



Appeal Decision

Site visit made on 8 April 2025

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2025

Appeal Ref: APP/B5480/W/24/3350708

210 Lyndhurst Drive, Hornchurch RM11 1JW

- 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 Jasbir Singh against the decision of the Council of the London Borough of Havering.
 - The application Ref is P0554.24.
 - The development proposed is for the change of use of ground floor retail unit into sui generis - hot food takeaway and installation of extraction flue.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Government published a revised National Planning Policy Framework (the Framework) in December 2024. The main parties were given the opportunity to comment, and I have considered the revised Framework in my decision.

Main Issues

3. The main issues are:
 - the effect of the proposal on the health and well-being of residents, with particular regard to the health of young people;
 - the effect of the proposal on the living conditions of occupiers of nearby homes, the residential nature of the area and the Lyndhurst Drive Local Centre with regard to opening hours, disturbance and noise; and
 - the effect of the proposal on the character and appearance of the area, including the appeal property.

Reasons

Health and Wellbeing

4. The London Plan, the Spatial Development Strategy for Greater London, March 2021 (the London Plan) at Policy E9 seeks to create a healthy food environment by restricting unhealthy options. It states that obesity is one of the greatest challenges facing the capital. Policy E9 sets out that the over concentration of hot food takeaways (HFT) should be carefully managed through locally defined thresholds and should not be permitted within 400m walking distance from primary or secondary schools. Policy 12 of the Havering Local Plan 2016 – 2031,

November 2021 (the Local Plan) seeks to manage the over concentration of uses that can have a negative health impacts.

5. The updated Framework is a material consideration, at paragraph 97 it states that applications for hot food takeaways should be refused within walking distance of schools which are not within designated town centres. This is a material change from the previous version of the Framework, and there is now an explicit presumption against HFTs within walking distance of schools.
6. The Council has identified that the proposal would be in the region of 160m from Towers Infant school and 400m from Towers Junior school. Interested parties have also drawn my attention to secondary schools. The Frances Bardsey Academy is the closest to the appeal site, although over 400m it is likely to be within walking distance for secondary school children.
7. The distance of the schools are close and convenient to the appeal site. Even if the infant and primary age children would be supervised by an adult, the general absence of other HFTs in the immediate area means the proposal would increase the access of school children to purchase unhealthy foods and a strong likelihood that the appeal development would be a destination for school pupils.
8. Although the appeal site is located within a parade of shops, the Lyndhurst Drive Local Centre, cannot be defined as a town centre. The proposed closure during the hours of 15:00 and 16:00 is unlikely to deter older and more independent children who leave school later, who stop to undertake other common after school activities, such as visiting local parks from being able to visit the premises.
9. I note the support from local residents for a HFT at the site due to the economic benefits and increase in choice. However, it has not been shown the appeal development is the only way of ensuring the property is occupied and contributes to the local economy. Comments from interested parties also suggest there are other takeaways locally in nearby Hornchurch.
10. There is no discussion in the proposals regarding a commitment to 'healthier catering' encouraged in London Plan Policy E9. There is no substantive evidence before me to set aside the guidance within the Framework or development plan policies, which seek to restrict takeaways in such locations as the appeal site.
11. 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 E9 of the London Plan and Policy 12 of the Local Plan. Together these seek, amongst other things, to address the challenge of childhood obesity and contribute to the creation of healthier communities. The proposal would also be contrary to the provisions of the Framework at paragraph 96, 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. The proposal would also conflict with paragraph 97 in relation to the need to refuse hot food takeaway within walking distance of schools.

Opening hours, disturbance and noise

12. The disturbance arising from such proposals is likely to include activity from comings and goings and resultant noise from this. Deliveries, and customers

visiting the premises are likely to generate noise in the form of car doors opening, engines starting, manoeuvring and people talking, cleaning and closing up. The Council's Environmental Health consultee comments suggested that a closing time of 23:00 seven days per week may be acceptable. The appellant has indicated their agreement to this.

13. However, although the site is located within the Lyndhurst Drive local centre, I have not been provided with opening hours of other business, or that any operate during the times proposed for the HFT. I do not have any details of the operation of any former business at the site. Although delivery vehicles would park on the forecourt, it has not been demonstrated that activity from vehicle movements would be appropriate for the environment. Taking into account my observations of the physical environment and layout of the area and relatively small and low-key local centre, the effects of the activity would be particularly enhanced by the narrowness of Lyndhurst Drive and Osborne Road and the close proximity of homes.
14. No assessment of the existing noise environment been undertaken. Therefore even though extraction and refrigeration data has been provided, there would be a requirement to ensure noise from such equipment falls 10dB below the background noise level. Such an assessment would also help to ascertain if the likely level of activity would be harmful in terms of noise generating activities later in the evening.
15. I therefore cannot be certain the sound emerging from modern equipment would be of an acceptable level. Whilst this could be secured by a planning condition, the advice from the environmental health consultee is not conclusive this could be achieved, and I have no evidence to the contrary that such a condition would be relevant to the proposal or reasonable to impose.
16. The opening hours are still relatively late, and activity and noise would occur at a time when residents may be relaxing or trying to sleep and surrounding units are closed. In this regard the proposal would be at odds with the residential nature of the area and character of local centre.
17. I conclude that the proposal would harm the living conditions of occupiers of nearby homes, the residential character of the area, and the Lyndhurst Drive Local Centre with regard to opening hours, disturbance and noise. The proposal conflicts with Policies 13 and 34 of the Local Plan. Together these seek to ensure that development has no significant adverse effect on surrounding amenity. The proposal would also not obtain support from paragraph 135 of the Framework which seeks to ensure that proposals do not undermine the quality of life or community cohesion.

Character and appearance

18. The proposed extract equipment and flue would be visible from Osborne Road. However, it would only just exceed the height of the eaves of the roof. It would also be set discretely in a corner location between the rear of the property and a rear two-storey offshoot. It would be set in from the edge of the building and Osborne Road, partly behind a substantial boundary. Therefore it would not stand prominently above any building and seen against the context of walls and roofing, with street trees providing further visual screening. A suitably worded planning condition could be used to ensure the flue is a dark recessive colour.

19. Taking into account the rear of the properties are commercial in nature, the extract equipment and flue suitably take into account the site constraints. They would not be incongruous against the host building, commercial parade or wider residential appearance of the area.
20. I conclude that visually the proposal would not harm the character or appearance of the area, including the appeal property. It would therefore not conflict with Local Plan Policy 26, which promotes the creation of successful places which provide site specific design solutions. The proposal would not conflict with paragraph 135 of the Framework which seeks to ensure development is sympathetic to local character and the surrounding built environment.

Other Matters

21. The Council has not raised substantive concerns regarding the effect on the vitality or viability of the local centre, highway safety, refuse and recycling and fire safety. Although I note the numerous concerns from interested parties, I have no substantive evidence to reach a difference conclusion on these matters. However, these weigh neither for nor against the proposal.

Planning Balance and Conclusion

22. The change of use would support continued employment opportunities at the site, generate economic benefits, and provide greater choice providing a service for parts of the community. In this respect there would be some support from the Framework relating to the social and economic arms of sustainable development. However these benefits have not been quantified and are likely to be modest. Therefore the benefits of the scheme attract limited weight.
23. Whilst the proposal would not harm appearance of the area, my above findings in relation to health and wellbeing, particularly of young persons, the living conditions of the occupiers of nearby homes, the residential character of the area and that of Lyndhurst Drive local centre brings the proposal into conflict with the development plan, read as a whole. I attach significant weight to the harm and conflict with Policy E9 of the London Plan, and Policies 12, 13 and 34 of the Local Plan and the related guidance in the Framework. As such the benefits do not outweigh harm.
24. There are no material considerations that have been shown to have sufficient weight to warrant a decision otherwise than in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

K Williams

INSPECTOR