed.

Vitality and Viability

9. As set out in the Council's Officer report, the appeal site is within a designated Neighbourhood Parade. Policy TC(b) of the Core Strategy 2014 states that development will not be permitted if the use class category proposed or the combined total of A3, A4 and A5 uses would occupy more than 25% of all designated frontage. The Council submits that the proposal would fail to comply with that criterion.
10. However, the use classes referred to in policy TC(b) have been revoked. As such, the previous A1 Shops and A3 Restaurants and cafés use classes have been subsumed into the broader Class E Commercial, Business and Service use class, which the appeal site would now fall into. Indeed, a Certificate of Lawfulness for the use of the premises as a restaurant/café within Class E has been granted by the Council. That said, the proposed takeaway would be a Sui Generis use, and would not fall within Class E.
11. Due to the change in the Use Classes Order, there is a degree of inconsistency in the wording of policy TC(b), in that the use of a premises can change between the previous A1 and A3 uses within the scope of Class E. Indeed, although the appeal site is described as being vacant on the planning application form, I saw that it was occupied by a café on my visit.

¹ By the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, amending the Town and Country Planning (Use Classes) Order 1987.

12. The broader policy objectives of policy TC(b) are echoed by the Framework, which seeks to promote the long-term viability of town centres, allowing them to grow and diversify in a manner that responds to rapid changes in the retail and leisure industries, allows for a suitable mix of uses, and respects their distinctive characters. However, the 25% limitation for the uses referred to in policy TC(b) would not fully align with the changing form of high streets and the greater variety of activity engendered by the amended Use Classes Order and sought by the Framework. Therefore on this matter, the identified conflict with policy TC(b) carries no more than limited weight against the proposal.
13. Policy TC(c) of the Core Strategy specifically relates to hot food takeaways, and states that proposals should not lead to an excessive clustering or disproportionate level of such uses. I saw that there are other hot-food takeaways in this Parade and the Council considers that the proposal would lead to a clustering of takeaway premises. However, the Council has not provided substantive evidence as to whether this would be excessive. Based on what I have seen and read the proposal would not lead to an excessive clustering or disproportionate level of takeaways.
14. I am also mindful that the appeal site is now in use as a restaurant/café and would represent a 'food and drink use' as referred to by the Council. The introduction of a takeaway could support the existing use, and even on its own terms the proposal would draw custom to the area. However, given that the site is currently in a productive use, these benefits would carry limited weight in favour of the proposal.
15. Drawing the above together, the proposal would conflict with policy TC(b) of the Core Strategy with regards to the proportion of non-retail uses. However, for the reasons stated, this carries no more than limited weight against the appeal. The proposal would draw custom into the area to the benefit of vitality and viability, albeit to a limited degree. It has also not been demonstrated that the proposal would lead to unacceptable clustering or a disproportionate level of takeaways within the terms of policy TC(c) of the Core Strategy. On balance, I conclude that the proposal would not harm the vitality and viability of this Neighbourhood Parade.

Conclusion

16. I have concluded that the proposal would not harm the vitality and viability of this Neighbourhood Parade, and may bring some limited benefits in that regard. However, I have also concluded that the proposal would conflict with policy E9(D) of the London Plan in respect of proximity to a secondary school. Given the importance of addressing the challenge of obesity and creating a healthier food environment, I give the conflict with this policy significant weight against the proposal.
17. On balance, the adverse impacts arising from the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. For the reasons given, the proposal would not represent sustainable development and the appeal should be dismissed.

David Cross

INSPECTOR