



Appeal Decision

Site visit made on 10 January 2023

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 07 FEBRUARY 2023

Appeal Ref: APP/A3655/W/22/3302519

1 Creswell Corner, Anchor Hill, Knaphill, Surrey, Woking GU21 2JD

- 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 Huseyin Dongel against the decision of Woking Borough Council.
 - The application Ref PLAN/2022/0264, dated 23 March 2022, was refused by notice dated 8 June 2022.
 - The development proposed is the change of use from Class E (Commercial, Business and Service) to hot food takeaway (Sui Generis) with a fan grille extractor opening to the rear
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Decision

1. The appeal is allowed, and planning permission granted for the change of use from Class E (Commercial, Business and Service) to hot food takeaway (Sui Generis) with a fan grille extractor opening to the rear at 1 Creswell Corner, Anchor Hill, Knaphill, Surrey, Woking GU21 2JD in accordance with the terms of application Ref PLAN/2022/0264, dated 23 March 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 professional services (Class E, formerly Class A2) to take away (Sui Generis) with a fan grille extractor opening to the rear. Externally illuminated fascia sign'. However, as the signage is the subject of a separate application, I have used the description from the Council's decision notice.

Main Issues

3. The main issues are the effect of the proposed development on: (i) the living conditions of residents of surrounding properties, with regard to noise and disturbance; and (ii) highway safety.

Reasons

Living Conditions

4. The site comprises the ground floor of a commercial unit close to the junction of Anchor Hill and Barley Mow Lane. The area is defined by a range of uses. While Anchor Hill and Barley Mow Lane are primarily residential in nature, the appeal property forms part of an established row of ground floor commercial units with residential accommodation above. I observed on my visit that the use of the appeal property as a hot food takeaway has already commenced.

5. The proposal would operate between 12:00 – 22:00 hours Monday – Saturday and 14:00 – 22:00 hours on Sunday. Due to the nature of the proposed use it can be expected that a significant proportion of the business will occur during the evenings, weekends and on bank holidays.
6. Accordingly, the proposal is likely to generate noise and activity, particularly in the evenings as customers 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 and use of the external area for the storage of waste and materials, in addition to internal activity. This would affect nearby occupants at times when they might reasonably expect a level of peace and quiet.
7. However, the area comprises nearby commercial uses that operate at night. The Council states that the proposed closing time would be consistent with the Chop Suey House hot food takeaway on the parade, and I observed that the nearby convenience store opens until 21:00 seven days a week. I further note the comments of the Council that prior to 22:00 there is noticeable background noise associated with vehicular traffic along Anchor Hill, with such noise levels at their lowest past 22:00. As such, noise from evening activities during the proposed opening hours is to be expected within the area.
8. Noise resulting from the proposal would not therefore appear out of place and would be assimilated with noise generated by surrounding uses, including those later into the evenings. Furthermore, I note that the Council's Officer Report suggested a condition limiting the hours of use of the rear yard where materials and waste would be stored such that it would not be used early in the morning or late in the evening. Accordingly, noise resulting from the proposal would not occur at times when it would unduly disturb surrounding residents. While I sympathise with the concerns of objectors in this regard, given the context I do not consider the proposal would cause or unduly exacerbate the problems to which they refer.
9. As per submitted plans, no external condenser units would be present at the site, and a silencer would be installed to the extraction equipment. This, along with the appropriate mounting of the flue ductwork and any external equipment, could be secured by way of condition to ensure that noise does not arise from the operation of such equipment that would unduly disturb surrounding residents.
10. For the reasons given, 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 and disturbance. In this regard, it would comply with Policy CS21 of the Woking Core Strategy 2012, Policy DM7 of the Development Management Policies DPD 2016 and the Hot Food Takeaway SPD insofar as they seek to ensure adequate living conditions.

Highway Safety

11. Parking is restricted in the vicinity of the site, with double yellow lines present at the junction of Anchor Hill and Barley Mow Lane, and bollards on the corner of the footpath. I noted that, beyond the double yellow lines, Barley Mow Lane was heavily parked at the time of my visit, with little availability for on-street parking. Parking bays for approximately 8 vehicles are provided adjacent to the shopping parade.
12. The proposal would result in a demand for parking by customers and delivery drivers. However, there is nothing before me to suggest that this would be of

a consistently high level throughout its opening hours. Due to the nature of the proposal, such parking would mainly occur later in the evening, when certain adjacent businesses in the parade will have closed. At such times the demand for parking associated with the adjacent commercial uses and, accordingly, for the use of the parking bays provided, is likely to be less.

13. I acknowledge concerns that vehicles associated with the use would be parked inconsiderately or illegally along either Anchor Hill or Barley Mow Lane. However, even if this were to occur, due to the takeaway nature of the use such parking would likely be short term while orders are placed, waited on and collected. Delivery and servicing vehicles would also attend the site, but any obstructions are likely to be occasional, for limited time and during the day, when there would be reduced demand for customer parking at the proposal.
14. In this context, the likely limited level of increased parking due to the proposal would not present a significant risk to highway safety or traffic flow and would not unduly impact the living conditions of surrounding occupiers from a traffic or parking stress perspective. I further note the recommendations of the Council that bollards are installed on the surrounding footpath to ensure that vehicles do not park on the pavement immediately surrounding the site. This can be secured by way of condition. Overall, I find that the additional demand for parking in the area would not prejudice highway safety, which accords with the conclusions of the Council's Traffic Department.
15. For the reasons given, the additional demand for parking in the area would not adversely affect highway safety. In this respect the proposal would comply with Policy CS18 of the Woking Core Strategy 2012, Policy DM16 of the Development Management Policies DPD 2016 and the Hot Food Takeaway SPD insofar as they seek to ensure development does not have a detrimental impact on highway safety.

Other Matters

16. Residents have raised concerns that the proposal would result in the loss of office space and that there are already hot food takeaways nearby. However, the Council considers the principle of the proposal in this location acceptable. Based on my observations, I have no reason to disagree. It has also been alleged the proposal may lead to an increase in rodents, antisocial behaviour, crime and littering as well as contributing to air pollution. However, I have no convincing or substantive evidence before me that this would be the case.
17. Further concerns were raised on the impact of the proposal on the surrounding character. However, among the surrounding uses the proposal, including its external flue, would not appear out of place. Objections were also received on the grounds of odour. However, on the submitted technical evidence the Council has raised no issue in this regard and based on my observations, I have no reason to disagree. A specification has been submitted outlining how the commercial extraction system is to be operated, cleaned and maintained to ensure that it will not cause undue harm with regard to odour, compliance with which can be secured by way of condition.
18. The effect of the proposal on living conditions of nearby residents was also raised with regard to privacy and external lighting. External lighting would be related to the proposed signage, which falls under a separate application and,

due to the position of the proposal relative to surrounding dwellings, I do not consider that any undue overlooking of nearby properties would occur.

19. Reference has been made to other applications for hot food takeaways being refused on this parade. However, limited information on this has been received and each appeal is decided on its own merits. The finances of the business have been queried by interested parties, who have also raised that the rear yard opens onto a private road. However, these are not matters that fall within the consideration of the planning merits of this appeal.

Conditions

20. 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 approved plans in the interests of certainty.
21. I have imposed conditions relating to the submission of schemes for the mounting of external equipment and installation of a silencer on extraction equipment in the interests of the living conditions of adjacent occupiers. I have also imposed a condition relating to the submission of a scheme for the installation of bollards in the interests of highway safety. These are imposed to ensure required details are submitted, approved and implemented 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 matters before development takes place. These conditions ensure the development can be enforced against if the requirements are not met.
22. I have attached conditions outlining the hours during which the use shall operate, including conditions relating to hours during which servicing can occur and the rear yard can be used. These are necessary in the interests of the living conditions of surrounding occupiers. As per the application form, I have included hours of operation during bank holidays that match those of Sunday operating hours.
23. I have further attached a condition that the commercial kitchen extraction system shall be operated, cleaned, serviced, maintained, and replaced in accordance with the manufacturer's recommendations and submitted specification and that it shall be retained at the site. This is necessary in the interests of the living conditions of surrounding occupiers. As the specification requires a minimum 0.2 second residence/dwell time and recommended cleaning intervals, I have not attached separate conditions on these specific requirements. A condition that no external plant or equipment is to be installed at the site without approval of the Council is also required in the interest of surrounding living conditions.

Conclusion

24. 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 and documents: Location Plan dated 22 March 2022; Proposed Block Plan Ref CC-2103-PBP dated 21 March 2022; and Drawing Ref CC-2204-PEEPFPES dated 22 April 2022; Specification for EMAQ/DEFRA Report prepared by Purified Air dated 22 April 2022.
2. The use hereby permitted shall only take place between 1200 to 2200 hours Monday to Saturday and between 1400 to 2200 hours on Sunday and bank holidays.
3. Servicing of the use hereby permitted, including loading, unloading, refuse collection and deliveries (with the exception of collection of customer orders by delivery drivers within the hours specified in condition 2) shall only take place between 1000 to 1800 hours Monday to Saturday and between 1200 to 1800 hours on Sunday.
4. The rear yard as shown on Drawing Ref CC-2204-PEEPFPES dated 22 April 2022 shall not be used at any time or for any purpose (other than as a mean of escape in an emergency situation) outside of the following hours: 10:00 to 21:00 hours Monday to Saturday and 1200 to 2100 hours on Sunday.
5. Unless within 3 months of the date of this decision a scheme for the installation of anti-vibration mounts to support the flue ductwork and any external plant and equipment is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site 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 6 months of the date of this decision, the use of the site 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.

6. Unless within 3 months of the date of this decision a scheme for the installation of a silencer to the commercial kitchen extraction equipment, including calculations across the frequency bands and attenuator selection, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site 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 6 months of the date of this decision, the use of the site 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.

7. Unless within 3 months of the date of this decision a scheme for the installation of bollards fronting Anchor Hill and Barley Mow Lane (including positioning, height and design) is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site 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 6 months of the date of this decision, the use of the site 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.

8. All elements of the commercial kitchen extraction system shall be operated, cleaned, serviced, maintained, and replaced (including the replacement of carbon filters) in accordance with the Specification for EMAQ/DEFRA Report prepared by Purified Air dated 22nd April 2022 and manufacturer's recommendations. Records of maintenance and the effectiveness of the system shall be kept in writing and made available to the local planning authority within 5 days of receipt of a written request, and the commercial kitchen extraction system shall be retained so long as the use hereby permitted continues.
9. Other than as specified on the approved plans and documents listed at condition 1 of this permission, no external plant or equipment shall be installed at the premises without the prior written permission of the local planning authority.

End of Schedule