



Appeal Decision

Site visit made on 1 February 2024

by L Reid BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2024

Appeal Ref: APP/U5360/W/23/3327483

151 Ground Floor, Hoxton Street, Hackney, London N1 6PJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Murat Bey against the decision of the Council of the London Borough of Hackney.
 - The application Ref is 2023/0130.
 - The development proposed is described as shopfront alterations and installation of a flue. Change of use from E class to mix class E & Sui generis (hot takeaway). Variation of opening hours Sunday-Thursday 09:00-23:00 and Friday & Saturday 09:00-01:00.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was made, the Government revised the National Planning Policy Framework (the Framework). Policies material to this decision have not fundamentally changed. Therefore, I have not sought the main parties' views on the changes to the Framework.
3. The description of development in the banner heading above has been taken from the planning application form. It is different to that on the Council's decision notice. However, neither of the main parties has provided written confirmation that a revised description of development was agreed. I have removed the reference to "retrospective" as this is not a description of development.
4. From the information provided, the change of use has already commenced. The description of development implies that the shopfront alterations have also been installed prior to the submission of the application. The submitted elevation plan shows pre-existing front elevation shopfront, an existing front elevation shopfront and further changes proposed as 'proposed front elevation plan'. At the time of my site visit, it did not appear that the timber panel and door had been installed as identified on the proposed elevation plan and I have considered the appeal on that basis.
5. The Council has previously issued an enforcement notice which has been appealed. I have not been provided with any further information on this.

Main Issues

6. The main issues are:
 - Whether the appeal site is in a suitable location for the change of use, having regard to its proximity to schools; and,

- Whether the shopfront alterations would preserve or enhance the character or appearance of the Hoxton Street Conservation Area.

Reasons

Suitable location

7. Part A of Policy LP39 of the Hackney Local Plan 2020 (the HLP) sets out the criteria that must be met for a hot food takeaway to be permitted by the Council. One of the requirements is that it is not located within 400 metres of the boundary of a primary school, secondary school or college. This is to address rising levels of childhood obesity in the Borough. Proposals for takeaways are also required to submit a health impact assessment in line with Policy LP9.
8. The development is described as a mixed-use restaurant and hot food takeaway. I was afforded access to the premises at the time of my visit, albeit the business was not open for customers, and I saw that there was seating available for customers. The applicant asserts that 50% of customers eat in the premises. The consumption of food is not mostly undertaken on the premises as would typically be the case with a Class E restaurant. The hot food takeaway element is part of the proposal, and it is therefore reasonable to assess the proposal against Policies LP9 and LP39.
9. Although within a mixed commercial and residential area, the Council has identified that the appeal site is located within 400 metres of the boundary of three primary schools. There is no counterevidence before me to dispute this. It is therefore likely that schoolchildren and their parents walk past the premises to the nearby primary schools. While the appellant suggests that the food on offer will include healthy options, there is no guarantee that these would be taken up by customers. Furthermore, planning permission cannot restrict the type of food to be sold from the premises, and therefore a range of food types cannot be guaranteed.
10. The appellant undertakes a health impact assessment in their appeal statement. However, it is largely focused on the mitigation measures for the noise and air pollution from the extraction system. It lacks sufficient detail in terms of identifying the potential impacts on health from the change of use and demonstrating how these issues would be addressed.
11. For these reasons, I find that the appeal site is not in a suitable location for the change of use because of its proximity to schools with the consequent harm that could arise from increasing levels of childhood obesity in the borough as identified in the adopted development plan. Insufficient information has also been submitted to adequately address the associated health impacts of the development. The proposal therefore conflicts with Policies LP9 and LP39 of the HLP, the purposes of which have been set out above. I give significant weight to this conflict.

Character and appearance

12. The appeal site is within the Hoxton Street Conservation Area (the CA). I have therefore had regard to Section 72(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 which requires that special attention be paid to the desirability of preserving or enhancing its character or appearance.

13. I have not been provided with a copy of the CA character appraisal. Based on my observations insofar as relevant to this proposal, the significance of the CA is primarily derived from the survival of the historic buildings which retain their traditional forms and architectural detailing. The buildings are laid out in a long linear form and share a broad consistency in height and materials. The various ground-floor commercial uses give this part of the CA its busy character. However, at ground level, there is little consistency in the design of the shopfronts with varying proportions, detailing and materials.
14. 151 Hoxton Street is a three-storey building with a shopfront and signage at ground floor, a traditional brick facade and timber sash windows with surround detailing on the upper floors and a well-defined parapet roof. It forms part of a terrace where several of the buildings have been altered and extended. As the building exhibits some of the traditional features characteristic of the CA, it makes a positive contribution to its significance.
15. The Shopfront Design Guide Supplementary Planning Guide (the SPG) does not strictly prohibit modern shopfronts. Instead, these shopfronts are encouraged where it is considered appropriate. The existing aluminium shopfront would be altered with a timber panel and a timber door installed. It would therefore be a mix of traditional and modern materials.
16. I have had regard to how the character of this building has changed. However, given the townscape context of this part of the CA, where the shopfront designs are so diverse, the proposed shopfront alterations would not appear incongruous. They would have a neutral effect on the character of the building and would therefore preserve the character and appearance of the CA as a whole. Policy D4 of the London Plan 2021 concerns the processes of design and has less relevance. Notwithstanding this, the proposal complies with Policy HC1 of the London Plan 2021, Policies LP1 and LP3 of the HLP and the guidance contained in the SPG. Amongst other things, these policies require development to be of the highest architectural design quality that preserves or enhances the significance of heritage assets.

Other Matters

17. Other restaurants nearby may also offer takeaway services, however, there are no substantial details before me of when these uses were permitted.

Conclusion

18. The proposal would preserve the character and appearance of the CA. It is also likely to provide some employment opportunities and support the vitality and viability of the area which would provide some limited economic benefits. Taken together, these benefits would not outweigh the harm I have identified above including the conflict with the development plan.
19. The proposal conflicts with the development plan when read as a whole, and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal is dismissed.

L Reid

INSPECTOR