



Appeal Decision

Site visit made on 25 August 2021

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 13 October 2021

Appeal Ref: APP/R5510/W/21/3258201

21 Station Road, West Drayton, Middlesex, UB7 7BT

- 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 Manesh Nathwani (LA Caruna S.A.) against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 57432/APP/2020/588, dated 10 February 2020, was refused by notice dated 6 May 2020.
 - The development proposed is the removal of external shop front signs and change of use from A1 to A3/A5 (restaurant/takeaway).
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Decision

1. The appeal is dismissed.

Preliminary matters

2. Plan '21SR(2)(February 2020)' showing the location of the flue was submitted at the appeal stage. The Council has had an opportunity to review this information and no interested parties have previously raised issues in respect to odour. For these reasons, I do not consider that any party is prejudiced by reference to this plan in my decision.
3. The National Planning Policy Framework (the 'Framework') was revised on 20 July 2021 and the new London Plan (2021) published during the appeal period. Both parties have had the opportunity to comment on the implications of this for their case.

Main issues

4. The main issues are the effect of the proposal on:
 - the living conditions of neighbours in respect of noise, disturbance and odour, and
 - the vitality and viability of the primary shopping area.

Reasons

Living conditions

5. It is proposed to construct a 4 metre high flue on the flat roof above the kitchen. This would be set back behind the single storey grocery shop next door and oriented to face the street.

6. Based on the submitted plans the flat immediately above the appeal site has a window less than 5 metres away from the proposed flue. I do not know if this window is openable. I observed that there is also a flat above the barbers at No 17, which has an opening window in proximity to the proposed flue. In the absence of any evidence to the contrary, I conclude that the flue is highly likely to introduce odours to the surrounding residential properties through nearby windows, causing harm to living conditions.
7. The appeal site is on a busy high street, surrounded by retail, commercial premises and restaurants. Given that opening hours could be controlled by condition in addition to this surrounding context, I do not consider that there would be measurable additional disturbance to the living conditions of neighbours from the noise and activity generated by the proposed venture.
8. There is a flat above the shop, but this is a common arrangement in the area and I am satisfied that any additional noise and disturbance to the occupants could be adequately controlled using a condition on the planning permission, if granted I do not consider that neighbours to the rear of the property would be affected because, not only is there is a reasonable amount of space between the buildings, but public access would be to the front.
9. Although I do not anticipate that the proposal would cause harm in respect of noise and disturbance, I conclude that it is likely that harm would be caused to the living conditions of the occupants of nearby properties from odour. This would be in conflict with Policy DMTC4 of the London Borough of Hillingdon Local Plan (Part 2) (January 2020) (the 'LP'), which requires that development must not cause loss of amenity to nearby properties.

Vitality and viability of the primary shopping area

10. The appeal site is the ground floor of a narrow, 2-storey, semi-detached property in the middle of a shopping parade, located in the primary shopping area of Yiewsley and West Drayton district town centre. It was last used as a stationery shop but appeared at the site visit to have been disused for some time.
11. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force and the period for transitional provisions has since ended. Restaurants and retail use now fall to be considered under Class E, and takeaways are classified as *sui generis*.
12. A change from one use to another which falls within the same class is not development that requires planning permission. The change from retail use to a restaurant would therefore be permitted development. There is no suggestion that the property could not be used as a restaurant without the need for planning permission. To this extent, I am satisfied that the proposed restaurant element would be acceptable in terms of its effect on the vitality and viability of the shopping area.
13. References in Policy DMTC2 of the LP to the proportion of A1 retail use are now overtaken by the use class amendments and the Council has not indicated how its policy will respond to this. I have therefore given limited weight to the requirements in Policy DMTC2 for minimum percentages of Use Class A1.
14. However, the change from retail use to a takeaway requires a change in use class from Class E to *sui generis* and, if the takeaway aspect is not incidental to

the restaurant, this would therefore require planning permission. There is no evidence that consumption of food and drink would mostly be undertaken on the premises and I have considered the appeal on the basis that the takeaway would be a significant part of the business and that the proposal would amount to a mix of primary uses.

15. Policy DMTC2 includes the general requirement that a concentration of non-retail uses should be avoided where they could cause harm to the vitality and viability of the town centre. Relevant to this appeal is that the former use class A5 'hot food takeaways' must be limited to a maximum of 15% of the frontage. I am satisfied that these principles remain applicable, despite the change of use class. 8.3% of the primary shopping frontage is in Class A5 use according to the Council's most recent data, which is well below the threshold.
16. On this basis, I conclude that the application would meet the thresholds outlined in Policy DMTC2, and that the vitality and viability of the primary shopping area would not be harmed by the proposal.

Conclusion

17. Although I have not found that there would be harm to the viability and vitality of the shopping area, nor to the living conditions of neighbours in respect to disturbance and noise, I consider it likely that the living conditions of neighbours would be harmed by odour from the flue.
18. I therefore conclude that the proposal would conflict with the local development plan when read as a whole. There are no other considerations that would lead me to determine other than in accordance with this and the appeal should be dismissed.

B Davies

INSPECTOR