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# Appeal Decision

Site visit made on 4 April 2023

**by M Chalk BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25<sup>th</sup> April 2023**

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**Appeal Ref: APP/H5960/W/22/3301386**

**167 Battersea Park Road, London, SW8 4BU**

- 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 Nadeem Hussain against the decision of London Borough of Wandsworth.
  - The application Ref 2021/3848, dated 2 February 2022, was refused by notice dated 16 May 2022.
  - The development proposed is described as "change of use of E(a)-Retail Shop into Sui Generis-Hot Food Take away with rear external flue."
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are:
  - Whether the location of the proposed development is acceptable, considering its proximity to St Mary's Primary School and Newton Preparatory School,
  - The effect on the living conditions of neighbouring occupiers, with regards to noise,
  - Whether it would provide sufficient cycle parking spaces,
  - Whether it would make adequate provision for refuse storage and collection,
  - Whether the location is acceptable with regards to flooding,
  - Whether it would achieve the highest standards of fire safety; and,
  - The effect of the proposed flue on the character and appearance of the area.

## Reasons

### *Proximity to schools*

3. Policy E9 of the London Plan (the LP) states amongst other criteria that hot food takeaway uses should not be permitted where these are within 400 metres walking distance from the entrances and exits of an existing school. The LP states that hot food takeaways generally sell food that is high in calories, fat, salt and sugar, and low in fibre, fruit and vegetables, and that there is evidence that regular consumption of energy-dense food from hot food takeaways is associated with weight gain, and that takeaway food is appealing to children. In accordance with expert recommendations, it seeks to limit the

presence of such uses in close proximity to schools as part of a broad package of measures intended to reduce childhood obesity within London.

4. St Mary's Primary School lies to the rear of the appeal site along St Joseph's Street and is within 400 metres walking distance of the site. Newton Preparatory School on Lockington Road is also within 400 metres walking distance of the site.
5. I saw during my visit that other properties within this parade of commercial units are in hot food takeaway use. However, I have no details before me of when these uses were permitted. In any case, their presence does not convince me that an additional such use is justified in this location given the potential additional harm this would cause to the aim of reducing childhood obesity, in conflict with Policy E9 of the LP.

#### *Noise*

6. The proposed flue would be sited on the rear elevation of the property, next to windows to the flat on the upper floor of 167. Any disturbance from the proposed flue would therefore be principally experienced by the occupiers of this flat. The submitted plans indicate that the extractor would be housed in an enclosed chamber for minimum noise. However, no such information has been provided regarding the flue or measures to limit noise to neighbouring occupiers. The appellant has suggested that such measures could be controlled by condition, but I consider that it would be reasonable for these to be submitted for consideration before any decision is taken so that they could be reviewed as part of the public consultation. In the absence of any such information, it is not possible to say that the proposed use would not cause disturbance to the neighbouring occupiers.
7. The flue would also be next to the boundary with No 165. However, that property has been extended to the rear above ground floor level, and I did not see any facing window during my site visit. The closest window would be the second floor rear window, but given that this is set away from the site of the proposed flue, on balance I consider it unlikely that significant disturbance would result from this relationship.
8. Nonetheless, the appeal proposal would be likely to result in unacceptable harm to the living conditions of the occupiers of the flat above the appeal property. It therefore conflicts with Policy D14 of the LP and DMS 1 of the Development Management Policies Document (the DMPD). Taken together these require that development mitigate and minimise the potential adverse impacts of noise and ensure that this does not harm the amenity of occupiers and nearby properties.

#### *Cycle parking*

9. Policy T5 of the LP and Policy DMT 2 of the DMPD require that in the borough of Wandsworth hot food takeaways provide customer cycle parking at a minimum of 1 space per 20 square metres. This is to help remove barriers to cycling and create a healthy environment in which people choose to cycle. No such provision is identified on the submitted plans.
10. The appellant has suggested that details of cycle parking could be secured by an appropriately worded condition. However, it is not clear from the plans

where such provision could be made within the site, so I am not convinced that such a condition would be reasonable or appropriate.

11. Accordingly, the appeal proposal would conflict with the identified aims of Policy T5 of the LP and Policy DMT 2 of the DMPD.

*Refuse storage and collection*

12. The Council's waste strategy consultee identified concerns relating to refuse collection and storage arrangements proposed by the appellant.
13. The information provided by the appellant suggests that refuse would be collected nightly between 11pm and midnight. The Council seeks collections either between 9pm and 11pm or 9am and 11am in accordance with local time banding regulations. It is not clear whether the proposed refuse collection by Veolia could be carried out within these times, and therefore I do not consider that this could be reasonably addressed by a condition even if I were otherwise minded to allow the appeal.
14. Internal waste and recycling storage is indicated on the submitted plan LIVARCH/167BPR/102 Issue A to the rear of the property. While not within the kitchen it appears that there is adequate space to contain refuse prior to collection, and enough space within the kitchen for smaller bins. On balance, I am satisfied that this aspect of the proposal could be controlled by a suitably worded condition, if I were otherwise minded to allow the appeal.
15. As acceptable details of refuse collection have not been provided, the appeal proposal would conflict with Policy DMT 2 of the DMPD, which requires amongst other criteria that adequate servicing arrangements are made for commercial vehicles and general servicing.
16. The Council referred in its reason for refusal to its Refuse and Recyclables Supplementary Planning Document. This principally addresses storage of commercial waste, as the Council only collects commercial waste upon request. As the appellant has indicated they would be using a private company to collect waste, and I have found that storage of waste would be acceptable in principle, this document is not determinative in this appeal.

*Flood risk*

17. The appeal property is in Flood Zone 3 and there is a history of surface water flooding in the area. The appellant submitted a Flood Risk Assessment (FRA) with the application, but this contained inaccuracies including giving the incorrect address. Consequently, it is not clear that the FRA is wholly reliable, and that the proposed use would be protected from the risk of flooding.
18. Accordingly, the appeal proposal conflicts with Policy DMS 5 of the DMPD, which requires that development in Flood Zone 3 be accompanied by a site specific FRA that shows how the development will remain safe during a flood and how it would recover from a flood.
19. The appellant has suggested that this could be addressed by a suitably worded condition. However, this is a matter that must be addressed prior to determination, given the potential risk of inadequate flood defence measures.

### *Fire safety*

20. Policy D12 of the LP requires that all development proposals must achieve the highest standards of fire safety. A Fire Safety Statement was provided with the application but this does not provide details of the adopted evacuation policy as required by Policy D12.
21. The appellant has suggested that this could be addressed by a suitably worded condition. However, given the safety risk I do not consider that this would be appropriate in this instance.
22. Due to insufficient submitted information it is not clear that the appeal proposal would achieve the highest standards of fire safety. It therefore conflicts with LP Policy D12.

### *Character and appearance*

23. The appeal proposal would include the erection of a flue to the rear of the property, extending to above the highest part of the roof. This flue would be largely concealed from view by the building's rear projection, and in wider views would be seen in the context of similarly tall flues to other properties within the terrace.
24. Given this context, and as the final materials and finish of the flue could be controlled by an appropriately worded condition, I do not consider that the addition of a flue to the property would result in harm to the character and appearance of the area. The appeal proposal would therefore accord with Policy IS 3 of the Core Strategy and Policy DMS 1 of the DMPD which, taken together, require that the existing varied character of the borough be protected.

### *Planning Balance*

25. The appellant suggests that the development would deliver economic benefits for the local area and provide employment for local people. However, the premises was open for business at the time of my site visit and I have not been provided with any detail of how significant a financial or employment benefit would be generated by the proposed use. I am therefore only able to give this potential benefit limited weight in my determination of the appeal, and this does not outweigh the cumulative harm that I have identified above.

### **Conclusion**

26. The appeal proposal would conflict with the development plan. There are no material considerations identified that lead me to conclude that this appeal should be determined other than in accordance with it. Consequently, for the reasons set out above, this appeal fails.

*M Chalk*

INSPECTOR