



Appeal Decision

Site visit made on 9 November 2022

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 January 2023

Appeal Ref: APP/Q5300/W/22/3301033

262 Ground Floor Church Street, Enfield, Edmonton N9 9HQ

- 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 Hayri Kale against the decision of Enfield Council.
 - The application Ref 22/00543/FUL, dated 14 February 2022, was refused by notice dated 22 April 2022.
 - The development proposed is Change of use of part of ground floor from Cafe (Use class E(b) to Hot food takeaway (Sui Generis) involving installation of extractor flue and alterations to shop front including and retractable awning (PART RETROSPECTIVE)
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Decision

1. The appeal is allowed and planning permission granted for the change of use of part of ground floor from Cafe (Use class E(b) to Hot food takeaway (Sui Generis) involving installation of extractor flue and alterations to shop front including and retractable awning (PART RETROSPECTIVE) at 262 Ground Floor Church Street, Enfield, Edmonton N9 9HQ in accordance with the terms of application Ref 22/00543/FUL dated 14 February 2022 subject to the conditions as set out in the attached schedule.

Preliminary Matters

2. The application form gave the description of the proposal as: Change of Use from E(b) café to Sui Generis (Hot Food Takeaway), including the sign and shopfront alteration and the installation of a retractable awning at the ground floor commercial unit of 262 Church Street, Edmonton, N9 9HQ. However, I have used the description from the Council's decision notice and provided on the appeal form, which is more accurate.

Main Issues

3. The main issues are: (i) whether the site is an acceptable location for the proposed use as a hot food takeaway, having particular regard to the health and wellbeing of local schoolchildren; (ii) the effect of the proposed development on the living conditions of residents of surrounding properties, with regard to noise and disturbance, odour, and vibration; and (iii) the effect of the proposed development on highway safety.

Reasons

Health

4. The site is the ground floor unit of a two storey terraced property positioned at a corner in Church Street. While its lawful use is a café it is currently operating

as a hot food takeaway. The area is largely residential, with a flat situated above the appeal property and dwellings located to the rear. However, sporadic commercial uses are also present, with a hot food takeaway neighbouring the site and a retail store and petrol station nearby. A primary school and secondary school are also present in the vicinity.

5. Policy DMD32 of the Enfield Development Management Document 2014 (the DMD), states that hot food takeaways will not be permitted on sites within 400 metres of a secondary school entrance. This policy seeks to address concerns regarding rising levels of obesity, particularly among young people, with explanatory text setting out that the distance of 400 metres represents the average distance people will walk to get food.
6. A map has been provided showing the distance between the site and the pupil's entrance to the school to be 500 metres. This shows that the other entrance, which is closer to the site, is used solely for staff parking and deliveries. I confirmed the use of both entrances on my visit.
7. Accordingly, while the site may be within 400 metres of Latymer Secondary School as the crow flies, it is not within 400 metres of the entrance used by pupils. Given the overall intention of Policy DMD32, and the reference in the accompanying text to the walking distance to get food, I consider this distance should be calculated from the pedestrian, pupil entrance to the school. Consequently, the proposal does not conflict with this aspect of Policy DMD32.
8. I therefore conclude that the site is an acceptable location for a hot food takeaway, having regards to the health and wellbeing of local school children. The proposal would comply with Policy DMD32 of the DMD insofar as it seeks to ensure such uses are located a reasonable distance from the entrance to secondary schools.

Living Conditions

9. A café previously operated between 07:30–16:30 hours Monday – Friday; 07:30–16:00 hours Saturday; and 08:30–16:00 hours Sunday and Bank Holidays. While the proposal also relates to a food and drink use, it would be open every day from 11:00–23:00 hours. Due to the nature of the proposed use it can be expected that a significant proportion of the business will take place during the evenings as well as at the weekends and on bank holidays.
10. Accordingly, the proposal is likely to generate additional noise and activity, particularly in the evenings as people come and go both on foot and by car. Noise would arise from general movement of people and vehicles, voices, car doors slamming and engines running. This would affect nearby occupants, particularly those above and to the rear of the site and at times when they might reasonably expect a level of peace and quiet.
11. However, the area already comprises a range of nearby commercial uses which operate at night, including the hot food takeaway adjacent to the site. In addition, a bus service along Church Street operates late into the evening. As such, noise from evening activities is to be expected within the immediate area, including noise of a similar nature to that generated by the proposal.
12. In this context, the additional noise generated by customers and their comings and goings would not appear out of place. In my view it would be assimilated within the noise generated by surrounding uses, including those which occur

late into the evenings. While I recognise that deliveries would also generate noise, this would be experienced at a busier time of day alongside other noises within the surrounds, including that of passing traffic. In this context such noise would not unduly disturb surrounding residents.

13. The proposal would also install an extractor flue close to surrounding residential properties, particularly those above the appeal site. The appellant has submitted details of the proposed system. The Council's Environmental Health Division finds these acceptable subject to a condition that an acoustic assessment be carried out, which I consider could also assess impacts arising from vibration. There is also no firm evidence to suggest that the proposed system when operated and maintained in accordance with the manufacturer's instructions would not be sufficient to control odour. Nevertheless, this could also be addressed by a condition requiring the approval of the system and its operation by the Council prior to the use commencing.
14. For the reasons given I find that, subject to the imposition of the conditions referred to above, the development would not have a significant adverse effect on the living conditions of surrounding residents, with particular regard to noise, disturbance, vibration and odour. In this regard, it would comply with Policies D3 and D14 of the London Plan 2021 (the London Plan), Policy CP32 of the Enfield Plan Core Strategy 2010-2025 (the CS) and Policies DMD32 and DMD68 of the DMD insofar as they seek to manage noise and deliver appropriate amenity. While reference is also made to Policy CP30, this relates primarily to the built environment.

Highway Safety

15. Church Street is a main thoroughfare, well used by both vehicles and pedestrians. The immediate section is long and straight with good forward visibility for drivers. The site is at a corner where Church Street meets a short and narrow side access road, where cars were parked during my visit.
16. Parking is restricted in front of the site from Monday – Friday between 08:00-09:30 hours and 16:30-18:30 hours, and on the opposite side of the road from Monday - Saturday between 08:00 – 16:30 hours. Parking in the wider area is further limited by bus stops, zebra crossings and double yellow lines. While the proposal would result in customer parking, there is nothing to indicate this would be of a consistently high level. Due to the proposal's nature, this would occur mainly in the evening outside the above restrictions. Although customers might park in the side road, any obstruction would likely be short term while customers place, collect and wait for orders.
17. Delivery vehicles would also attend the site, but any resulting obstructions are likely to be occasional, for a limited time and during the day, when there would be reduced demand for customer parking. In addition, although reference is made to parking for business use, this would be limited by the scale of the proposal such that it could be accommodated within the area without having a significant impact on parking pressure.
18. The appellant has submitted crashmap data indicating a small number of slight incidences in the immediate location, which has not been disputed by the Council. In this context, the likely limited level of increased parking due to the proposal, and any associated vehicle movements between Church Street and the side access road, would not present a significant risk to highway safety.

Overall, I find that the additional demand for parking in the area would not adversely affect highway safety, which accords with the conclusions of the Council's Traffic Department.

19. With regards to refuse storage, while information has not been submitted detailing the likely levels required, the appellant has confirmed that this would replicate the current waste storage. I have no reason to doubt that this would be the case. Although this would result in a bin sited within the public highway, this would not change from the current situation such that it would not lead to adverse impacts on highway safety.
20. For the reasons given, the additional demand for parking in the area and the presence of waste storage would not adversely affect highway safety. In this respect the proposal would comply with Policies D3, D4, T5 and T6 of the London Plan, Policies CP24 and CP25 of the CS and Policies DMD32, DMD45 and DMD48 of the DMD insofar as they seek to protect highway safety.

Other Matters

21. The Council has also referred to the proposed awning, with the decision notice stating that it would give rise to conditions prejudicial to highway and pedestrian safety. However, it would be positioned above the footpath and set back from the road so that no such adverse effect would occur. The fact that the awning would overhang the footpath is a matter to be addressed by the highways authority outside of the remit of this appeal.
22. I have had regard to the comments of the interested party who operates the adjacent hot food takeaway. While I acknowledge the similarity of the two uses, competition between businesses is not a planning matter that I can take account of in this appeal. Although comments also make a general reference to effects on ecology, I have no substantive information before me to demonstrate that the proposal would result in adverse effects in this regard.

Conditions

23. As the use is ongoing, I have not found it necessary to attach a condition limiting the timescale for implementation of the permission. I have specified the hours of opening and approved plans in the interests of certainty, but have removed reference to submitted plans relating to proposed signage and adverts as I understand this to be the subject of a separate application.
24. I have imposed a condition relating to equipment for the control of fumes and smells, and any noise and vibration associated with such equipment, in the interests of the living conditions of occupiers of adjacent residential properties. This is imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matter before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met

Conclusion

25. For the reasons given, the proposal would 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 allowed subject to the conditions set out in the attached schedule.

C Rafferty

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
Location Plan Drawing No. P119 dated 10 February 2022;
Block Plan Drawing No. P120 dated 10 February 2022;
Existing Ground Plan Drawing No. P106 dated 10 February 2022;
Existing Roof Plan Drawing No. 107 dated 10 February 2022;
Existing North Elevation Drawing No. P108 dated 10 February 2022;
Existing South Elevation Drawing No. P109 dated 10 February 2022;
Existing West Elevation Drawing No. P110 dated 10 February 2022;
Existing East Elevation Drawing No P111 dated 10 February 2022;
Proposed Ground Plan Drawing No. P112 dated 10 February 2022;
Proposed Roof Plan Drawing No. 113 dated 10 February 2022;
Proposed North Elevation Drawing No. P114 dated 10 February 2022;
Proposed South Elevation Drawing No. P115 dated 10 February 2022;
Proposed West Elevation Drawing No. P116 dated 10 February 2022; and
Proposed East Elevation Drawing No P117 dated 10 February 2022.
2. The use hereby approved shall not operate outside the following hours: 11:00 to 23:00 hours (Monday to Sunday)
3. Unless within 2 months of the date of this decision a scheme for equipment to control the emission of fumes and smell from the premises and any noise and vibration associated with such equipment is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 2 months of the local planning authority's approval, the use of the site hereby approved shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 4 months of the date of this decision, the use of the site hereby approved shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

End of Schedule