



Appeal Decision

Site visit made on 18 October 2022

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th November 2022

Appeal Ref: APP/L5810/W/21/3281642

130 High Street, Teddington TW11 8JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by The Fallow Deer against the decision of Richmond Upon Thames London Borough Council.
 - The application Ref 21/1664/VRC, dated 10 May 2021, was refused by notice dated 5 July 2021.
 - The application sought planning permission for use of the premises as an A3 restaurant/café without complying with a condition attached to planning permission Ref 17/1755/FUL, dated 11 September 2017.
 - The condition in dispute is No U29715 which states that: This permission shall enure only for the benefit of Mrs Alex Camilleri-Lloyd and for only such period of time as they may be occupying the premises and the permission shall not enure for the benefit of the land nor of any other person(s).
 - The reason given for the condition is: To prevent a permanent change to a non-retail use in conflict with local shopping policy which had not demonstrated over time to have added to the vitality and attractiveness of Teddington High Street and offered local employment opportunities unlike the local business operated by the applicant.
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Decision

1. The appeal is allowed and planning permission is granted for the Use of the premises as an A3 restaurant/café at 130 High Street, Teddington TW11 8JB in accordance with application Ref 21/1664/VRC, without compliance with condition number U29715 previously imposed on planning permission Ref 17/1755/FUL, dated 11 September 2017, but subject to the conditions in the attached schedule.

Background

2. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (Regulations) came into force, amending the Town and Country Planning (Use Classes) Order 1987 (Use Classes Order). The Regulations have amended the system of Use Classes and in doing so created a new 'Commercial, business and service' use class (Class E) which has replaced, amongst others, the Use Classes A1 (shops) and A3 (restaurants and cafés). As such, adapting premises within Class E, such as from a shop to a café, no longer constitutes an act of development.
3. The original permission (Ref 17/1755/FUL) was granted consent in 2017 for an A3 restaurant/café use with a personal condition attached. The appellant seeks the removal of this personal condition (No U29715). With the new Regulations in place, and without a personal condition, this would enable future operators

of the premises the freedom to continue a restaurant/café business or operate another use falling within Class E.

Main Issue

4. The main issue is whether the condition is reasonable and necessary in the interests of the viability and vitality of the parade of shops and the wider Teddington High Street shopping centre.

Reasons

5. The appeal site is located within a Secondary Shopping Frontage along the Teddington High Street. The High Street is characterised by town centre uses including, amongst other things, shops, cafes, and restaurants. Removing the personal condition would give increased flexibility in the use of the appeal premises. This could result in a scenario where there is a permanent concentration of non-retail units, which would be at odds with the provisions of Policy LP26 of the Council's Local Plan (2018) (LP).
6. However, it is a well-established legal principle that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The Regulations coming into force in 2020 is a material consideration that did not exist when previous planning and appeal decisions were made at the appeal site or when the LP was adopted.
7. From the evidence before me, other shops within the parade, or the wider Teddington High Street shopping centre, could be lost and, for example, a café use established, without the need for planning permission. Moreover, if the appeal premises was operating as a shop, it would also have been possible to change its use to any other use within Class E now, without any restrictions or controls from the planning regime. This includes operating a restaurant/café use. This is a matter to which I give very significant weight.
8. As the Explanatory Memorandum to the Regulations notes, this change was intended to better reflect the diversity of uses found on high streets and in town centres, to provide flexibility for businesses to adapt and diversify to meet changing demands, and to support the viability of these areas now and in the future.
9. In this regard, whereby other Class E premises have the flexibility to operate a range of uses falling within that class, constricting the appeal premises use with a personal condition is unduly restrictive, and not necessary for the health of the high street.
10. Overall, for the reasons given above, the condition is not reasonable and necessary in the interests of the viability and vitality of the parade of shops and the wider Teddington High Street shopping centre. I therefore find that there would be no conflict with the National Planning Policy Framework (2021) when read as a whole. This, amongst other things, supports planning decisions which help create the conditions in which businesses can invest, expand and adapt.
11. Although there could be conflict with the LP, for the reasons given above there are material considerations that justify a decision other than in accordance with it in this instance.

12. The removal of the personal condition would not result in any external changes or alterations to the property. Moreover, by increasing the flexibility for its use it would, in my view, decrease the likelihood of the property being vacant for periods between users. As such, removing the condition would preserve the character and appearance of the High Street Teddington Conservation Area.
13. Decision notices for the grant of planning permission under section 73 are also required to restate the conditions imposed on earlier permissions that continue to have effect. It also provides the power to not attach conditions, which were previously imposed, or to attach modified versions of them.
14. Condition 1 is necessary as this provides certainty. Conditions 2-6, 8, 12 and 13 are necessary in the interests of the amenity of the area and the living conditions of residents. As it is unclear what the status of condition 7 (sound limiting device) imposed on the original planning permission is, I have re-imposed it, as it remains relevant in the interests of the amenity of the area. If it has in fact been discharged, that is a matter which can be addressed by the parties.
15. The details required by the Council's original conditions Ref: U29748, U29753 and U29756 have been discharged by the Council. I have subsequently replaced these conditions with conditions 9, 10 and 11, which require the ongoing retention of these details. This is necessary in the interests of the amenity of the area.

Conclusion

16. For the reasons set out above, the appeal is allowed.

Mr R Walker

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans and documents, where applicable: -
Site/location plan received by the Council on 5th May 2017.
- 2) Customers shall not be present on the premises, nor shall there be preparation, sale or delivery of food for consumption off the premises before or after the following times:

0800- 1730 Monday - Thursday

0800- 2300 Friday - Saturday

0900- 1730 Sunday

A notice to this effect shall be displayed at all times on the premises so as to be visible from outside.
- 3) The rear yard shall at no time be used by customers as a seating/eating area.

- 4) Staff shall not be present on the premises prior to a 60 minute period before the approved opening times or after a 60 minute period has elapsed following the approved closing times.
- 5) No playing of musical instruments or operation of sound amplification equipment shall take place in any part of the premises so as to be audible outside the premises at any time before 10 am nor after the approved closing time or 9 pm which ever is the sooner.
- 6) No refuse or waste material of any description shall be left or stored anywhere on the site other than within a building or refuse enclosure.
- 7) A sound limiting device shall be fitted to/used by any in-house or peripatetic musical amplification system/s used at the venue and set at a level that will achieve the entertainment music noise criteria detailed in the table 2 below. The limiter shall be set and secured so that it cannot be overridden by performers or DJ's or other persons other than house engineers or other appointed sound system engineers. The limiter shall not be altered without prior agreement of the Local Planning Authority. An acoustic assessment and report shall be submitted to and agreed by the Local Planning Authority, within 8 weeks of the date of this decision notice which demonstrates how the sound limiting device has been set in order to achieve the requirements of the entertainment noise control criteria below.

Table 2: Entertainment Noise Limit Levels.

Time of Day External Criteria: Day/Eve Entertainment Noise level (EN)
Leq,5min shall be no greater than the (WEN) residual noise by more than 3dB(A)

Internal Criteria: Day/Eve Entertainment Noise level (EN) Leq,5min shall be no greater than the Noise Rating Level NR 20 (Leq,5minutes)

Note

Entertainment noise level (EN) = Representative, or predicted, entertainment noise level, measured or predicted 1 m from the facade of noise-sensitive premises or within noise-sensitive premises.

Residual Noise level (WEN) = Representative noise level without the entertainment noise, measured or predicted 1 m from the facade of noise-sensitive premises or within noise-sensitive premises

Further information on appropriate assessment methodologies is available from the Pollution Section at LBRuT.

- 8) The continuous equivalent sound level (LAeq,T) from music and/or entertainment noise emanating from the venue, as measured (1 metre from the facade) (within a habitable room) of representative neighbouring noise sensitive premises to include;
 - High Street, Teddington
 - Udney Park Rd, Teddingtonor when measured elsewhere and calculated to said locations, shall not exceed the following limits detailed in Table 2 below;).

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- 9) The scheme for the noise control of any mechanical services plant including heating, ventilation and air conditioning (HVAC) and kitchen extraction plant in use at the premises shall be retained in accordance with the details approved by the Local Planning Authority by notice Ref: 17/1755/DD03 dated 28 November 2018. Save for refrigeration plant, any external plant shall only be operated during the approved opening times of the business.
- 10) The scheme for the extraction and treatment of fumes and odours generated from cooking or any other activity undertaken on the premises shall be operated and retained in accordance with the details approved by the Local Planning Authority by notice Ref: 17/1755/DD03 dated 28 November 2018 and operated in accordance with manufacturer's instructions.
- 11) The refuse and servicing arrangements and associated management measures shall be implemented and maintained in accordance with the details approved by the Local Planning Authority by notice Ref: 17/1755/DD01 dated 11 January 2018.
- 12) Covered and screened facilities for the storage of refuse shall be provided within the curtilage of the site at all times.
- 13) The sound insulation of the party ceiling between the restaurant and the structurally adjoining residential property shall be retained in accordance with the details approved by the Local Planning Authority by notice Ref: 18/3342/VRC dated 12 April 2019. No alteration to the ceiling which undermines the sound insulation integrity of the scheme shall be undertaken without the grant of further specific consent of the local planning authority.

End of Schedule