



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: 25 August 2023

Appeal Ref: APP/G5750/W/23/3314966

452 Romford Road, London E7 8DF

- 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 Balasingam Nanthakumar against the decision of the Council of the London Borough of Newham.
- The application Ref 22/01389/FUL, dated 10 June 2022, was refused by notice dated 7 November 2022.
- The development proposed is change of use from use class E to hot food takeaway and installation of extractor flue pipe and shop front.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues relevant to this appeal are the effect of the proposal on:
 - the health and wellbeing of local residents, with particular regard to the health of young people;
 - the vitality and viability of town and local centres; and
 - the character and appearance of the area, including the appeal property.

Reasons

Health and wellbeing

3. The London Plan (LP) (2021) at Policy GG3 seeks to create a healthy food environment by restricting unhealthy options and Policy E9 sets out that the over concentration of hot food takeaways (HFT) should be carefully managed through locally defined thresholds. For the Borough of Newham, to avoid the over concentration of takeaways a linear and area concentration has been adopted in Policy SP9 of the Newham Local Plan 2018 (NLP). This includes a requirement that there are no more than three takeaway premises within 400 metres (m) of each other. Moreover, Policy E9 of the LP is clear that where an HFT application falls within 400m of a primary school, planning permission will not be granted.
4. While there is not a linear concentration of takeaways on either side of Romford Road in the appeal site location, the Council have clearly demonstrated that there is a concentration of three or more takeaways within a 400m catchment. The appellant has not provided any detailed evidence to the contrary. As such, the proposal would further exacerbate the concentration of takeaways in the locality and increase the availability of unhealthy foods. It

would not therefore contribute positively to the health and wellbeing of residents, a strategic aim of the NLP.

5. Furthermore, it is not disputed that the appeal site falls within 400m of a primary school. Given this proximity, even if the primary age children would be supervised by an adult, it seems to me a strong likelihood that the appeal development would be a destination for school pupils. Moreover, the general absence of other HFTs in the immediate area means the appeal development would increase the access of school children to purchase unhealthy foods. The appeal scheme, therefore, does not promote healthy eating.
6. The use class order does not distinguish between healthy and non-healthy food at takeaway premises. I have no details before me on the intended operator's menu which may well have a healthy food offer. In any event, a condition restricting the sale of unhealthy food would not meet the relevant tests set out in the Planning Practice Guidance.
7. I note the support from a local resident for a HFT at the site rather than the existing convenience store, of which there are said to already be many in the area. However, there is a policy requirement for proposals to contribute to the creation of a healthy food environment and in this case, the addition of an HFT in an area where there is already a concentration of such uses would not support healthy lifestyles, and in doing so would be detrimental to an identified local health and wellbeing need.
8. The Council alleges a conflict with Policy SP1 of the NLP with regards to this matter. While Policy SP1 refers to development helping to deliver the Council's duty to promote community safety, it does not explicitly refer to healthy lifestyles and my attention has not been drawn to any words in this policy that are relevant to this main issue. This policy has not therefore been determinative in my decision.
9. For the reasons given above, the proposal would be harmful to the health and wellbeing of local residents, with particular regard to the health of young people, in conflict with policies GG3 and E9 of the LP and policies SP2, SP3 and SP9 of the NLP which seek to promote healthy lifestyles, avoid problems of bad neighbour uses such as HFTs and avoid the concentration of takeaway uses, including preventing new HFT uses within 400m of primary schools.
10. The proposal would also be contrary to the provisions of the National Planning Policy Framework (the Framework) at paragraph 92, which sets out that planning decisions should aim to achieve healthy places which enable and support healthy lifestyles, especially where this would address identified local health and wellbeing needs.

Vitality and viability

11. The LP states that the vitality and viability of London's varied town centres should be promoted, enhanced and strengthened as a main focus for London's sense of place. The Council's strategy, set out in policies INF5, SP6 and S6 of the NLP, is to direct town centre uses to designated centres first in order to consolidate their economic roles.
12. The appeal site is not located within a designated local or town centre and as such the proposal is not a location where the change of use to a takeaway would be acceptable in policy terms. While the proposal would not result in a

new commercial use given the proposed replacement of an existing retail premises to a takeaway, I note that outside of defined centres, the presumption is that a change of use of a shop should be to a residential use. Moreover, it has not been demonstrated that the proposed use cannot be provided within a designated centre, 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.

13. The proposed development may only be modest in scale, however the incremental effect of these types of development would be likely to have a detrimental effect on the Council's strategy to support the designated centres if they are allowed to go unchecked. As such, the proposal would harm the vitality and viability of town and local centres, in conflict with policies E9, SD6, SD7 and SD8 of the LP and policies S6, SP6, SP7 and INF5 of the NLP. Amongst other things, these policies require town centre uses to be directed to designated centres to encourage a consolidation of commercial uses to ensure the vitality and viability of their economic role. The proposal would also be contrary to Section 7 of the Framework in relation to ensuring the vitality of town centres.

Character and appearance

14. The appeal property forms part of a row of three storey terraced properties with commercial uses on the ground floor on Romford Road which has a mixed-use character. Katherine Road nearby to the site is predominantly residential in character. The flue would be on the rear elevation which has a varied appearance owing to a range of outriggers, extensions and alterations. While the proposed flue is of a substantial size, it remains commercial in nature and would not appear incongruous in this mixed used area. In any event, a condition could be imposed requiring the flue to be painted to match the brick work to ensure a harmonious appearance that would not be highly visible to nearby occupiers or pedestrians and drivers. As a result, the appeal scheme would relate positively to the character and appearance of the appeal property, and the terrace as a whole.
15. While I note that Katherine Terrace is identified in the NLP as a key movement corridor/linear gateway, owing to the appeal site's mid terrace location, views of the rear elevation from this street are limited. In any event, given that I have found the flue to respect the character and appearance of the area, it follows that the scheme would not be significantly detrimental to the public realm of the key movement corridor/linear gateway.
16. As such the proposal would not harm the character and appearance of the area, including the appeal property and accords with policies D3, D4 and D8 of the LP and policies SP1, SP3, SP7 and SP8 of the NLP. These policies, amongst other things, require development to be of a high quality of design and respond positively to the site's context including public realm and the borough's key movement corridors and linear gateways. Proposals should positively respond to local distinctiveness through their scale and appearance, with due regard to existing building types, forms and proportions and avoid negative design impacts for neighbours. The proposal would also align with the Framework at Section 12 with regard to achieving well designed places.
17. The Council also alleges a conflict with Policy D1 of the LP and Policy SP2 of the NLP with regards to this matter. These policies refer to defining an area's

character to understand its capacity for growth and healthy neighbourhoods, and my attention has not been drawn to any words in these policies that are relevant to this main issue and as such have not therefore been determinative in my decision.

Other Matters

18. The appeal scheme is said to be necessary to avoid the closure of the premises as the existing newsagents is experiencing a lack of business. While the change of use would support continued 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 appeal development is the only way of achieving the appellant's aim of keeping the property occupied.

Conclusion

19. While the proposal would not harm the character and appearance of the area, my above findings in relation to health and wellbeing and vitality and viability 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