



Appeal Decisions

Site visit made on 8 April 2025

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2025

Appeal A Ref: APP/Q3820/C/23/3319113 &

Appeal B Ref: APP/Q3820/C/23/3319114

The Ground Floor, 54 The Boulevard, (Caprinos Pizza), Northgate, Crawley, West Sussex RH10 1XH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Muhammad Taimur on behalf of SAKT Ltd t/a Caprinos Pizza (Appeal A) and Mr Muhammad Taimar (Appeal B) against an enforcement notice issued by Crawley Borough Council.
 - The enforcement notice was issued on 21 February 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use from a betting shop to a hot food takeaway and restaurant and associated operational development comprising the erection of an extract/ventilation system.
 - The requirements of the notice are:
 - 5.1 To cease the use of the land as a hot food take away and restaurant.
 - 5.2 To remove the extract/ventilation system and then make good the building with matching wall and/or roof materials. (Area edged in black on the attached plan).
 - The period for compliance with the requirements is 21 days for requirement 5.1 and
 - 3 months for requirement 5.2.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions

1. It is directed that the notice should be corrected by:
 - deleting the following words from section 3 of the Notice: 'and restaurant'.
 - deleting the following words from sections 5.1 and 6.1 of the Notice: 'and restaurant.'
2. Subject to these corrections, the appeals are dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. The Appeals have been lodged under grounds (a), (b) (f) and (g). However, it is clear from the substance of their appeal submissions that the appellants are also seeking to appeal under ground (c), in so far as they consider that the unit has changed to Class E (cafe and restaurant) in May 2021 under permitted

development, and therefore planning permission is not required. As the Council have provided detailed comments on the appellants statement, I am satisfied that neither party would be prejudiced by the inclusion of this. I have therefore determined the appeal on this basis.

4. During the course of this appeal the Crawley Borough Local Plan 2015-2030 (CBLP), and policies contained within it, has been replaced with the Crawley Borough Local Plan 2023 to 2040 (LP), which was adopted on 16 October 2024. This must now be given full weight in the decision-making process. Both parties have been given the opportunity to comment on the new LP, and so have not been prejudiced. I have therefore not assessed the development against the policies of the superseded CBLP.

The Appeals on Ground (b)

5. To succeed on Ground (b), it is necessary for the appellants to demonstrate, on a balance of probabilities that as a matter of fact, the hot food take-away and restaurant use has not been made from the unit in question.
6. The appellants state in December 2020 they started to the lease process to acquire, 54 The Boulevard, with the plan to open a Franchise Pizza Restaurant and Take Away business. Therefore, the appellants accept that their plan for Caprinos Pizza was to include a restaurant and takeaway use. However, a planning application was submitted on 29 January 2021 for the "Change of use to Sui Generis hot food takeaways (for the sale of hot food where consumption of that food is mostly undertaken off the premises)" (2021 planning application). The accompanying Design and Access statement submitted with the 2021 application states:
 - "The proposed takeaway will be occupied by Caprinos Pizza and will operate between 11am and 2am."
 - "The customer service area will be located at the front of the store. The cooking area, including the 'bake and serve' area will be in the Centre of the store, the wash up area, cold rooms and WC located to the rear of the building."
 - "Overall, it is clear that this is a suitable location for a hot food takeaway and the proposal will not cause any harm to the character and viability of the local area as a shopping facility."
 - "The unit will incorporate a preparation and baking area, and a customer waiting area for those choosing not to use the home delivery option."
7. Therefore, the application made to the Council was clearly for a takeaway use and not a restaurant. Whilst the appellants now state that there is no hot food takeaway use taking place and that the premises is a 16-cover restaurant permitted under Class E, the plans and layout shown in the submitted drawings for the above (withdrawn) planning application match the layout of the premises currently in situ in terms of the food preparation and cooking areas, the counter, and the area for customers to wait whilst collecting their food. There are also no toilet facilities available for customers, with the only toilet located to the rear of the premises in the staff areas. Only two tables and eight chairs were currently stored in the small customer area to the front of the premises, where collections take place. As such, the business is clearly laid out

in conformity with the 2021 planning application, which was for a hot food takeaway use.

8. Furthermore, Council Officer's visited the site on 2 October 2022 and 8 November 2022 and had observed that the premises had been changed to a hot food takeaway use. During the later of these visits Officer's noted that the premises was fitted out as a hot food take away with takeaway services being offered in the advertising, and piles of pizza boxes within the building. Officers also noted that the seating area to the front is relatively small in area with no cutlery or condiments visible on the tables. At the rear of the premises was a large rubbish bin containing used takeaway pizza boxes.
9. On 22 November 2022, the Council also took a screen shot of the company's website and Just eat website. This includes reviews left by customers of Caprinos, many of which refer to their food either being takeaway or delivered to them. The screen shot also shows that the business offers delivery and collections, and that the delivery service operates between the hours of 14:00 and 01:00.
10. A further Officer site visit was carried out on 22 November 2022 between 17:00 and 17:30. The Officer observed take-away customers waiting to collect food and delivery drivers, carrying insulated bags, coming and going from the premises. He also observed no one consuming food on the premises. Another site visit was carried out by the Senior Enforcement Officer between 18:30 and 19:30 on 23 November 2022, who observed four delivery drivers collecting food orders, and again, no customers were consuming food within the premises.
11. Having carefully considered the evidence put forward by both parties, I conclude, on the balance of probabilities, the premises comprises a hot food takeaway. Any consumption of food on the premises is clearly ancillary to the primary use as a hot food takeaway. Thus, for the reasons given above, my conclusion is that the notice should be corrected by deleting the following words from section 3 of the Notice: "and restaurant". Consequential corrections are also required to the requirement of the notice omitting the words "and restaurant" from sections 5.1 and 6.1 of the notice.
12. Since the appellant has made appeals on grounds (a), (b), (c), (f) and (g) on the basis of a takeaway use and restaurant I am satisfied that this would not cause any injustice to either party, since the takeaway use was already stated in the original notice. Therefore, the planning merit arguments, and the arguments made under the legal grounds of appeal would remain the same.
13. The ground (b) appeals succeed to this limited extent.

The Appeals on ground (c)

14. Under this ground of appeal, it is contended that the premise have converted into Use Class E (cafe and restaurant) in May 2021, from the former lawful use as a betting office, under permitted development. However, I have already found above, that on the balance of probabilities the unit comprises a hot food takeaway use and not a restaurant. Planning permission is required for such a change of use. There is none in place and the change of use to a takeaway is not permitted development. There has therefore been a breach of planning

control, and the appellants have not discharged the onus on them to demonstrate otherwise.

15. Accordingly, the appeals fail on ground (c).

Appeal A, Ground (a) appeal, and the Deemed Planning Application (DPA)

16. The terms of the DPA are directly derived from the corrected allegation, which relates to the change of use from a betting shop to a hot food takeaway and associated operational development comprising the erection of an extract/ventilation system. Therefore, the main issues are:

- The effect of the development on the integrity of the Arun Valley Special Protection Area, Special Area of Conservation and Ramsar site; and
- the effect of the development on the living conditions for the neighbouring residential occupiers on the upper floors of the Boulevard, the Pavement and Queensway with particular regard to cooking odours, noise, and disturbance.

Reasons

Integrity of the Arun Valley habitats sites

17. The site is located within the Sussex North Water Resource Zone (WRZ), within which water is mains-distributed by Southern Water. Sussex North WRZ is supplied from groundwater abstraction, from the Folkestone beds of the Lower Greensand/Wealden Greens and semi-confined aquifer, on the River Arun, close to Pulborough in Horsham district. The abstraction site is located close to a group of nature conservation sites, known as the Arun Valley Sites, which are nationally or internationally designated as Special Areas of Conservation (SAC), Special Protection Area (SPA), and a Ramsar Site for their rare and protected habitats.

18. According to Natural England's position statement on 14 September 2021, it cannot conclude with certainty that existing water abstraction in the supply area is not having an adverse effect on the integrity of these areas of nature conservation. To provide the necessary certainty, new developments in the supply area are therefore required to not add to this adverse effect by demonstrating water neutrality, i.e., that the use of water before the development is the same or lower after the development. The LP states that water neutrality should be achieved by first ensuring that development is highly water efficient, and secondly by ensuring that the additional demand arising from development is offset within the Sussex North WRZ.

19. No water neutrality statement has been submitted to demonstrate that the required water neutrality, either through the incorporation of on-site measures and/or by appropriate off-setting actions capable of achieving water neutrality, have been provided. As a result, there can be no certainty that the hot food takeaway use, which includes food preparation and cooking areas, does not contribute to the existing adverse effect on the integrity of the Arun Valley habitats sites.

20. Whilst the issue of water neutrality was raised after the takeaway use began in 2021, this does not obviate the need to consider it as part of this decision. The

requirements of the Conservation of Habitats and Species Regulations apply. Furthermore, the appellant have had the opportunity to respond to the matter and so there is no breach of natural justice.

21. For the above reasons, the development conflicts with Strategic Policy SDC4 and Strategic Policy GI2: Biodiversity Sites of the LP. Collectively, these require that all development within the Sussex North WRZ will need to demonstrate water neutrality through water efficient design and offsetting of any net additional water use of the development, and the protection of Biodiversity sites.
22. Furthermore, it contravenes the Conservation of Habitats and Species Regulations 2017, and is inconsistent with the Framework, which in chapter 15 seeks the conservation and enhancement of the natural environment.

Living conditions for the neighbouring occupiers on the Boulevard, the Pavement and Queensway - cooking odours, noise, and disturbance

23. The appeal site relates to a ground floor commercial unit within a three-storey development containing similar commercial units on the ground floor. The second floor of the appeal site has a historic Class D1 use whereas the first floor was granted planning permission in 1988 for a change of use from office to retail. However, during the site visit I observed that the upper floors above the appeal site appear to be vacant. Notwithstanding this, the Council state that there are a number of residential flats on the upper floors of the Pavement, Victoria House and Queensway which are all in close proximity to the appeal premises. This has not been disputed by the appellant. Therefore, there is a susceptibility for the living conditions of neighbouring occupiers to be affected by the introduction of an alternative and more intensive use of a commercial site.
24. The appeal takeaway serves primarily pizzas. Hot food takeaways have the potential to adversely affect the living conditions of nearby residents by virtue of noise and odour caused by cooking inside the premises. An extractor is installed within the kitchen to remove odours and fume, although no further detailed evidence has been submitted regarding this existing equipment. Extraction flues have the potential to affect the living conditions of neighbouring occupiers by way of vibrations, noise, fumes, and odours.
25. No noise assessment, noise mitigation measures, or details of odour abatement technologies or anti-vibrations devices have been submitted with this appeal to demonstrate that neighbouring residential occupiers of the site would not be affected by the current extraction system. I also note that the Council's Principal Environmental Health Officer, also stated under the 2021 planning application that "*we are not in a position to recommend approval at this time as further information is required.*" Given the close proximity of neighbouring residents to the existing takeaway use, and in the absence of any strong evidence on the existing (or proposed) extraction equipment, I am not satisfied that such an important matter could be left to a condition.
26. For the above reasons, and in the absence of further clear evidence, I conclude that the development harms the living conditions for neighbouring occupiers on the Boulevard, the Pavement and Queensway with regard to cooking odours, noise, and disturbance, in conflict with Strategic Policy DD1, and policies EP4

and EP5 of the LP. Collectively these state that all proposals for development will be required to not cause unreasonable harm to the amenity of the surrounding area by way of noise, smells and/or vibration; that noise generating development will be permitted where nearby noise sensitive uses will not be exposed to noise impact that will adversely affect the amenity of existing and future users; and that permission will only be granted where it can be demonstrated that the development has appropriately factored air quality into the location, design and operation of development, and where necessary, provided appropriate mitigation.

Conclusion on the Ground (a) appeal and the Deemed Planning Application

27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. For all the reasons outlined above, the development conflict with the development plan taken as a whole. None of the other matters raised by the appellant, including the benefits to the appellant's business, outweighs the harms identified. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
28. For the reasons given and with regard to all other matters raised, I conclude that the Ground (a) Appeal should fail.

The Appeals on Ground (f)

29. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
30. The corrected enforcement notice requires the use of the premises as a hot food take away use to cease, and to remove the extract/ventilation system and make good. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
31. The appellant considers that it is excessive to require restaurant use to cease, and the extractor removed, and that a lesser step should be to cease the hot food takeaway use only and allow the Class E use only, subject to any conditions relating to extraction details.
32. However, under the ground b) appeal, I have found that the Notice, as corrected, relates to a hot food takeaway use and not a restaurant. Furthermore, I have found that limited details of the extraction system have been provided as part of this appeal and it would not be appropriate to deal with this by condition. Therefore, it is not therefore excessive to require the use of the premises as hot food takeaway to cease and the extraction system to be removed.
33. There are no lesser steps drawn to my attention or any obvious alternative that would remedy the breach of planning control which is the purpose of the notice.
34. Therefore, the appeals on ground (f) fails.

The appeals on Ground (g)

35. This ground of appeal is that the time given to comply with the notice is too short. The Council has given 21 days for the use of the site as a hot food takeaway to cease and 3 months for the removal of the extraction equipment. The appellants state that the 21 days is punitive but has not stated how long is reasonable to comply with the Notice.
36. I have identified under ground (a) that it has not been demonstrated that the use of the site for hot food takeaway does not contribute to the existing adverse effect on the integrity of the Arun Valley habitats sites, and the longer the unauthorised use operates, the more water is used resulting in an adverse effect on the integrity of these areas of nature conservation. In addition, I have also found that the extraction equipment unacceptably harms the living conditions for neighbouring occupiers on the Boulevard, the Pavement and Queensway with regard to cooking odours, noise, and disturbance.
37. There would not be any complex building operations required to dismantle the extraction details or cease the use as a takeaway. In these circumstances, I conclude that the time period given by the Council would be reasonable and proportionate time to comply with the notice and the appeal on ground (g) fails.

Conclusions

38. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR