



Appeal Decision

Site visit made on 6 December 2022

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 January 2023

Appeal Ref: APP/U5930/W/22/3299945 306 High Road, Leyton E10 5PW

- 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 Carltonmoore Limited against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 214047, dated 22 December 2021, was refused by notice dated 25 February 2022.
 - The development proposed is the change of use from Estate Agent (Use Class E(c)(iii)) to hot food takeaway (Use Class Sui Generis) with demolition of existing garage and erection of single storey side extension, new shopfront, boundary fencing, new access to residential unit at first and second floor (Use Class C3) and installation of extract and ventilation equipment to rear. Proposed opening hours Monday to Sunday 11.00 to 23.00 including Bank Holidays
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form described the proposal as the change of use from vacant estate agent (Class E) to hot food takeaway (sui generis) with demolition of existing garage and erection of single-storey side extension and replacement shopfront and installation of extract and ventilation equipment. The main parties agreed to change the description to that in the Decision Notice, which I have used.
3. Reference has been made to the emerging London Borough of Waltham Forest Draft Local Plan. However, this is at the examination stage and does not form part of the development plan. I therefore attach limited weight to its emerging policies.
4. The appellant has submitted updated drawings amending the shopfront design. These show changes to the placement and size of fenestration and to the external materials, colouring and decorative detailing. Together I consider that these changes amount to a materially different external design to that considered by the Council and consultees. The appeal process should not be used to evolve a scheme. Having regard to the Wheatcroft principles¹ and guidance², I have considered the appeal on the plans which formed the basis of the Council's decision.

Main Issues

5. The main issues are whether: (i) the proposed development would preserve or enhance the character and appearance of the Leyton Town Conservation Area; (ii)

¹ Bernard Wheatcroft Ltd vs. Secretary of State for the Environment [JPL 1982]

² 'Procedural Guide Planning Appeals – England'

the appeal site is a suitable location for a hot food takeaway; and (iii) the proposal would make adequate provision for cycle parking.

Reasons

Conservation Area

6. The site is the ground floor of No. 306 High Road at the junction with Huxley Road. It sits in the Leyton Town Conservation Area (the CA), at its northern boundary as part of a terrace of eight properties. This part of the CA is defined by ground floor commercial units with residential uses above. Its special interest derives from the Victorian architecture, with certain traditional detailing retained at street level.
7. The shopfront at the site is a later addition, with the red brick juxtaposing with the traditional floors above. However, it retains proportions and detailing reflective of the historic character. In addition, the positioning of fenestration relative to the entrance creates a legible design that assimilates with the other frontages in the immediate terrace. Overall, it contributes positively to this section of the CA.
8. The proposal would incorporate traditional features. It would be constructed from yellow brick to reflect the upper floors of the property, with a timber fascia finished in a Traffic Grey. While shopfronts in the immediate terrace are predominantly lighter, certain units feature darker signage. The limited use of Traffic Grey in the overall context of the site frontage, positioned primarily at the top of the shopfront, would not therefore appear incongruous.
9. An extract duct would be installed on the Huxley Road elevation, visible on the approach to the CA. However, there are other hot food takeaways in the immediate area and this elevation features a prominent, modern advertisement. In this context, the modest extract duct would not appear out of place or detract from the overall character of the building or area.
10. However, the proposal would create an imbalance in the immediate terrace. It would add a notable element of bulk, reducing the consistent proportions of the units and resulting in an incongruous expanse of brick on the front elevation, creating an unduly dominant shopfront. While it would be experienced alongside the large shopfront of No. 308, it would nevertheless upset the overall composition of the terrace within the CA. In addition, although the fenestration position would be retained, its setback from the entrance would reduce the legibility of the site. Even when occupied, the unit's solid brick expanse would be at odds with the active frontage of the terrace.
11. As such, the proposal would cause visual harm to the site and its contribution to the surrounding character and appearance. It would therefore neither preserve nor enhance the character or appearance of the CA. Its effect would be localised at the edge of the CA, in an area of varied design, such that overall the harm would be 'less than substantial'. The Framework makes it clear that great weight should be given to the conservation of heritage assets. Paragraph 202 specifies that where a development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against public benefits of the proposal.
12. I acknowledge the benefits put forward by the appellant. The proposal would contribute to the vitality of the area by bringing the site back into use. It would create jobs and have the possibility for linked trips with surrounding uses. However, given its single unit nature these benefits are limited. In

addition, I consider such benefits could be achieved by an alternative scheme that does not result in visual harm to the surrounds. As such, I find that these public benefits do not outweigh the less than substantial harm identified.

13. For the reasons given, the proposal would neither preserve nor enhance the character or appearance of the CA. As such, it would fail to comply with Policies CS12, CS14 and CS15 of the Waltham Forest Local Plan - Core Strategy 2012 (the CS), Policies DM25, DM28 and DM29 of the Waltham Forest Local Plan - Development Management Policies 2013 (the DMD), the Supplementary Planning Document - Urban Design 2013 and the Supplementary Planning Document - Shopfront Design Guide 2016, which together seek to ensure good design and to protect heritage assets.

Suitable Location

14. Policy DM25 of the DMD seeks to maintain A1 uses at street level, and Section B states that development should not lead to a proliferation of non-retail uses of more than 50% of the length of the frontage. More than 50% of the immediate frontage of the site, and the wider Leyton District Centre Secondary Frontage, is currently in non-retail use.
15. However, even acknowledging the Class E use of the site, the proposal would not replace a current retail unit given the former use of the site as an estate agent. As such it would not lead to a proliferation of non-retail units but would retain the current situation. I therefore consider the change of use to a hot food takeaway would not in itself conflict with Section B of Policy DM25.
16. Policy DM23 of the DMD resists hot food takeaways where, among other things, they are within 400m of the boundary of a school, youth centre or park. This policy seeks to address rising levels of obesity, particularly among young people, and supporting text is clear that 400m is a more practical equivalent than a 10 minute walk for the purposes of this policy. Numerous schools are in the area but are over 400m walking distance from the site, which I consider to be the intention of the policy rather than a distance taken as the crow flies. Similarly, the policy makes no reference to nearby nurseries.
17. However, Sidmouth Park and Coronation Gardens are within 400m of the site. While local and national policies promote vitality of communities by an appropriate mix of uses, they also seek to support healthy lifestyles. Given the likelihood for young people to visit parks, an exclusion zone for takeaways near such spaces complies with wider policy aims. While it is alleged the current exclusion would cover most of the town centre, no substantive evidence shows this to be case. Furthermore, although Policy 54 of the emerging local plan does not include reference to parks, as set out above I can give very limited weight to this. As such, I give full weight to Policy DM23, with which the proposal would conflict due to its proximity to parks.
18. Nevertheless, given the Class E use of the site, it could be used as a shop, café or restaurant without the need for planning permission. This is a material consideration. Such uses could sell food deemed as unhealthy as that of a hot food takeaway. This includes confectionary, sugary drinks, snacks of limited nutritional value and similar hot food choices to that of the proposal.
19. These may be more attractive and accessible to schoolchildren, particularly given the likely lower price point when compared with a hot food takeaway. As

such, there is no substantive evidence that the type of food sold at the proposal would be any more harmful to the health of schoolchildren than that which could be purchased if the site reopened as another Class E use.

20. For the reasons given, although the proposal would not comply with the provisions of Policy DM23 of the DMD, this is outweighed by the lack of substantive evidence that it would cause greater harm to the health and well-being of local school children when compared with the lawful use of the site under Class E. Furthermore, the proposal would comply with the provisions of Policy DMD25 of the DMD, Policy E9 of the London Plan 2021 and Policy CS13 of the CS, which together seek to promote health and wellbeing and ensure hot food takeaways are not permitted within 400 metres walking distance of schools. Overall, the site would be a suitable location for a hot food takeaway.

Cycle Parking

21. Policy DM16 of the DMD requires minimum cycle parking standards as set out in Appendix 4 of the DMD. As a result, the proposal would be required to deliver 4 cycle parking spaces. No such cycle parking is shown on the plans submitted with the application.
22. However, had the proposal been acceptable in all other aspects, I am satisfied that a suitably worded condition could have been attached requiring submission of a plan for the Council's approval, demonstrating the position and type of any such cycle parking facilities.
23. Subject to the imposition of the condition referred to above, the proposal would provide adequate cycle parking facilities. As such, it would comply with Policies CS7 of the CS and Policies DM14 and DM16 of the DMD, which relate to sustainable transport.

Other Matters

24. The appellant has referred to numerous appeal decisions which have granted planning permission for hot food takeaways. However, each case must be decided on its own site specific merits and reference to development elsewhere therefore carries little weight.
25. The appellant's frustrations with the Council's approach to pre-application discussions are noted. However, this does not impact the consideration of the planning merits of the case.

Conclusion

26. For the reasons given, while I have found in favour of the appellant on the second and third main issues, this does not justify the harm identified on the first main issue. As such, the proposal would not accord with the development plan when taken as a whole. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

C Rafferty

INSPECTOR