



Appeal Decision

Site visit made on 11 July 2023

by F Harrison BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2023

Appeal Ref: APP/U5360/W/22/3304786

22 Shoreditch High Street, Hackney, London E1 6PG

- 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 Waqim Mirza against the decision of the Council of the London Borough of Hackney.
- The application Ref 2022/0871, dated 4 April 2022, was refused by notice dated 19 July 2022.
- The development proposed is change of use from a class E to sui generis (hot food takeaway).

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's name is spelt differently on the application form and the appeal form. The spelling in the banner heading above is taken from the application form which matches the spelling on the decision notice. I have used the description of development as stated on the Council's decision notice, rather than that given on the application form, as this is more precise. The appellant raises no specific objection to that description, which they have subsequently used on the appeal form.

Main Issues

3. The main issues are:
 - whether the appeal site is a suitable location for the proposed use as a hot food takeaway; and
 - the effect of the proposal on the living conditions of neighbouring occupiers with regard to noise and disturbance.

Reasons

Suitable location

4. Policy LP39 of the Hackney Local Plan (2020) (HLP) is clear that proposals for new hot food takeaways will only be permitted where a series of criteria are met. This includes a requirement at criterion iii) for there to be at least three non-takeaway units between the proposed use and an existing takeaway. The adjoining unit to the appeal site, 21 Shoreditch High Street, has been identified by the Council as a takeaway. While the Council have referred to the adjoining unit being a 'former A5 use' this is in reference to the change in the use class order with takeaway moving from use class A5 to sui generis.

5. I observed the adjoining unit to be closed with the roller shutters down and it was not clear if it was still trading. However, even if the unit has been closed for several years and there is said to be an ongoing legal dispute associated with the unit, no further substantive evidence is before me on this matter and in any event, this would not prevent another takeaway operator taking over the unit. As such, I have no clear reason to come to a different conclusion to the Council that the adjoining unit's authorised use is a takeaway. Consequently, the proposal would lead to an over-concentration of hot food takeaways. For this reason, I conclude that the appeal site is not a suitable location for the proposed use as a hot food takeaway, in conflict with Policy LP39 of the HLP which seeks to avoid the over-concentration of hot food takeaways.

Living conditions

6. The appeal property occupies a ground floor unit in a row of two storey terraces where the ground floors are in commercial use. The Council suggest that the first floor of the terraces are residential flats and has particular concerns about the effect of the proposal on the occupiers at 23 and 24 Shoreditch High Street. The appellant in their submissions, however, have drawn my attention to a photo which demonstrates that the first floor space at Nos 23 and 24 are used as seating areas in connection with the public house on the ground floor. I also note that the first floor of the appeal site is said to be in use as ancillary office space.
7. Nevertheless, while the ground floor may currently be closed at the adjacent unit at No 21, there is no clear evidence before me that the first floor of that property is not in use as a residential flat or has an authorised use as a flat. As such, on the basis of the evidence before me, I cannot be certain there would not be occupiers in proximity to the development which would create a sensitive relationship. The development is proposed to be open into the night time, until 5am seven days a week. As such, the effects of the development would be most keenly experienced when any neighbouring occupiers are likely to be at home and sleeping.
8. The appeal site is located in an area that has a mix of uses and a commercial character and I appreciate that the public house and off license within the same terrace as the appeal site have late opening times. They are not however as late in to the night and early morning as the appeal scheme would be. Moreover, the late-night activity associated with a takeaway would have a greater potential for disturbance from increased comings and goings. This increase in noise and disturbance would be audible from the adjacent first floor premises at a time when any occupiers would reasonably expect a level of peace and quiet and as such, would give rise to a significant adverse effect on their living conditions.
9. Therefore, the proposal would unduly harm the living conditions of neighbouring occupiers, with regard to noise and disturbance, in conflict with Policy E9 of the London Plan (2021) and Policies LP2, LP38 and LP58 of the HLP. These policies, amongst other things, seek to manage the over concentration of takeaway uses to ensure development is appropriate to its location, which should be designed to ensure there are no significant adverse impacts on the amenity of occupiers and neighbours, including through noise and disturbance.

Other Matters

10. The appeal scheme is said to be necessary to enhance the financial viability of the commercial unit. While the change of use would support employment opportunities at the site which is a clear benefit, the modest level of jobs that would result attracts limited weight. Moreover, it has not been shown the proposal is the only way of ensuring the unit is viable. The benefits of the scheme do not therefore outweigh the harm I have identified above on the main issues to which I attach considerable weight.
11. The appeal site falls within the South Shoreditch Conservation Area. The Council do not have concerns regarding the impact of the proposal on the significance of this designated heritage asset. Having considered the proposal and visited the site, I concur with that view and find that the appeal proposal would have no effect on the character or appearance of the conservation area.

Conclusion

12. My above findings bring the proposal into conflict with the development plan, read as a whole. There are no material considerations that have been shown to have sufficient weight to warrant a decision otherwise than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

F Harrison

INSPECTOR