



Appeal Decision

Site visit made on 18 October 2022

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 NOVEMBER 2022

Appeal Ref: APP/Z5630/W/22/3293499

Elegance & Beauty, 227 Kingston Road, New Malden KT3 3SS

- 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 Ajaz Khan against the decision of Royal Borough of Kingston Upon Thames.
 - The application Ref 21/02931/FUL, dated 31 August 2021, was refused by notice dated 1 December 2021.
 - The development proposed is described as change of use from A1 retail unit, to sui generis fast food take away, with extraction flue to the side of the property
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on the health of children, having regard to the proximity of the appeal site to a local school.

Reasons

3. There is a primary school, King's Oak Primary School, on Dickerage Lane to the north west of the appeal site. There is disagreement between the parties as to whether the appeal site is within 400 metres of the school. London Plan (2021) (LP) Policy E9 states that takeaway uses should not be permitted where they would be within 400 metres walking distance from the entrances and exits of a primary or secondary school. The entrance to King's Oak Primary School is to the south of its site, the closest side of the school to the appeal site. I walked the most direct route to the school during my site visit, via Kingston Road and Dickerage Lane. Whilst the school is not visible from the appeal site, the logical walking route between the two is circa 250 metres. I conclude that the appeal property is therefore within 400 metres walking distance of a primary or secondary school.
4. I recognise that, being a primary school, some pupils might be accompanied to and from the school by their parents, which may involve walking past a confectionary shop. Also, parents have a role to ensure their children have healthy diets and there may not be an undue concentration of takeaways in the area currently. Nevertheless, there is evidence that takeaway food is appealing to children and so, Policy E9 aims to create a healthier food environment particular around schools.
5. As a result, the appeal site would not be a suitable location for the appeal scheme when applying local and London-wide planning policies. This would be

harmful given the relative certainty and public interest that flows from a planning system that is genuinely plan led. Consequently, the proposed development would be contrary to Policy DM21 of the Royal Borough of Kingston Core Strategy (2012) (CS) and Policy E9 of the LP which seek, amongst other aspects, to manage the effect of hot food takeaways on the health and wellbeing of local schoolchildren.

Other Matters

6. I note the appellant's reference to several planning approvals from the Council. However, these either do not relate to proposals for new takeaway uses or were permitted prior to the adoption of the LP. Furthermore, I have not been provided with details confirming whether schools are within 400 metres of any of the sites. I therefore give these other cases limited weight, and I have determined this appeal on its individual planning merits against the most up to date local and national planning policies.
7. I am very sympathetic about the effects of the Covid 19 pandemic, resultant financial losses through prolonged lockdowns and that the unit has been vacant for more than two years. The appellant asserts that a change of use is sought due to a current decline in demand for Use Class E units. The takeaway occupier within the unit could serve the community and promote social interaction. It would also contribute to the vitality and viability of the area by diversifying the local offer, potentially helping increase local footfall, whilst the business would contribute to the economy through taxes. Be that as it may, these matters do not outweigh the conflict with policy that I have identified.
8. The appellant has suggested that a planning condition could be imposed to compel the appellant to provide healthy food choices as part of the future occupier's menu. However, there are no details in this case to justify imposing such a condition in line with the Healthier Catering Commitment as envisaged by policy E9.

Conclusion

9. The proposal would not accord with the development plan as a whole and there are no other considerations, including the provisions of the Framework, to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR