



Appeal Decision

Site visit made on 3 July 2024

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 23 September 2024

Appeal Ref: APP/M5450/W/23/3329802

101 Burnt Oak Broadway, Harrow, Edgware HA8 5EN

- 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 Roze Aram Ali against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/2047/23, dated 13 July 2023, was refused by notice dated 24 August 2023.
 - The development proposed is the retention of pre-existing restaurant to the rear of 101 Burnt Oak Broadway.
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Decision

1. The appeal is allowed and planning permission is granted for the retention of pre-existing restaurant to the rear of 101 Burnt Oak Broadway at 101 Burnt Oak Broadway, Harrow, Edgware HA8 5EN in accordance with the terms of application, Ref P/2047/23 dated 13 July 2023.

Preliminary Matters

2. The appeal site comprises a building at the corner junction of Burnt Oak Broadway and The Highlands. At ground floor level the lawful use of the site is as a single Class E unit, following the granting of a certificate of lawful development for the change of use of the unit from a shop to a restaurant. I observed that the ground floor has since been divided in two, with a hairdresser fronting Burnt Oak Broadway and a second unit to the rear.
3. The Council finds that the retention of the hair salon at the front of the site is an appropriate use within the primary shopping frontage and would not result in a detrimental impact on the vitality and viability of the town centre. Based on my observations, I have no reason to disagree.
4. The Council contends that the rear ground floor unit is currently in use as a hot food takeaway, citing the layout of the unit, the presence of takeaway menus and boxes, and the advertisement of the business on online food delivery services. However, the proposal before me is described as the retention of a restaurant rather than a hot food takeaway, and submitted plans clearly label the unit as a restaurant.
5. Accordingly, I have made my decision on the basis of the submitted plans, as I am obliged to do. In the event that the unit is in an alternative use for that which permission has been granted, this is a matter between the main parties and other powers exist for the Council in this regard.

6. Furthermore, I note the Council's position that the appellant has not sought planning permission for the rear extension or external alterations at the appeal site as part of this application and that these have not therefore been assessed as part of this scheme. I have proceeded on this basis.

Main Issue

7. The main issue is whether the appeal site would be an appropriate location for the proposal.

Reasons

8. Policy E9.D of the London Plan 2021 states that development proposals containing hot food take away uses will not be permitted if located within 400 metres walking distance from the entrances and exits of an existing or proposed primary or secondary school. On the evidence, the appeal site is located some 330 metres from the entrance to Barnfield Primary School and some 160 metres from Shalom Noam Primary School, both of which I observed on my visit. Policy E9.D seeks to ensure that development does not result in a proliferation of hot food takeaways in the proximity of such schools, given that this may have implications with regard to health and wellbeing.
9. However, as I have outlined above, the proposal before me is not for a hot food takeaway use, but for the retention of a restaurant. Accordingly, the proposal would not conflict with the provisions of Policy E9.D of the London Plan 2021 or the provisions of the Framework in this regard. There is nothing substantive before me to suggest that the site would not be a suitable location for a restaurant, with regard to health and wellbeing or any other matter. I further note that the current lawful use of the site is as a Class E unit.
10. For the reasons given, and on the information before me, I find that the appeal site is an appropriate location for the proposal.

Conditions

11. The Council's Officer Report references various conditions that would be attached if planning permission was granted. However, the current, lawful and ongoing use is as a Class E restaurant, that is currently in operation. As such, I find no need to attach the suggested conditions in this regard, including the standard time limit condition. As the application relates to the use of the unit only, I have also not imposed a plans condition.

Conclusion

12. For the reasons given, the proposal would accord with the development plan when taken as a whole. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. I therefore conclude that the appeal should be allowed.

C Rafferty

INSPECTOR