



Appeal Decision

Site visit made on 24 January 2023

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2023

Appeal Ref: APP/L5810/W/22/3303963

75 High Street, Whitton, Richmond upon Thames TW2 7LD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by S Chopra against the decision of the London Borough of Richmond Upon Thames.
 - The application Ref 22/1778/VRC, dated 30 May 2022, was refused by notice dated 26 July 2022.
 - The application sought planning permission for the change of use of retail (E use class) into restaurant (E use class) including installation of extraction flue system to rear, without complying with a condition attached to planning permission 22/1008/FUL dated 27 May 2022.
 - The condition in dispute is No 6 which states that; *the premises shall at no time provide a take-away service or be used for the sale of hot food for consumption off the premises. A notice to this effect shall be displayed at all times on the premises so as to be visible from outside.*
 - The reason given for the condition is: *to protect the amenities of nearby residential properties. To ensure that the proposed development does not prejudice the free flow of traffic, or the conditions of general safety along the neighbouring highway.*
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of retail (E use class) into restaurant (E use class) including installation of extraction flue system to rear at 75 High Street, Whitton, Richmond upon Thames, TW2 7LD, in accordance with the application Ref 22/1778/VRC, made on the 30 May 2022 without complying with condition No 6 set out in planning permission 22/1008/FUL, granted on 27 May 2022 by the London Borough of Richmond upon Thames, and subject to the attached schedule of conditions.

Preliminary Matter

2. The Council appears to have considered the proposal on the basis of it being a change of use from retail (use class E¹) to a restaurant (use class E) and take-away (sui generis). However, the scope of the assessment before me is whether condition 6 of planning approval 22/1008/FUL that prevents the operation of a take-away service at the appeal site, is needed to make the proposed change of use from a retail premises to a restaurant acceptable.
3. At the time of my site visit, I observed that the shop front does not accord with the submitted plans, namely in respect of the position of the entrance door.

¹ Town and Country Planning (Use Classes) Order 1987 (as amended).

Furthermore, I observed 2 'Just Eat' signs on the premises which may indicate that a take-away service is already in operation. For clarity, I have assessed the proposal based on the information before me and not as built or operating on site.

Main Issues

4. The main issues are i) whether the appeal site is a suitable location for the development, having regard to the vitality and viability of the Whitton key shopping frontage (KSF), ii) the effect of the proposed development upon the living conditions of existing occupiers, with particular regard to noise, and iii) highway safety with particular regard to adequacy of car parking.

Reasons

Vitality and Viability

5. The appeal site is a ground floor commercial unit located within the KSF of the established shopping parade of Whitton High Street. Policy LP26 of the Richmond upon Thames Local Plan 2018 (LP) seeks to prevent a loss of retail floorspace (A1 use class) in KSF's.
6. The Council suggest that restricting the takeaway element was at the heart of the justification for allowing the change of use to a restaurant but without qualifying why this was deemed to be the case. The evidence as to why the loss of a retail unit within the KFS was considered acceptable at the time of granting approval for the proposed restaurant (reference 22/1008/FUL) is not before me. The Council has nonetheless accepted the loss of retail space within the KFS, and this forms an important material consideration as the legitimate permitted use of the appeal site.
7. The appellant is seeking permission to operate as a restaurant with the ability to provide a take-away service. The existing restaurant is relatively small-scale in nature with 4 dine-in tables and seating for what appeared to be approximately 20 covers. Therefore, in order to be ancillary to the main use of the restaurant, any take-aways would be required to be a very small part of the overall business operation. It seems to me that it would be unreasonable to prevent the appellant from providing an occasional take-away service.
8. I observed that there are a number of eating establishments within the KFS and wider high street. There is no evidence from the Council as to what use classes they consider the eating establishments within the KFS to fall within and whether they are deemed to be café's, restaurants, take-aways or mixed uses. From my observations, whilst take-away premises were present, it did not appear that there was a particular over-proliferation of these uses. Even if they were prevalent, the proposal seeks to permit the operation of a restaurant with an ancillary take-away offering.
9. I am also referred to the refusal of a take-away at 106 High Street (18/1778/FUL) which was deemed to have a negative effect on the KSF, that I am informed was upheld at appeal. However, I have not been provided with the reference number or details of this appeal, such that I can make a comparison with the proposed scheme. Nevertheless, the Council's reference to the development as a take-away appears to be intrinsically different to that before me.

10. I therefore conclude that the appeal site is a suitable location for a restaurant use with an ancillary take-away service, having regard to the vitality and viability of the Whitton key shopping frontage. The proposal would therefore accord with Policy LP26 of the London Borough of Richmond upon Thames Local Plan 2018 (LP) which seeks to resist the loss of A1 floorspace within KSF's and an over-concentration of similar uses. It would further accord with paragraph 86 of the National Planning Policy Framework (the Framework) which encourages a positive approach to the growth, management and adaption of town centres.

Living Conditions - Noise

11. The appeal site forms a ground floor commercial premises, part of a parade of shops within a 2-storey building where the upper floor appears to be in residential use. The Council are concerned that a take-away use would give rise to noise arising from the dispatch of food by a delivery service and it advises that no acoustic assessment has been provided. There is no indication that the provision of ancillary take-aways would require any additional equipment than that already in place for the restaurant use, including the existing flue.
12. Although a snapshot in time, during my visit on a weekday afternoon, I observed that there was a high level of pedestrian and vehicular activity including buses stopping, and vehicles unloading along the High Street. The atmosphere was one of an active, noisy high street.
13. Against this background level of activity, and in light of the fact that the restaurant use already generates activity from customers visiting and leaving the appeal site, the movement of delivery drivers for an ancillary take-away service would likely be of a low-level, so as not to result in a material increase in noise for the occupiers of the flats above and adjacent to the appeal site. Any movements associated with a low-level take-away service would not be particularly discernible over and above the vehicular activity that already takes place along the High Street. Moreover, I note that the existing hours of operation of the restaurant use and the presence of staff on the premises are limited by conditions on the original approval (reference 22/1008/FUL). These are not proposed to be changed.
14. I have no detailed evidence before me to demonstrate that the proposal would result in a considerably worse noise impact than the existing situation. I find that the proposed development would not adversely affect the living conditions of neighbouring occupiers, particularly in regard to noise. The proposal would therefore accord with Policies LP8 and LP10 of the RLP which seek to ensure that development does not lead to detrimental effects on the amenity of occupiers of surrounding land.

Highway Safety

15. The Council's evidence indicates that it is concerned about the implications of the take-away use in respect of access for delivery drivers and the implications for on-street car parking, rather than from staff or customers attending the premises.
16. On-street parking is available on both sides of the High Street, albeit subject to various restrictions. These include time limits immediately to the front of the appeal premises limiting parking to 2 hours between 08:30-16:30 hours

Monday to Saturday with no return within an hour. Loading and disabled bays are also available along the High Street. In addition, there is a service road to the rear along which linear car parking occurs.

17. Take-away collections and deliveries are typically brief transactions where customers or drivers would pull up in their vehicles, collect their order and leave within a short period of time. Although I appreciate it was a snapshot in time during the day, I observed that there was a good availability of on-street car parking spaces with vehicles regularly coming and going. Car parking did not therefore appear to have reached saturation point along the High Street, although I acknowledge there may be wider concerns relating to car parking during event days, given the Twickenham Events Controlled Parking Zone that applies to some nearby streets.
18. Given the ancillary nature of the proposed take-away service and the location of the premises on an active High Street where public parking is available, it is unlikely to generate a significant demand for car parking that would be detrimental to the local highway network. Moreover, it cannot be assumed that all take-away collections would be by car or delivery driver. The appeal site is situated within a highly sustainable location, accessible by both train and bus and close to residential areas such that patrons may collect orders on foot.
19. Paragraph 111 of the Framework is clear that development should only be refused on highway safety grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. There is no objective evidence before me to indicate that the proposals would result in an unacceptable deficit of on-street parking provision. Furthermore, an ancillary take-away service to a small restaurant would not result in significant vehicular movements per day. In the absence of any evidence that highway safety issues or disruption to traffic flow would occur as a result of the proposed development, I find that the proposal would not result in a severe impact on the road network.
20. The proposed development would not be harmful to highway safety, with particular regard to car parking. As such the proposal complies with paragraphs 110 and 111 of the Framework, which aim amongst other things, to achieve safe and suitable access and to prevent unacceptable impacts on highway safety.

Other Matters

21. There is no compelling evidence before me that the appellant wishes to operate anything other than a restaurant with an ancillary and subservient take-away service. If however, the take-away use was ever to become the dominant activity with an accompanying uplift in noise or vehicular movements, a material change of use is likely to occur and a further planning application would need to be considered by the Council at that point in time.
22. Reference is made to the appeal site being located within a Take-away Management Area. However, the evidence before me indicates that the appeal site would be over 400m to the nearest school located on Nelson Road at the opposite end of the High Street. There are a modest number of food outlets on the High Street that school children would pass before reaching the appeal site. There is limited evidence before me as to whether these premises are subject to any restrictive conditions preventing the sale of take-aways to children at

particular times of the day. Already operating as a restaurant, there are no restrictions to stop children eating-in at the premises. The removal of the condition to allow ancillary take-aways would not therefore be likely to significantly increase the ability of children being able to access food that would be significantly more harmful to their health and wellbeing than the existing situation. A condition limiting over the counter sales before or after school hours would not be reasonable in this instance given the distance of the premises from the nearest schools and the primary use of the appeal site as a restaurant.

23. Concerns are raised by interested parties regarding vermin to the rear of the appeal site. Whilst noting this, given the lack of detailed evidence to substantiate these concerns, I do not find they alter or outweigh my conclusions with regard to the main issues.

Conditions

24. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original permission (22/1008/FUL) that continue to have effect. The Council has advised that conditions 2, 3 and 8 of the original permission have not been discharged and this is not contested by the appellant. Therefore, I shall impose all conditions that I consider remain relevant. I have amended the wording where necessary to ensure compliance with the Planning Practice Guidance and paragraph 56 of the Framework.
25. I have listed the approved plans the subject of this appeal for the avoidance of doubt and in the interests of certainty. Conditions relating to the hours of operation, presence of staff on the premises and amplified music, are reimposed in the interests of protecting the living conditions of neighbouring occupiers. In light of the fact that details in respect of the noise insulation scheme, mechanical plant and bin storage have not been provided and are important to the protection of the living conditions of neighbouring residents and the character and appearance of the area, I have reimposed the conditions with amended wording providing 3 months for the submission of details as agreed with the parties. A condition to ensure that the development incorporates fire safety measures is also retained in the interests of safety and the character and appearance of the area.
26. The Council has requested 2 further conditions relating to the provision of a transport statement and a noise/acoustic assessment to demonstrate how the take-away service will operate. Given my findings above, neither of these conditions are considered reasonable or necessary in respect of the ancillary nature of the proposed take-away activity. Noise generating equipment and insulation are already dealt with by proposed conditions 2 and 3.

Conclusion

27. The proposal would be in accordance with the development plan as a whole and material considerations do not lead me to decide otherwise. For these reasons and having regard to all other matters raised, the appeal is allowed.

M Clowes

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall not be carried out other than wholly in accordance with drawing no's;
042/P/21.03 Ground floor plan and site plan
042/P/21.04 Proposed elevations and roof plan
042/P/21.05 Proposed elevation and section
042/P/21.06 Location Plan.
2. a) The extraction plant hereby permitted shall be installed in strict accordance with the details provided in the acoustic report submitted by DAA Group Issue 01 dated 20th July 2021. The plant shall thereafter be retained as approved. The plant shall not be used unless the equipment is installed in compliance with these details.
b) A commissioning acoustic test report shall be undertaken within 3 months of the date of this decision in order to demonstrate the limiting noise levels detailed in the above report at Section 5.3 have been achieved. The results of the tests shall be submitted to and approved in writing by the Local Planning Authority. If any further mitigation is required to demonstrate the above compliance, a detailed scheme shall be submitted to the Local Planning Authority for their written approval within 3 months, including a timeframe for implementation. The noise insulation scheme shall be retained thereafter.
3. a) The noise insulation scheme hereby approved shall not be implemented other than in accordance with the details outlined in the acoustic report by DAA Group Issue 01 dated 20th July 2021 and shall thereafter be retained as approved.
b) Within 3 months of the date of this decision, a commissioning acoustic test and report shall be undertaken in order to demonstrate that condition (a) above has been achieved, and the results submitted to and approved in writing by the Local Planning Authority. If any further mitigation is required to demonstrate the above compliance, a detailed scheme shall be submitted to the Local Planning Authority for their written approval within 3 months, including a timeframe for implementation. The noise insulation scheme shall be retained thereafter.
4. No music, amplified sound system or other form of loud noise shall be used or generated which is audible outside the premises or within adjoining residential dwellings.
5. Customers shall not be present on the premises, nor shall there be preparation, sale or delivery of food for consumption off the premises during the following times:
Monday-Saturday inclusive before 09:00 and after 23:00 hours.
Sundays/Bank Holidays inclusive before 10:00 and after 22:30 hours.
A notice to this effect shall be displayed at all times on the premises so as to be visible from outside.
6. Within 3 months of the date of this decision, details of the proposed arrangements for the storage and disposal of refuse/waste shall have been submitted to and approved in writing by the Local Planning Authority. The

development shall be carried out in accordance with the approved details and shall be retained for their intended purposes thereafter.

7. Staff shall not be present on the premises after a period of 60 minutes has elapsed following the approved closing times.
8. The odour control equipment to the kitchen extraction system hereby permitted shall be installed in strict accordance with the Odour Management Plan by Delta Tech Ltd. The odour control equipment shall thereafter be retained as approved.
9. The development must be carried out in accordance with the provisions of the Delta Tech Ltd Planning Fire Safety Strategy dated August 2022 and retained as such thereafter.