



Appeal Decision

Site visit made on 24 November 2011

by **Phillip J G Ware BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 January 2012

Appeal Ref: APP/L5810/A/11/2158248
80 High Street, Hampton Hill TW12 1NY

- 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 Edgewest Lambeth Ltd against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref DC/SGS/11/1581/FUL, dated 13 May 2011, was refused by notice dated 4 August 2011.
 - The development proposed is the change from A4 to A5 Use Class, to include a ground floor extension and re-positioning of associated plant at roof level.
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Decision

1. The appeal is allowed and planning permission is granted for the change from A4 to A5 use class, to include a ground floor extension and re-positioning of associated plant at roof level at 80 High Street, Hampton Hill TW12 1NY in accordance with the terms of the application, Ref DC/SGS/11/1581/FUL, dated 13 May 2011, subject to the conditions set out in the schedule to this decision.

Application for costs

2. An application for costs was made by Edgewest Lambeth Ltd against the Council of the London Borough of Richmond-upon-Thames. This application is the subject of a separate Decision.

Main issue

3. No significant objection has been raised to the proposed operational development, and I have no reason to raise any issues in that respect.
4. There is one issue between the main parties. That is the effect of the proposed works on the amenity of surrounding occupiers and the area generally in relation to litter.
5. Residents and others have raised a range of other matters. These are dealt with subsequently.

Reasons

The effect on amenity in relation to litter

6. The appeal premises are a vacant two storey public house on the eastern side of the High Street. The immediate area includes ground floor retail and food premises, with residential and commercial accommodation above a number of the frontage properties, with more housing in the side roads. Immediately to

- the south of the premises is the access to a Council car park. Bushy Park is to the east of the frontage properties, with access further along the High Street.
7. The proposal is the change of use of a vacant public house to an A5 use (the sale of hot food for consumption off the premises). No occupier has been named, although the appellant has stated that a number of parties have shown an interest. The same proposal was refused planning permission by the Council earlier in the year, on grounds related to amenity and the lack of marketing evidence, although it was recommended by officers.
 8. The Council's single reason for refusal in relation to the current scheme is couched in general amenity terms but the officer's report, which comprises the Council's case on appeal, makes it clear that this relates to a concern over litter in the area. The appellant has suggested a number of mitigation measures, including logged litter patrols at different times of the day, and litter bins to be provided at the front of the premises and in the adjacent car park. These same suggestions were submitted at the time of the previous application.
 9. The officer's report on the appeal scheme refers to the Council's previous decision at which time it was felt that an outlet of this size and potential number of users could result in a large amount of litter. It was stated that not all of this would be dealt with by the proposed mitigation measures, especially bearing in mind the proximity of Bushy Park.
 10. The Council's concern regarding littering, especially given the location of Bushy Park is understood. However no evidence has been put forward by the authority to substantiate that concern, nor to explain why the proposed mitigation measures would not be effective or sufficient. There are other similar uses in the area and these may generate some litter but there is nothing to suggest that these uses give rise to significant problems, or that the proposed use would be more harmful than those which already exist. It is appreciated that the appeal premises are larger than other existing premises in the area, although the serving area is not particularly extensive, but this does not necessarily indicate a higher turnover or increased propensity to litter. Much would depend on the popularity of the outlet and the nature of the food provided.
 11. Overall, subject to a condition regarding mitigation measures, the proposal would not harm the amenity of surrounding occupiers and the area generally in relation to litter. It would not conflict with Policy DM TC5¹ which provides, amongst other matters, that there should not be an adverse effect on the amenity of nearby uses and surrounding residential areas.

Other matters

The loss of the existing use

12. The previous application was refused by the Council, in part, due to the absence of marketing evidence to clearly demonstrate that the building was no longer suitable for its current lawful use. The report now submitted by the appellant demonstrates that there has been no demand for public house use over a two year period of marketing. This is no longer an issue raised by the Council.

¹ Development Management DPD (November 2011)

13. Although it is true that the marketing suggested the possibility of alternative uses, the evidence that there is no demand for public house use is persuasive. This contrasts with serious interest from a number of A5 operators, as set out in the appellant's marketing report. It is accepted that the marketing took place during a period of national financial difficulties, but the continuing economic situation cannot reasonably be used to support a refusal of planning permission when marketing clearly shows a lack of interest for the existing use. The avoidance of a further period of vacancy would be a significant benefit to the area.

The principle of the proposed use

14. The principle of the proposed change of use has been the subject of some criticism, although this is not a matter raised by the Council.
15. From the evidence and from what I saw on site, the appeal premises are in one of the busier parts of the High Street, with shops and food and drink premises appearing to be busy. It is the type of location where take-away operations are commonly found, and the proposal would accord with national policy aimed at offering a wide range of services, and would encourage choice and competition.
16. The authority has explained that the site is within a Mixed Use area where uses which attract visitors are generally encouraged, and that Policy DM TC 4 is relevant. This states that, in relation to public houses, changes of use will not be permitted unless certain criteria are met. The relevant criterion is whether there is another public house within convenient walking distance – and as there is one opposite the site the policy is met. Overall, the principle of the proposed change of use is therefore acceptable.

The identity of the future occupier

17. It has been suggested by some objectors that a large operation would damage the character of the High Street, although this is not a matter raised by the Council. However the character of the High Street in terms of the size of properties is very mixed, and the proposed unit would by no means be the largest retail or related outlet in the road.
18. There has been considerable criticism related to a particular occupier who, it is alleged, would take up a permission. However the application does not specify a particular occupier and, even were it to do so, there is no planning reason for discriminating between one A5 user and another in this case.
19. Partly related to the assumed identity of the occupier, a number of allegations of potential anti-social behaviour have been made. Even leaving aside the fact that the occupier is not known, there is no evidence that the change of use would, in itself, result in anti-social behaviour.

The effect on the Conservation Area

20. The property is within the High Street (Hampton Hill) Conservation Area, although the effect on the Conservation Area is not a matter raised by the Council. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.

21. In this case, it is clear from the above considerations that the change from a public house to a take-away use would be essentially neutral in terms of the character of the area. No objection has been raised to the proposed building works, and they would not affect the appearance of the Conservation Area. In terms of the character of the area, the proposed use would accord with the existing mixed character of the area, and with its designation as a Mixed Use area. Overall the proposal would therefore conserve the character and appearance of the Conservation Area.

Highway safety

22. Concern has been raised by residents that the location of the proposed use adjacent to a pedestrian crossing could be hazardous. However Council officers have pointed out that there is a public car park to the rear of the premises and another within 100 meters. For these reasons, and given the high level of accessibility on foot and by bus the Council has not objected to the proposal on highway grounds.

23. Although the duration of parking associated with a takeaway use would be likely to be different to that related to the former public house, both would be likely to generate parking demand. The previous public house use required more car parking spaces than the proposed take-away, according to the Council's standards – so the proposal would represent an improvement in numerical terms. There is no evidence to demonstrate that the change of use would exacerbate any parking issues or lead to hazardous conditions on the highway caused by vehicles parking for a short time on the highway.

Noise and fumes

24. There is no evidence that the operation of the proposed use would give rise to any unacceptable smells or noise. Nor is there any evidence that the previous public house gave rise to any such issues. A condition is necessary to require a noise assessment related to the extract flue and related equipment, in order to assess its impact on neighbours and set out steps to ensure that any impact will be satisfactory. On that basis, this is not a matter on which this appeal should turn.

Conditions

25. In addition to a condition identifying the approved plans, for the avoidance of doubt, it is necessary to require the use of matching materials in the interests of the appearance of the area. The Council suggested that these matching materials should also be submitted for approval, but if they are to match the existing materials this additional element is unnecessary.
26. In the interests of the amenity of residents of the area, the Council suggested a limitation on the hours of food preparation or delivery off the premises, and I agree that this is necessary in the interests of the area. It is also necessary to limit the hours when food can be sold from the premises, so as to avoid food prepared earlier being sold late into the night. The appellant has accepted the principle of limiting the hours of use of the premises. However no reason has been given for the suggested requirement that the opening hours be posted on the premises, and I do not consider this necessary.
27. As discussed above, a condition is necessary to require details of measures related to litter to be submitted for Council approval. However the Council's

condition did not require that these measures be implemented, and this is obviously necessary.

28. Also as discussed above, a noise assessment needs to be submitted. Again, the Council's suggested condition needs to be extended to require any approved works to actually be carried out.

Conclusion

29. For the reasons given above I conclude that the appeal should be allowed.

P. J. G. Ware

Inspector

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3028-01; 3028-02; 3028-03; 3063-01; SME/2009/Hampton-P-1A; SME/2009/Hampton-P-2B; SME/2009/Hampton-Elevs; 30189/1F.
- 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.
- 4) There shall be no preparation, sales or delivery of food for consumption off the premises outside the following hours: Sunday – Thursday 0800 hours - 2330 hours; Friday - Saturday 0800 hours– 2400 hours.
- 5) No development shall take place until details of measures to be taken to reduce the possibility of litter connected to the premises affecting the surrounding area have been submitted to and approved in writing by the local planning authority. The approved measures shall be put in place prior to the commencement of the use and the approved measures shall continue thereafter.
- 6) No development shall take place until an updated noise assessment related to the extract flue and related equipment has been submitted to and approved in writing by the local planning authority. Any works approved as part of the noise assessment shall be carried out prior to the commencement of the use and shall be retained thereafter.