



Appeal Decision

Site visit made on 17 June 2024

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2024

Appeal Ref: APP/L5240/W/24/3338052

37 Brigstock Road, Thornton Heath, Croydon CR7 7JH

- 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 K Mozumder against the decision of the Council of the London Borough of Croydon.
 - The application Ref is 23/03847/FUL.
 - The appeal development is a change of use of ground floor from café (Use Class E(b)) to restaurant and take away (Use Class Sui Generis), and associated alterations.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the appeal development on the application form is unclear. I have used the description from the appeal form, with minor amendments, in the banner heading above.
3. I note from the evidence that the appeal development has taken place.

Main Issues

4. The main issues are whether the appeal development would allow for:
 - Suitable access and storage for bicycles; and,
 - Suitable access for the storage and removal of waste and recycling materials.

Reasons

5. The appeal property is located within a short parade of commercial uses on Brigstock Road, with its principal entrance and exit onto the footpath by Brigstock Road. The site edged red location plan identifies the appeal site, and from this, and my observations on site, it is clear that the front doorway is the only direct means of accessing the appeal property from the public highway, and vice versa.
6. I note the existing lawful use of the property is said to be a café, although no substantive evidence has been provided to demonstrate this. Such a use has some similarities to the appeal development, including in terms of the preparation and service of food and drink to visiting members of the public, and the consequent removal of associated waste.

7. The appellant does not directly address how the appeal development's waste and recycling materials would be removed from the property. Reference is made to how the café use was said to store waste / recycling from the business in the rear yard, which was then collected, via the rear access door, from Boswell Road, a side road to the east of the appeal site, by a commercial waste service. This is said to have occurred three times a week. However, no evidence of this operation has been provided by the appellant.
8. In the absence of any substantive evidence showing how the appeal development would deal with the removal of waste and recycling, I have assumed the same approach is intended.
9. However, this approach would entail crossing the land of a third party, an MOT garage at 2A Boswell Road. This land is clearly marked as a *Private Forecourt* by signs, and there is also yellow hatching and parking spaces painted onto the ground to signify its extent and function. The forecourt was occupied by a number of vehicles at the time of my site visit.
10. The appeal site is in a reasonably accessible location, close to a railway station and with a bus stop by the front entrance. There are said to be bicycle parking areas nearby but these are not identified by the appellant and so whether they would be convenient for visitors is not clear.
11. Employees, including potentially delivery riders, are said to be able to store bicycles in the rear yard. However, unless the employees wheeled their bicycles through the restaurant and kitchen / office, which would be neither convenient, hygienic or without a risk of danger, they would also have to cross the land of the third party to reach the public highway.
12. Again, in the absence of any substantive evidence explaining how bicycles would be moved from the public highway to the rear yard, I have assumed the same approach to waste / recycling, across the third party land, is intended.
13. The site edged red location plan does not include a route from the rear of the site to the public highway at Boswell Road. Consequently, the owner of this land has not been formally notified that access is required over their land for the appeal development.
14. Whilst a rear access is mentioned by the appellant, they do not directly address whether a right of access exists over the third party land for either the removal of waste / recycling or for employees to store their bicycles. Even if such a right exists, passing through land used for an MOT business without any physical segregation from that use would carry risks of injury and would not be satisfactory.
15. It is not clear what effect the rear access to the appeal property through the MOT business would have on the operation of that business. Were the access route to be blocked, or any right of access withdrawn by the third party, waste / recycling and bicycles would need to be transported through the restaurant, which would also not be satisfactory.
16. Notwithstanding the appellant's assertion that these matters could be addressed by way of planning conditions, or the conditions suggested by the Council were the appeal to be allowed, I am not satisfied these matters could be controlled in this way.

17. Government policy sets six tests for the imposition of planning conditions¹ and it is not clear to me from the evidence that conditions to satisfactorily control bicycle access and the removal of waste / recycling materials over third party land would meet the tests of reasonableness or enforceability.
18. For these reasons, the appeal development would not provide suitable access and storage for bicycles, or for the storage and removal of waste and recycling materials. It would, therefore, conflict with Policies T1 (strategic approach to transport), T2 (healthy streets), T4 (assessing and mitigating transport impacts) and T5 (cycling) of the Spatial Development Strategy for Greater London March 2021; with Policies SP8 (transport and communication), DM16 (promoting healthy communities), DM29 (promoting sustainable travel and reducing congestion) and DM30 (car and cycle parking in new development) of the Croydon Local Plan 2018, and with the Framework, in this regard.

Conclusion

19. For the reasons given above, I conclude the appeal is dismissed.

Andrew Parkin

INSPECTOR

¹ Paragraph 56 - National Planning Policy Framework December 2023 (the Framework)