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## Appeal Decision

Site visit made on 12 September 2016

**by Andrew McGlone BSc MCD MRTPI**

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

**Decision date: 19 September 2016**

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**Appeal Ref: APP/M4320/W/16/3153546**

**72 Moor Lane, Thornton, Liverpool, Merseyside L23 4TW**

- 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 Mrs J Christophorou of Christophorou Limited against the decision of Sefton Metropolitan Borough Council.
  - The application Ref DC/2016/00246, dated 1 February 2016, was refused by notice dated 18 April 2016.
  - The development proposed is a change of use from A1 (retail) to A5 (hot food to take away) with ancillary first floor existing residential use.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are (i) the effect of the development on the living conditions of nearby residents, with particular reference to noise and disturbance; (ii) the effect of the extraction flues on the external appearance of the building; and (iii) whether the design and location of extraction flues would ensure the living conditions of nearby residents, with particular regard to outlook, noise, smell and disturbance.

### Reasons

#### *Living Conditions – Noise and Disturbance*

3. The appeal site is a vacant unit that forms part of a 10 no. unit shopping parade containing commercial uses at ground floor with residential flats above. The shopping parade forms a crescent around the traffic light controlled junction of Moor Lane and Edge Lane. The site itself lies to the rear of a deep pavement adjacent to Moor Lane. Semi-detached dwellings line Moor Lane to the south west, whilst to the rear are dwellings on Thornfield Road. A post office adjoins the site, beyond which are a betting shop, pharmacy, dentist, hairdresser, bathroom showroom, convenience store and a Subway. A service road extends in front of the shopping parade which provides on and off-street parking facilities. A supermarket and its associated car park is opposite, whilst a smaller supermarket can be found nearby on Edge Lane.
  4. The shopping parade serves the local community, but it also attracts passing trade due to its location on the well trafficked route of Moor Lane which continues south westerly to the settlement of Great Crosby. Moor Lane also
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extends northwards to the junction of the A565 and Broom's Cross Road. The A565 extends to settlements along the Sefton coastline whilst Broom's Cross Road continues to Switch Island. Journeys to the parade are generally on foot or by motor vehicle.

5. There are no other hot food takeaway (HFTA) uses in the shopping parade or the local area. It is put that as a consequence potential customer's travel to other areas to access a HFTA. Whilst this maybe the case, the appellant's proposal would introduce a new use into the shopping parade across seven days a week between 11am and 10pm. Noise and disturbance is created by the existing use of the shopping parade, in particular through customers visiting the premises. The effect of which fluctuates during the day, given the heavily trafficked routes of Moor Lane and Edge Lane. However, traffic volumes are not consistently high into the evening, especially once the evening rush hour period has finished.
6. Even though nearby supermarkets are open until 10pm and 11pm respectively and a Subway is close, they are different types of uses to the proposed HFTA. The larger supermarket is also sited away from residential properties. Moreover, other uses within the shopping parade close earlier in the evening than the proposed opening times. Consequently, residents in the flats above neighbouring units as well as 70 Moor Lane would be sensitive to any noise and disturbance that may arise from the HFTA given their close proximity.
7. I understand the previous use of the appeal site resulted in comings and goings throughout the day with up to a dozen vans operating at various times of the day. However, the proposed use would result in the area in front of the shopping parade attracting comings and goings on foot and by motor vehicle during the day and in particular into the night. The deep pavement directly in front of the premise provides an opportunity for persons to congregate. The proposed HFTA, despite the appellant's experience in the industry, would in my view, lead to an increased potential for individuals or groups of people to create noise. This would prove difficult to control. The effect would be felt more keenly during evening hours, when many residents would reasonably expect a degree of peace and quiet once other premises in the parade close and on days when other premises are not open.
8. Whilst a planning condition could control an earlier closing time, I have determined the appeal based on the hours applied for by the appellant.
9. I note the appellant has clarified the use of the first floor flat would be used by employees of the proposed HFTA. Although this could be conditioned, which would overcome some of the harm identified by the Council in the first reason for refusal, it would not satisfactorily address or ensure the living conditions of occupants of No 70 or occupants in the first floor flats in the shopping parade.
10. For these reasons, I conclude that the development would cause harm to the living conditions of nearby residents, with particular reference to noise and disturbance. The proposal would be contrary to saved Policies CS3, MD6 and H10 of the adopted Sefton Unitary Development Plan (UDP) and paragraph 17 of the National Planning Policy Framework ('the Framework').
11. The Council refer to Policy HC3 of the emerging Local Plan for Sefton (LP). However, since the plan has not yet been adopted and the policy may change I attach little weight to it.

### *External Appearance*

12. The extraction flues would be sited in-between the rear facing first floor windows of the first floor flat. Due to their position at the rear, together with the layout of the surrounding built form, the extraction flues would not be readily visible from public vantage points. However, from adjacent land and buildings the two flues would be extremely noticeable, due to their proposed height and location close to each other. They would therefore detract from the external appearance of the building.
13. For these reasons, I conclude that the design and location of the extraction flues would adversely affect the external appearance of the building and would be contrary to Policies MD6 1(c) and DQ1 of the UDP; which seek to ensure ventilation and extraction equipment do not significantly affect the external appearance of the building in terms of scale, form and detailing.

### *Living Conditions – Extraction Flues*

14. The rear facing windows either side of the extraction flues would serve the living room of the ancillary flat. They each have a single pane which opens outwards. The extraction flues would be very close to these windows, but the occupants would retain a largely undisturbed outlook across the rear yard of the appeal site and the gardens of adjacent dwellings.
15. Whilst poorly design extraction flues can lead to noise, smell and disturbance, I note further information is required in addition to the extraction system technical specification provided by the appellant. Given the bespoke design of the extraction flue, I consider a planning condition could enable appropriate details are provided to ensure the extraction system does not lead harm the living conditions of nearby residents.
16. For these reasons, I conclude that the proposal insofar as this issue would comply with Policies MD6 and DQ1 of the UDP and paragraph 17 of the Framework. These policies seek to ensure that the living conditions of those within and adjacent to the site are not significantly harmed. For the same reasons as I set out in the first main issue, I attach little weight to Policy HC3 of the LP.

### *Other Matters*

17. Although the site is near a well trafficked route, I am mindful of the prior use of the premise and those within the shopping parade. Whilst short term parking is likely to occur, notwithstanding a previous appeal decision, this by itself does not warrant the refusal of the application.
18. I fully understand the HFTA would bring a vacant premise back into use, create jobs and introduce a use in an accessible location to the local community where there are no HFTA at present. Additionally I acknowledge the unit would be occupied by a small business and that there may be an increase in footfall at the shopping parade which may also support local business. These all attract substantial weight in terms of fulfilling the economic role of sustainable development. However, the single unit would only make a modest contribution towards it and the proposal would not fulfil the social or environmental roles of sustainable development.

## **Conclusion**

19. For the reason set out above, whilst I have not found harm in respect of the third main issue, I do not consider this to outweigh the harm I have found on the first and second main issues.
20. For the reasons set out above, I conclude that the appeal should be dismissed.

*Andrew McGlone*

INSPECTOR