



Appeal Decision

Site visit made on 24 April 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2023

Appeal Ref: APP/L5240/W/22/3303804

29 Lower Addiscombe Road, Croydon CR0 6PQ

- 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 Dixon Decordeva of Flavour Boss Jerk Centre against the decision of the Council of the London Borough of Croydon.
 - The application Ref 22/01123/FUL, dated 16 March 2022, was refused by notice dated 27 May 2022.
 - The development is for the retention of A5 Use Class on Ground Floor and the erection of a new extract system to the rear.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The main parties agree that the hot food takeaway use applied for has commenced. Although the proposed external extract flue system had not been installed at the time of my site visit, I have determined the appeal on the basis that the use applied for has commenced.
3. The appellant's description of development in the banner heading above refers to Use Class A5 – hot food takeaways. However, this was amongst the use classes removed by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (SI 2020 No.757). Hot food takeaways are now listed as a use that cannot be included within a specified class of the Use Classes Order. As such, I have determined the appeal on the basis that the proposed use is "sui generis", which reflects the description used by the Council. I am satisfied that doing so would not prejudice the interests of any party.
4. In response to the Council's reason for refusal the appellant has submitted with their appeal a survey of hot food takeaways within the Addiscombe West Ward. The submitted survey does not change the appeal proposal and both the Council and interested parties have had an opportunity to consider its findings. Having regard to the principles established in the case of *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37], the interests of the parties would not be unfairly prejudiced were I to accept the submitted survey. Therefore, I have done so and had regard to the survey in reaching my decision on the main issue.

Main Issue

5. The main issue is whether the site is a suitable location for a hot food takeaway, having particular regard to its out of centre location and to public health.

Reasons

6. The hot food takeaway use occupies a former ground floor shop within a terraced building fronting Lower Addiscombe Road, that comprises of a ground floor commercial premises with residential accommodation on the upper floors. The main parties agree that the appeal site is located in an out of centre location.
7. Policy SD6 of The London Plan (Adopted July 2021) (TLP) seeks to promote and enhance the vitality and viability of London's varied town centres, through amongst others, ensuring that town centres are the primary locations for commercial activity.
8. TLP Policy SD7 states that boroughs should take a town centres first approach by applying the sequential test to applications for main town centre uses requiring them to be located in town centres. If no suitable town centre sites are available or expected to become available within a reasonable period, consideration should be given to sites on the edge of centres. Out of centre sites should only be considered if it is demonstrated that no suitable sites are available, or expected to become available, within town centres or edge of centre locations.
9. Notwithstanding the references to the now removed A5 Use Class, Policy DM8 of the Croydon Local Plan (2018) (the CLP), seeks to ensure that the vitality and viability of town centres is maintained by setting out a sequential approach to the location of hot food takeaways. This approach reflects that in the TLP, and requires applicants for planning permission to demonstrate that such uses cannot be accommodated on sites or in units that are both suitable and available within a town centre, or existing units in edge of centre locations.
10. In all locations, CLP Policy DM8 states that hot food takeaways are not acceptable in Wards where the existing provision exceeds the national average in order to support the public health agenda and restrict the opening of unhealthy hot food takeaways in close proximity to schools and open spaces. Where acceptable, hot food takeaways should be accredited in accordance with the Eat Well Croydon scheme.
11. There is no substantive evidence before me to demonstrate that the hot food takeaway use at the appeal site could not be accommodated on a site within a town centre location or edge of centre location. As such, the proposal would conflict with the objectives in TLP Policies SD6 and SD7, and CLP Policy DM8, which require, amongst others, that hot food takeaways are only located in out of centre locations where such uses cannot be accommodated on sites or in units that are both suitable and available within a town centre or existing units in edge of centre locations.
12. The appellant's survey of the Addiscombe West Ward shows that the hot food takeaway use at the appeal site would not result in the density of hot food takeaways within the Ward exceeding the national average density of 96.1 per 100,000 population. The appeal premises is accredited with the Council's Eat

Well Croydon scheme and would therefore contribute to promoting access to healthier food options and supporting the public health agenda of tackling obesity.

13. Consequently, the appellant's survey results show that the hot food takeaway use at the appeal site would comply with the threshold on the concentration of hot food takeaways set out in CLP Policy DM8. There is no substantive evidence before me to dispute the appellant's contention that the appeal site is not within 400m of a school. Therefore, on the basis of the evidence before me, the appeal proposal would not conflict with the locational criteria for hot food takeaways set out in TLP Policy E9.
14. However, irrespective of the appellant's survey of the concentration of hot food takeaways within the Ward, this would not outweigh the appeal site's locational conflict with TLP Policies SD6 and SD7, and CLP Policy DM8. These policies seek to ensure that the vitality and viability of town centres is maintained through a sequential approach to the location of hot food takeaways. I note that the Inspector in the appeal against the enforcement notice served on the hot food takeaway use at the site (APP/L5240/C/20/3263754) reached a similar conclusion on the evidence before them, finding that the site was not a suitable location for a hot food takeaway having regard to its out of centre location.
15. I conclude that on the evidence available, the appeal site is not a suitable location for a hot food takeaway having regard to its out of centre location and it would not maintain the vitality and viability of town centres. As such, it would conflict with TLP Policies SD6 and SD7, and CLP Policy DM8, which, amongst others, require that hot food takeaways are only located in out of centre locations where such uses cannot demonstrably be accommodated on sites or in units that are both suitable and available within a town centre or existing units in edge of centre locations.

Other Matters

16. The appeal premises serve Caribbean food. Interested parties, including those of Caribbean background, have brought to my attention that they find it difficult to obtain Caribbean takeaway food in the locality. I note that similar concerns were raised to the Inspector in respect of the appeal against the enforcement notice. Therefore, my decision on this appeal may disproportionately affect those with characteristics that are protected by the Equality Act 2010, by limiting access to Caribbean takeaway food in the locality. Under this Act, I am subject to the Public Sector Equality Duty in determining this appeal and I must have due regard to the three equality principles set out in section 149.
17. I have had due regard to the equality implications of my decision, in particular with the need to advance equality of opportunity and foster good relations between those who share a relevant protected characteristic and those who do not. However, these considerations do not outweigh the need to ensure that the vitality and viability of the town centre are maintained.
18. The use generates employment and brings economic benefits to the locality and revenue to the Council. It supports the community, helps train young people in the skills of cooking, and food is donated to charities and the homeless. However, there is no substantive evidence that such benefits could not be achieved in locations that accord with the policies that seek to maintain

the vitality and viability of town centres. As such, these benefits are outweighed by the conflict that I have identified with the policies referred to above.

19. There is no dispute between the main parties that the premises do not harm the character and appearance of the area; that the proposed kitchen extract flue would avoid visual intrusion and subject to appropriate worded planning conditions could safeguard against odour and noise nuisance; that opening hours could be controlled by condition; that level access is provided for persons with restricted mobility; and refuse storage and collection arrangements could be made satisfactory. However, these factors neither weigh in favour nor against the proposal, being requirements of any well designed and operated hot food takeaway.
20. The existence of other hot food takeaway uses in the locality does not override the Council's policies which require a sequential approach to the location of hot food takeaway uses. As such, the existing hot food takeaways in the locality do not weigh in favour nor against the proposal.

Conclusion

21. The proposed development conflicts with the development plan when considered as a whole. There are no material considerations, either individually or in combination that outweigh the identified harm associated with the development plan conflict.
22. For the reasons given above, I conclude that the appeal should be dismissed.

G Sylvester

INSPECTOR