



Appeal Decision

Site visit made on 13 June 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 27 June 2023

Appeal Ref: APP/G1580/W/22/3313516

191 Southborough Lane, Bromley, BR2 8AR

- 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 K Patel against the decision of Bromley London Borough Council.
 - The application Ref DC/22/03244/FUL1, dated 12 August 2022, was refused by notice dated 4 November 2022.
 - The development proposed is installation of container on land to rear of No. 191 Southborough Lane (fitted out as a mobile kitchen) along with storage container, and change of use of ground floor and land at rear from retail shop falling within Class E to a mixed-use comprising retail shop with delivery and collection of hot food prepared within kitchen container at rear of premises.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application form described the proposed development as "Provision of 1 no container to rear of property as storage. Provision of 1 no mobile kitchen and gas storage cage to rear of property. Kitchen to provide hot food as takeaway from No 191 Southborough Lane". This was amended in the officer's report, on the decision notice and on the appeal form to the description given in the heading above. I have adopted this description as it better reflects the nature and detail of the development proposed.

Main Issues

3. The main issues in this case are: i) the effect of the proposed mobile kitchen and associated hot food takeaway on the living conditions of the neighbouring residential occupiers in respect of smells, noise and general disturbance; ii) the effect of the proposal on the character and appearance of the site and the surroundings; and iii) the effect of vehicles coming and going, parking and servicing the proposed development in respect of the safety and convenience of highway users and the living conditions of nearby residential occupiers.

Reasons

4. The application site is a two storey mid terrace property with a retail shop on the ground floor. The parade of shops/commercial units with residential flats above is set back from the main carriageway of Southborough Lane, fronting

onto a narrow slip road which is accessed via openings between green spaces in front of the parade. At the rear, the site comprises an open garden/yard area with access to an unmade track leading between No. 1 The Fairway and 211 Southborough Lane. This track provides rear access/servicing for the commercial parade fronting Southborough Lane and access to the garden areas at the rear of some of the commercial units. The site slopes down from the rear access track to the back of the building, with the land adjacent to the building being at lower level than the garden/yard.

5. A number of the areas at the rear of the commercial premises are mostly taken up with storage or one kind or another, but from what I could see at my site visit, there are garden areas behind Nos.189, 193 and 197 Southborough Lane. There are also gardens of dwellings in Brookmead Avenue that back onto the access track. At the end of the access track, on land behind No.187 Southborough Lane, there is a yard that is largely used for storage, including in shipping containers. This area somewhat separates the appeal site from the rear gardens of dwellings in Cloisters Avenue.
6. The appeal proposal is that the current use is as a retail store would remain, but the shop would have a service counter selling hot food prepared in the mobile kitchen. The smaller container, closest to the shop, would be for storage use, with the larger unit, some 6.2m long behind would comprise the mobile kitchen. It is proposed that ingredients would be delivered to the kitchen at the rear via shop or the rear service track. Waste from the kitchen would be stored in bins at the rear and disposed of by a waste collection service. Sanitary/ changing facilities for the kitchen would be shared between the existing shop and the proposed kitchen (being those existing within the shop building). It is anticipated that there would be 2 to 3 deliveries a week of basic ingredients. The application form identifies the hours of operation being 11am to 10pm, 7 days a week including Bank Holidays.

The effect of the proposed mobile kitchen and associated hot food takeaway on the living conditions of the neighbouring residential occupiers in respect of smells, noise and general disturbance

7. As I have noted in paragraph 5 above, there are garden areas behind Nos.189, 193 and 197 Southborough Lane serving first floor residential accommodation. That accommodation already has a poor environment to the rear, and a noisy and crowded street frontage for much of the day and evening with the congested service road beyond a narrow footway. No doubt any residential accommodation above the commercial units is socially valuable, and the living conditions of occupiers should be given some priority. Additionally, I consider that the Brookmead Avenue gardens would also be vulnerable to disturbance due to smells and noise.
8. The kitchen unit is shown to be 6.2m long by 2.85m wide. Its height would be 2.8m from ground level nearest the shop unit, having to be raised at that end because of the sloping ground. The difference in levels, with the frontage buildings being at a lower level to that of the garden, would mean that the extractor fans, at the top of the kitchen unit, would be close to the level of the windows to first floor flats. The kitchen layout shows the following cooking equipment – 6 burner range and oven, 'salamander' grill, and deep fat fryer. The elevation of the kitchen (drawing No.2262-2A) shows 2 extraction fans, 1

at each end of the unit, although the schedule of equipment lists 1 'extraction system'.

9. The planning statement and updated details sheet, among other matters, refers to drawing 2262-2A, and refers to fans in the plural, stating (item 5) that they would have integral odour control filters. At item 8 it is said "Design not to exceed 53db at outlet. The appeal documentation also includes extracts from an axial fans catalogue, but from the information provided it is difficult to draw conclusions about how intrusive noise would be, although the movement of people from the kitchen and the store to the shop unit could be distinctly noisy for much of the day, and particularly at times of the year when the doors to the kitchen would be likely to be kept open. Since the appeal business is intended to operate every day of the year, from 11am to 10pm, no doubt with additional activity after the close of trading as staff clean up and leave, these aspects of the operation are of importance
10. More importantly, no satisfactory information is provided that deals with odour control, although in the appellant's appeal statement it is said "*extractor fans would control odours*" (paragraph 3.3) and "*the system would adequately remove odours and would be relatively quiet in operation*" (paragraph 5.19). A 'takeaway' kitchen is apt to produce odours that are unpleasant, and it is essential that kitchen extraction equipment deals effectively with this matter. The council's statement of case explains that the proposed Indian cooking has a high odour potential, requiring a very high level of odour control.
11. Taking account of the information that is provided, I consider that there would be unacceptable adverse effects on the living conditions of nearby residential occupiers as a result of smells, noise, and general disturbance.

The effect of the proposal on the character and appearance of the site and the surroundings

12. The illustration of the kitchen shows a unit that is not as unattractive as the containers that can be seen in the immediate vicinity, and it might be assumed that the storage unit would have similar appearance, although this is not shown. Nevertheless, these structures in the immediate vicinity of garden areas, which should give residential occupiers some attractive outdoor space away from the noisy vehicle dominated front slip road, also bring commercial activities closer to the gardens of the nearby houses. They would be harmful to the character and appearance of the site and the surroundings.

The effect of vehicles coming and going, parking and servicing the proposed development in respect of the safety and convenience of highway users and the living conditions of nearby residential occupiers

13. Although my site visit was in the early afternoon, I saw that the slip road was fully congested by moving and parked vehicles, indicating that this was probably fairly typical of much of the day for 6 days per week. Probably the situation would be less hectic in the evening, although there are existing takeaway businesses already operating in the immediate vicinity. The concerns of the council are largely founded on uncertainty about the effects of the proposed development through vehicles coming and going, parking and servicing, and the safety and convenience of highway users and the living conditions of residents. But there are no clear indications that this would be so

and, on balance, I am not persuaded that these matters justify the refusal of permission.

Conclusions

14. I have not made reference to the various development plan policies, or the content of the National Planning Policy Framework. The fact is that the decision on this appeal, taking account of the information provided, comes down to a matter of judgement on the likely effects of the proposal on the living conditions of residential occupiers and the character of the area. I have found that the appeal proposal would bring unacceptable adverse effects on the living conditions of nearby residential occupiers as a result of smells, noise, and general disturbance, and there would be harm to the character and appearance of the site and the surroundings. For these reasons I will dismiss the appeal.

Terrence Kemmann-Lane

INSPECTOR