



Appeal Decision

Site visit made on 16 May 2023

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2023

Appeal Ref: APP/Z5630/W/22/3307281

15 Ace Parade, Chessington KT9 1DR

- 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 Mehoy Rannama against the decision of the Council of the Royal Borough of Kingston Upon Thames.
- The application Ref 22/01643/FUL, dated 13 May 2022, was refused by notice dated 20 July 2022.
- The development proposed was initially described as "*Change of use from shop/restaurant Class 5 to takeaway (Sui Generis) A5 use*".

Decision

1. The appeal is allowed, and planning permission is granted for the change of use from restaurant (Use Class E) to mixed use restaurant and takeaway (Use Class Sui Generis) at 15 Ace Parade, Chessington KT9 1DR in accordance with the terms of the application, Ref 22/01643/FUL, dated 13 May 2022, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. I have taken the address of the appeal site from the Council's decision notice as it more accurately reflects the location of the appeal site than that stated on the application form. I have also amended the description of development to reflect the changes to the Use Classes Order which came into force on 1 September 2020¹ and the appeal premises current use as a restaurant.

Main Issue

3. The main issue is the effect of the proposed development on public health, having regard to the proximity of the appeal site to a local school.

Reasons

4. The appeal site is located within a parade of shops adjacent to an off-slip from the Kingston bypass dual carriageway (A3) at Hook Road. It is currently in use as a small pizza restaurant and is less than 200 metres from the entrance of Southborough High School to the north, situated on the opposite side of the A3. The proposal involves the change of use of the premises from a shop/restaurant (Use Class E) to a mixed-use shop/restaurant and hot food takeaway (Sui Generis Use).
5. Objective D of London Plan 2021 (LP) Policy E9 states that development proposals involving hot food takeaway uses should not be permitted where

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

they are within 400 metres walking distance from the entrances and exits of primary or secondary schools. The supporting text states that a wide range of health experts recommend restricting the proliferation of hot food takeaways, particularly around schools, to help create a healthier food environment. This objective is aimed at improving the health and wellbeing of the community by limiting the ability of children to access unhealthy food through resisting the proliferation of hot food takeaways in proximity to schools.

6. The Use Class E status of the appeal site means that other than its current use as restaurant it could be used as a shop or a restaurant without the need for planning permission. As either a restaurant or a shop the premises could sell food deemed as unhealthy as that of a hot food takeaway.
7. To reach the appeal site from the school entrance, pedestrians would need to negotiate two zebra crossings on the slip roads to and from the dual carriageway. As such I consider that the mixed-use nature of the premises and the location on the opposite side of the dual carriageway to the school entrance would deter school pupils from considering it as an attractive option for hot food. Furthermore, I observed that there were other establishments in the vicinity also within 400 metres walking distance of the school access point, also offering hot takeaway food. These were all on the north side of the A3, closer to the school entrance than the appeal site.
8. Objective E of LP Policy E9 promotes the use of a Healthier Catering Commitment (HCC) certification scheme whereby operators of food businesses are able to gain accreditation for measures which reduce unhealthy components of takeaway food or the inclusion of healthier alternatives on a menu. The appellant sets out in detail how the premises operates as restaurant in relation to healthy catering and has provided a copy of their HCC certificate.
9. Whilst the existence of other hot food takeaways in the locality is not a reason in itself to allow another hot food takeaway, in this instance I have taken into account the location of the appeal premises in relation to the school entrance, the mixed-use nature of the proposal and the operators accreditation with the HCC in line with Objective E of LP policy E9.
10. Therefore, I consider that the proposal would warrant an exception to Objective D of Policy E9 of the London Plan, which seeks to manage the effects of hot foot takeaways on the health and wellbeing of local schoolchildren.

Other Matters

11. I have carefully considered representation made with regard to the proliferation of food outlets in this location. I have also considered the traffic impacts of the proposal. However, based upon the responses from the relevant consultees and upon the information available to me, there is no substantive evidence that harm would arise with respect to these matters. Furthermore, I am satisfied that, where necessary, any additional measures required could be adequately secured by planning conditions.

Conditions

12. I have considered the Council's suggested conditions in the light of the tests in the National Planning Policy Framework and the guidance in the Planning Policy Guidance (PPG). I have imposed the standard time limit as I have not been provided with any substantive evidence the use as applied for has commenced.

A plans conditions is also considered necessary for certainty, I have imposed a range of conditions relating to the operation of the premises, including hours of operation, noise, vibration and odour control, fire safety and refuse storage which are all reasonable due to the intensification of the use to include hot food takeaway to ensure that the premises operates safely and with consideration to the living conditions of nearby residents. As the premises is already in use as a restaurant, it would not be appropriate to impose these as pre-commencement conditions.

13. Having considered the requirements of Objective E of LP Policy E9 which requires boroughs to introduce a requirement for compliance with the HCC where it would be justified. Although the KLP predates the LP, I have not been made aware of any intention that the borough intends to introduce such a policy in a draft Local Plan, nor have I been provided with any data which suggests that the borough suffers from high levels of obesity. I, therefore, do not consider that it would be reasonable or justified to impose an ongoing requirement on the operators of the premises to be accredited by the HCC.

Conclusion

14. Planning law² requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The PPG advises that a material consideration is one which is relevant to making the planning decision in question. In coming to my decision, I have had full regard to the conflict of the proposal with Objective D of the LP policy E9. This conflict carries considerable weight in the determination of the appeal. However, the evidence put forward by the appellant with regard to his commitment to the HCC promoted by Objective E of LP policy E9, the appeal site's location in relation to the school entrance and the mixed-use nature of the proposal indicates that a decision otherwise in accordance with the development plan should be made in this instance.
15. For the reasons given above, having considered the development plan as a whole and all relevant material considerations that justify a departure from it and leads me to conclude that the appeal should be allowed subject to the conditions set out in the attached schedule.

K L Robbie

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 22/511//E/01 Rev A Existing Floor Plans & Elevations; 22/511/P/01 Rev A Proposed Floor Plan & Elevation.
- 3) The use hereby permitted shall not be open to customers outside of the following times: 0800 hours to 2300 hours Monday to Sunday.

² Section 38 (6) of the Planning and Compulsory Purchase Act 2004

- 4) Within 3 months of the date of this permission, an acoustic report shall be submitted to and approved in writing by the Local Planning Authority demonstrating that the rating level of any plant, permitted as part of this development, will be at least 5dBA lower than the existing background noise level at any given time of operation. The noise levels shall be measured or predicted 1m externally to any window at the nearest residential facade. Measurements and assessment shall be made according to British Standard 4142:2014.
- 5) Within 3 months of the date of this permission, full details, with calculations, of the extraction system have been submitted to and approved in writing by the Local Planning Authority. The submission shall include, where applicable, details of:
 - (i) The extract fan, attenuators (it is recommended that the infill is protected by Melinex polyester film), anti-vibration mounts, high velocity cowl, filters, odour abatement and any other items of plant;
 - (ii) The velocity of the air at final discharge and duct termination height and location;
 - (iii) The retention time of gases in the carbon filters (where applicable);
 - (iv) A maintenance schedule;
 - (v) A completion of a risk assessment of odour and demonstration of compliance with "Control of Odour and Noise from Commercial Kitchen Exhaust Systems" published by EMAQ+ dated September 2018, which replaced the previous Defra guidance, now withdrawn. Before commencement of the approved use, the approved extraction system shall be installed on site in accordance with the approved details and shall be retained and maintained thereafter. Any variations thereafter shall be agreed in writing by the Local Planning Authority.
- 6) The plant shall be supported on adequate proprietary anti-vibration mounts as necessary to prevent the structural transmission of vibration and regenerated noise within adjacent or adjoining premises, and these shall be so maintained thereafter.
- 7) Within 3 months of the date of this planning permission, a Fire Statement which is an independent fire strategy, produced by a third party, suitably qualified assessor, shall have been submitted to, and approved in writing by, the local planning authority. The statement should detail how the development proposal will function in terms of:
 - (i) the building's construction: methods, products and materials used, including manufacturers' details
 - (ii) the means of escape for all building users: suitably designed stair cores, escape for building users who are disabled or require level access, and associated evacuation strategy approach
 - (iii) features which reduce the risk to life: fire alarm systems, passive and active fire safety measures and associated management and maintenance plans

- (iv) access for fire service personnel and equipment: how this will be achieved in an evacuation situation, water supplies, provision and positioning of equipment, firefighting lifts, stairs and lobbies, any fire suppression and smoke ventilation systems proposed, and the ongoing maintenance and monitoring of these
 - (v) how provision will be made within the curtilage of the site to enable fire appliances to gain access to the building 6. ensuring that any potential future modifications to the building will take into account and not compromise the base build fire safety/protection measures.
- 8) Within 3 months of the date of this planning permission details of waste and recycling facilities to serve the development to which this permission relates shall be submitted to and approved in writing by the local planning authority. The refuse and recycling facilities as shown in the approved details shall be provided prior to beneficial occupation of the development and shall be permanently retained thereafter. The developer and/or their successors in title shall take all reasonable steps to ensure that all refuse and recyclable materials associated with the development are either stored within these facilities or internally within the building(s) on the application site, and that no refuse or recycling material is stored or placed for collection on the public highway except on the day of collection.
- 9) Within 3 months of the date of this planning permission, a scheme detailing sound transmission reduction measures to be installed between the ground floor use and the first floor flat, designed to provide at least DNTw+Ctr 50dB, shall be submitted and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details prior to the commencement of the use and retained thereafter.