



# Appeal Decision

Site visit made on 2 July 2024

**by K Lancaster BA (hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 July 2024**

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**Appeal Ref: APP/E5900/W/24/3338920**

**111A Commercial Road, Tower Hamlets, London E1 1RD**

- 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 Azizur Rahman against the decision of the Council of the London Borough of Tower Hamlets.
  - The application Ref is PA/23/02126.
  - The development proposed is the change of use from a cafe/coffee shop (Use Class E(b)) to a takeaway (Sui Generis).
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Based on the evidence before me and my observations at my site visit, the change of use has already commenced. I have therefore considered the appeal on this basis.
3. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023 and updated it on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

## Main Issue

4. The main issue is whether the appeal site is in a suitable location for the change of use, having regard to its proximity to schools.

## Reasons

5. The appeal site, 111A Commercial Road comprises a single storey building located just off Commercial Road, accessed from Parfett Street. It is currently in use as a hot food takeaway (Use Class Sui Generis). Prior to this, the premises was in use as a café (Use Class E). The surrounding area is characterised by a mix of commercial, residential, and educational uses.
6. The appeal is seeking planning permission retrospectively for the change of use of the premises only, no external changes to the building are proposed.
7. Policy E9(d) of the London Plan 2021 states that proposals involving hot food takeaway uses should not be permitted within 400 metres walking distance

from the entrances and exits of existing or proposed 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.

8. Policy D.TC5 of the Tower Hamlets Local Plan (THLP) states that proposals for hot food takeaways should not be within 200 metres walking distance from an existing (or proposed) school and/or a local authority leisure centre. However, as the London Plan was adopted after the THLP, it supersedes the minimum distance requirement set out in this policy.
9. It is not disputed that the appeal site is located in close proximity to a number of schools, including, but not limited to, Kobi Nazrul Primary School and Madani Girls School, which are both located within 200 metres of the appeal site. A further number of other schools<sup>1</sup> are located close by and within 400 metres walking distance. It is therefore likely that schoolchildren and their parents walk past the premises to the nearby schools.
10. The appeal site is located in a mixed commercial area, and I accept that this means there are a number of existing hot food takeaway units selling similar food and that a single premises operating as a hot food takeaway will not have a significant effect on the provision of these premises within close proximity to local schools. Nevertheless, it would contribute to increasing the concentration of these uses.
11. It is also noted that, had the appeal site remained a café, it could have also served a similar menu of food items as the current hot food takeaway, and this would have been deemed acceptable as the café would fall under Use Class E(b).
12. However, whilst the recent revisions to the Use Classes Order introduced a greater degree of flexibility to change use within the newly created Use Class E and that this includes Café/Restaurant uses, it specifically excluded Hot Food Takeaways which have a Sui Generis use. Both Policy E9 of the London Plan and D.TC5 of the THLP are concerned with the proximity of new hot food takeaway uses to schools and leisure facilities. Therefore, whilst I have had regard to the previous use of the appeal site as a café and the proximity of similar uses, I am not persuaded that this addresses the policy conflict which has been identified.
13. For these reasons, I find that the appeal proposal is not in a suitable location, having regard to its proximity to local schools. The change of use is therefore contrary to Policy E9 of the London Plan and Policy D.TC5 of the THLP, which require, amongst other things, hot food takeaway premises to be located more than 400 metres walking distance from existing and proposed primary and secondary schools.

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<sup>1</sup> Including: London Enterprise Academy; London East Academy; Wapping High School; Date Palm Primary School; Harry Gosling Primary School; Buttercup Primary School; Mulberry School for Girls and Raine's Boy's School.

### **Other Matters**

14. The appeal site lies within the Myrdle Street Conservation Area (MSCA), which is located to the west of the Royal London Hospital and extends southwards from Whitechapel Road. The significance of the MSCA lies in its special architectural and historic interest, illustrated by its rich history and significant architecture, dating from the eighteenth, nineteenth and early twentieth centuries. The proposal relates to the use of the premises, which is an existing commercial premises. Therefore, I find that the proposal has a neutral effect on the MSCA and thus preserves its significance.
15. In terms of amenity impact, the Council accepts that the proposal does not result in adverse amenity impact in terms of odour and noise, subject to the specific conditions set out in their comments. Based on the evidence before me I see no reason to disagree with this assessment. However, the absence of harm is a neutral factor which neither weighs for or against the proposal.

### **Conclusion**

16. For these reasons, the proposal conflicts with the development plan 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.

*K Lancaster*

INSPECTOR