



Appeal Decision

Site visit made on 3 January 2023

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 MAY 2023

Appeal Ref: APP/B5480/W/21/3289623

41 New Road, Rainham RM13 8DR

- 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 Shamin P Mudalige against the decision of London Borough of Havering.
 - The application Ref P1392.21, dated 8 July 2021, was refused by notice dated 10 September 2021.
 - The development proposed is Change of Use to Sui Generis (Hot-Food Takeaway) from Use Class E(a). installation of an extractor flue pipe and shop front change.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council adopted the new Havering Local Plan ("the HLP") on 17 November 2021. At the same time the 2008 Core Strategy and Development Control Policies DPD ("the CS&DC DPD") was withdrawn. The decision notice referred both to the policies of the CS&DC DPD and the draft policies of the emerging HLP, as it then was. The appeal was lodged after the adoption of the HLP, and both main parties' appeal submissions were therefore made in the light of the relevant new policies; in my reasons below, I have referred to only to the policies of the HLP.
3. As I am determining this appeal sometime after planning permission for the proposed development was refused, I sought a brief factual update from the Council on the status of a yet-to-be-determined planning application¹ on an adjacent site which had been referred to in its officer report. The relevance of this application is addressed at the appropriate point of my reasons below.

Main Issues

4. The main issues are:
 - Whether or not the site is a compatible location for the proposed use, having regard to the planned strategic residential redevelopment of the area, and the loss of residential floorspace; and
 - The effect of the proposed development on living conditions for nearby residential occupiers (including future residents), with particular regard to noise disturbance caused by customers and vehicles.

¹ LPA Ref: P.1555.21

Reasons

Compatibility of the proposed use

5. The appeal site is a three-storey building on the north side of New Road, a busy dual-carriageway A-road. The proposed development is the use of the ground floor, which appeared to be vacant at the time of my site visit, as a *sui generis* hot food takeaway, along with the installation of an extractor flue on the west side of the building, and changes to the shopfront.
6. The site lies within the Rainham and Beam Park Strategic Development Area ("the SDA"), which is designated in the HLP and defined in its policies map². Policy 2 of the HLP sets out the strategic aims for the SDA. Among other things, these include "the delivery of over 3,000 new high-quality homes in attractive, well managed residential schemes which are well integrated with their surroundings", on "a series of connected sites to the south of New Road [...] together with sites to the north of New Road which are currently occupied by incompatible uses". The same policy also supports the provision of retail and commercial units in a new local centre adjoining the proposed Beam Park railway station, a short way south of the appeal site.
7. I saw on my site visit that several large blocks of flats under construction (and apparently nearing completion) on the south side of New Road reflect the changing face of the SDA, as sought by Policy 2 of the HLP. The premises on the same side of New Road as the appeal site, however, remain representative of the historic commercial and industrial nature of the area. There is a particular prevalence of businesses related to the sale, service or repair of motor vehicles, at least some of which (I infer, as such uses are not further defined) are among the "incompatible uses" referred to in Policy 2.
8. The appellant argues that Policy 2 does not contain a presumption against the appeal proposal and, "in view of the modest scale of the proposal, together with the use of purchase powers, the comprehensive development of sites along the New Road frontage" would still be accomplished. However, in seeking to replace the "incompatible uses" on the north side of New Road with strategic housing development, in my view Policy 2 must sensibly be read as also seeking to avoid the introduction of further incompatible uses to that area.
9. In broad terms, I consider that the introduction of a hot food takeaway on the appeal site would weigh against the strategic aims of delivering a significant number of new homes, including on currently commercial sites on the north side of New Road, and setting them within an attractive and well-integrated environment. In more specific terms, the submitted drawings appear to show that the proposed extractor flue would oversail part of the adjoining site. The proposed use would therefore be incompatible with the development plan's strategic aims for the SDA in general, and with the redevelopment of the adjacent site in particular.
10. The Council also considered that the proposed development would lead to the loss of ground floor residential floorspace, on the basis that an earlier planning application³ had referred to all three floors of the appeal property being in residential use, although it acknowledged that this did not represent a

² The SDA was also designated in the withdrawn CS&DC DPD, so it has not emerged only as the result of the (relatively) recent change in the development plan.

³ LPA Ref: P1241.17

determination of the lawful use of that part of the site on its part. The ground floor did not have the appearance of being occupied for residential use at the time of my site visit, and the planning application was made on the basis that the premises were last used within Use Class E(a), but it is not necessary for me to reach a definitive conclusion on the present lawful use of the premises in determining this appeal. Notwithstanding the disagreement between the parties on this point, I cannot conclusively establish that the proposed development would lead to a loss of residential floorspace. However, this does not alter my overall conclusion on this main issue.

11. I conclude that the appeal site is not a compatible location for the proposed use, having regard to the planned strategic residential redevelopment of the SDA. The development would therefore conflict with Policy 2 of the HLP, the principle relevant provisions of which I have set out in paragraphs 6 and 7 above. It would also conflict with Policies D3 and SD10 of the London Plan 2021 which, among other things, seek to ensure that development is of the most appropriate form and land use for the site, and that the regeneration of strategic areas is supported.
12. For the reasons set out in paragraph 10, I find no conflict with the provisions of Policy 3 of the HLP which seek to prevent a loss of residential floorspace.

Neighbours' living conditions

13. Under the appeal scheme, the majority of the ground floor unit would be given over to food storage, preparation, and cooking, with a relatively limited customer area towards the front of the building. The external forecourt is shown on the submitted drawings as a car park, as well as a storage area for two waste/recycling wheely bins.
14. Comings and goings of people and vehicles on the front forecourt, as well as the taking out of rubbish to the bins and the regular refuse collections, would be likely to cause a significant noise disturbance for occupiers of the flats on the upper floors of the appeal property. This activity would also be very close to the proposed strategic development on the adjoining site to the west, where residential blocks creating a new street frontage to New Road would almost abut the appeal property, so noise disturbance would not be limited to the appeal site itself (I acknowledge that planning application P.1555.21 has not yet been determined by the Council, but given the pattern of development I saw on the south side of New Road it appears that it would be reasonably representative of the type of scheme which is eventually likely to come forward in that part of the SDA).
15. It was suggested by the appellant that the proposed hot food takeaway would significantly rely on the home delivery market, with as much as 70% of orders (based on experiences since the Covid-19 lockdowns at his other takeaways) being for delivery. It is also argued that, for what appear to be the sensible economic reasons of maximising income and reducing fuel costs, delivery services seek to ensure that drivers collect a batch of orders for delivery rather than individual orders. I have no reason to dispute either of these points. However, the fact remains that the successful operation of a hot food takeaway would be likely to rely on a relatively large number of vehicles (whether belonging to delivery drivers or to individual customers) coming and going from the site throughout the business's operating hours, including to 11 o'clock in the evening on Fridays and Saturdays. There would still also be noisy on-site

operations, such as the filling or collection of bins, which would create further disturbance. In any case therefore, there would be likely to be a considerable amount of noise disruption arising from the takeaway use. This would cause significant harm to the living conditions of nearby residential occupiers (including future residents of the adjoining site).

16. I therefore conclude that the proposed development would conflict with Policies 7, 26 and 34 of the HLP and with Policies D14 and T6 of the London Plan 2021. Together, and among other things, these policies seek to ensure that development is well-designed and well-integrated with surrounding uses, does not adversely impact the amenity and quality of life of existing and future residents (including though unacceptable noise generation), and that adequate provision is made for efficient deliveries and servicing.

Conclusion

17. The proposed development would not be compatible with the planned strategic residential redevelopment of the area and would cause harm to living conditions for neighbouring occupiers (including future occupiers). It would therefore conflict with the development plan taken as a whole.
18. There are no material considerations which indicate that the decision should be made other than in accordance with the development plan. For the reasons given above, the appeal is therefore dismissed.

M Cryan

Inspector