



Appeal Decision

Site visit made on 24 May 2023

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2023

Appeal Ref: APP/G5750/W/22/3310943

68 Portway, Stratford, Newham, London E15 3QJ

- 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 Prem Pabila against the decision of London Borough of Newham.
 - The application Ref 22/01793/FUL, dated 23 July 2022, was refused by notice dated 23 September 2022.
 - The development proposed is change of use from retail class (E) to pizza shop & take away (Sui Generis) including installation of extraction flue on the rear elevation.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on the:
 - Creation of a healthy food environment;
 - Vitality and viability of Local and Town Centres; and
 - Living conditions of nearby residents in respect of odour, noise and disturbance.

Reasons

Healthy Neighbourhoods

3. Policy E9 of the London Plan 2021 states that proposals for takeaway uses should not be permitted within 400m walking distance from entrances and exits of a primary school. Due to the proximity of the appeal site to the West Ham CoE Primary School, the appeal site is clearly in contravention of Policy E9.
4. The Council also considers that the proposal would be in a 'takeaway hotspot', where within the terms of Policy SP9 of the London Borough of Newham Local Plan 2018 (the Local Plan) no more than three premises should be within this use within 400m of each other. Reference is made to Figure 3.6 of the Local Plan which indicates such a hotspot in this location.
5. However, the map in Figure 3.6 is a relatively undetailed image. Although individual hotfood takeaway shops are indicated on the map, the Council has not specified which takeaways they are or their current status. With regard to the latter, I am mindful that the plan is of some age dating from 2018 at the latest. Therefore, although I have had regard to Figure 3.6, this is not definitive

evidence that the site is currently within a hotspot. Given the lack of specific evidence and the relatively dispersed distribution of takeaways in the vicinity, I was not able to determine the existence of a hotspot on my site visit.

6. That said, I have some concerns about the appellant's evidence. The appellant claims that 75 Portway opposite the appeal site is not actively used as a takeaway, although a sign placed on No 75 at the time of my visit indicated that it was still in use for that purpose. The existence of seating in other units also does not indicate that the premises are not used as a takeaway, as many takeaways include an element of seating for customers to consume food if they wish to do so.
7. Nevertheless, due to the lack of detailed and up-to-date evidence to support the Council's concerns, it has not been demonstrated that the proposal is within a takeaway hotspot within the terms of Policy SP9.
8. The appellant also refers to the introduction of Use Class E, where the appeal site could be used for the sale of food and drink for consumption on the premises. However, such a use would be materially different to a takeaway, particularly in relation to convenient access to potentially unhealthy food. The introduction of Use Class E does not therefore lead me to a different conclusion in respect of the harm arising from the proposal to community health.
9. Drawing the above together, the proposal would be within 400m of an entrance or exit to a primary school, and would therefore be contrary to Policies GG3 and E9 of the London Plan with regards to creating a healthy food environment. The proposal would also be contrary to the National Planning Policy Framework (the Framework) which seeks to promote healthy communities.
10. It has not been demonstrated that the proposal would be contrary to Policy SP9 of the Local Plan in respect of an overconcentration of takeaways, nor Policy SP2 which relies on it. I also find no conflict with Policies SP1 and SP3 of the Local Plan as these do not refer to matters of public health. However, this does not negate my conclusions on this main issue.

Vitality and Viability

11. The appeal site is part of a small group of shops and other commercial uses extending on either side of Portway. However, the area is predominantly residential in character including residential uses on the upper floors of the building containing the appeal site.
12. Policy INF5 of the Local Plan states that town centre uses will be directed to designated Town and Local Centres first. Despite the commercial units in this location, this area is not a designated Town or Local Centre within the Local Plan, nor is it a defined Local Shopping Parade. Outside of such defined centres and parades, the presumption in the Local Plan is that a change of use of a shop should be to a residential use. As the proposal relates to the introduction of a town centre use outside of a designated centre, the proposal would conflict with Policy INF5.
13. The proposal would relate to the replacement of one commercial use with another i.e. an existing retail use to a sui generis takeaway. However, it has not been demonstrated that the proposed use cannot be provided within a designated centre or parade, to the benefit of their vitality and viability. The

nature of the existing use does not weigh in favour of the proposal to the extent that this justifies a departure from adopted planning policy.

14. The appellant refers to the range of commercial uses which the appeal site could be changed to under the provisions of Use Class E. However, a hotfood takeaway is materially different to the range of uses which fall within Class E, and is a use which is more suited to a town centre location including in respect of supporting the vitality and viability of those locations.
15. Due to its location outside of a designated Town or Local Centre, the proposal would harm the vitality and viability of those designations. The proposal would therefore be contrary to Policies E9, SD6 and SD7 of the London Plan and Policies SP6, SP7 and INF5 of the Local Plan with regards to the vitality and viability of town centres and consolidating town centre uses. The proposal would also be contrary to the Framework in respect of ensuring the vitality of town centres.

Living Conditions

16. There are residential dwellings located in close proximity to the appeal site, including the floors directly above the proposal. Due to the proximity of these dwellings, residents are likely to be particularly susceptible to odours and noise generated by the appeal proposal. This would arise from cooking, as well as noise and disturbance from activity associated with the proposal including the comings and goings of customers.
17. It is proposed to install an extract and ventilation system including an air cleaner and ozone control units. However, given the close knit relationship with residential properties I am not persuaded that this would be sufficient to satisfactorily mitigate odours and fumes arising from the proposal, even given ongoing maintenance of filters. For the same reasons, I do not consider that acoustic insulation and vibration mounts would adequately control noise and vibration from the extract system, and I am also mindful of potential noise and disturbance arising from activities within the unit and from customers.
18. The appellant refers to a nearby restaurant which includes a flue pipe, and contends that the area is accustomed to higher levels of odour, fumes, noise and vibration. However, it would not be sensible to introduce a use such as the appeal proposal which may further increase the harm arising from noise and odour in this location.
19. There is reference to conflicting information with regards to the location of the discharge point of the extraction system. However, this is a matter of detail which could be addressed by condition. Nevertheless, this does not detract from my conclusions on the harm arising from the proposal on this main issue.
20. I conclude that the proposal would lead to significant harm to the living conditions of nearby residents with regards to odour, noise and disturbance. The proposal would therefore be contrary to the amenity, noise and air quality requirements of Policies D3, D14 and SI1 of the London Plan and Policies S1, SP2, SP8 and SC5 of the Local Plan. The proposal would also be contrary to the Framework which seeks to ensure a high standard of amenity for existing and future users of land and buildings.

Conclusion

21. For the reasons given above I conclude that the appeal should be dismissed.

David Cross

INSPECTOR