



Appeal Decision

Site visit made on 20 May 2025

by F P Tinsley MA (Hons) MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2025

Appeal Ref: APP/E5900/W/24/3357255

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

- 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 Mr Azizur Rahman against the decision of the Council of the London Borough of Tower Hamlets.
 - The application reference is Ref PA/24/01300.
 - The development proposed is 'Retrospective planning application for change of use from a cafe/coffee shop (Use Class E(b)) to a takeaway (Sui Generis). Proposed change to opening hours, specifically changing the time of opening to 17:00 daily.'
-

Decision

1. The appeal is dismissed

Procedural Matters

2. The appeal is in respect of a retrospective planning application which sought planning permission for the change of use of the premises from a café (Use Class E) to a hot food takeaway (Use Class Sui Generis) with restricted trading hours. It was evident on my site visit that the unit is trading as a hot food takeaway.

Main Issue

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

Reasons

4. Policy E9(D) of the London Plan 2021 states that proposals for hot food takeaway uses should not be permitted within 400 metres walking distance of the entrances and exits of existing or proposed primary and secondary schools. The supporting text explains that a wide range of health experts advocate restricting the proliferation of hot food takeaways, particularly near schools, to help create a healthier food environment. This policy aims to improve community health and well-being by limiting children's access to unhealthy food, thereby resisting the concentration of hot food takeaways in close proximity to schools.
5. Policy D.TC5 of the Tower Hamlets Local Plan 2031 (2020) (the Local Plan) states that proposals for hot food takeaways should not be located within 200 metres walking distance of an existing or proposed school and/or a local authority leisure centre. However, as the London Plan was adopted after the Local Plan, it supersedes the minimum distance requirement set out in this policy.

6. It is not disputed that the appeal site is located in close proximity to several schools, including, but not limited to, Kobi Nazrul Primary School and Madani Girls School, both of which are within 200 metres of the site. Additionally, several other schools are situated nearby, within 400 metres walking distance. As a result, it is likely that schoolchildren and their parents regularly pass the premises on their way to and from these schools.
7. Planning permission was refused in 2024 for the retrospective change of use of the premises from a café to a hot food takeaway under appeal reference APP/E5900/W/24/3338920. That proposal was similar to the proposal before me and so is highly relevant to my determination.
8. The current appeal seeks to address the previous reason for refusal, which was upheld at appeal, relating to the site's proximity to local schools. To mitigate this concern, the appellant has proposed restricting opening hours aiming to avoid times when schoolchildren are most likely to be passing the premises. Notwithstanding the description of development refers to opening at 17:00 daily, the appellant has indicated he would be prepared to open at 17:30 Monday to Friday.
9. While I accept that the premises will be closed during the peak period for school-related trips, typically between 15:00 and 16:00, this does not fully address the issue of schoolchildren traveling from school later in the evening. Many pupils remain on-site to participate in extracurricular activities, such as sports, after-school clubs, or revision sessions, and may pass by the premises outside standard school hours.
10. Moreover, the development plan policies are clear and explicitly require a specified distance between schools and new takeaways. These policies do not allow for exceptions based on opening hours. Hence, the creation of a healthy food environment seeks more than a stricter opening hours regime, it relates to the very presence and concentration of such facilities relative to schools and places where children and young people congregate. This is consistent with the government's approach set out in paragraph 97 of the National Planning Policy Framework.
11. The London Plan policy serves as a strategic framework to regulate the distribution of takeaways across London. I agree with the Council that the approach suggested by the applicant's proposal would undermine the effective implementation of this policy and lead to inconsistencies across the city. No justification based on other material considerations has been provided that would lead me to a different conclusion regarding the proposal before me.
12. For these reasons, I find that the appeal proposal is not in a suitable location due 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 Local Plan.

Other Matters

13. The appeal site lies within the Myrdle Street Conservation Area (MSCA), located to the west of the Royal London Hospital and extending southwards from Whitechapel Road. The significance of the MSCA derives from its special architectural and historic interest, reflected in its rich history and notable architecture dating from the eighteenth, nineteenth, and early twentieth centuries. The proposal concerns the use of the premises, which is an existing commercial

unit. Therefore, I find that the proposal has a neutral effect on the MSCA and thus preserves its significance.

14. I have noted the appellant's intended pricing structure, which is not specifically aimed at schoolchildren, as well as their proposed dispersal policy, which has not been provided for my consideration. Additionally, I acknowledge the intention to implement an agreement with Uber Eats, the exclusive delivery service provider, to restrict takeaway delivery coverage around local schools. However, the sector is a dynamic one and matters of pricing and day to day management would be likely subject to change. Hence, I attribute these factors very little weight.

Conclusion

15. For the reasons identified above, the proposal conflicts with the development plan as a whole, and material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal is dismissed.

F P Tinsley

INSPECTOR