
Appeal Decision

Site visit made on 13 September 2016

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 30 September 2016

Appeal Ref: APP/W3710/W/16/3153317

Rogers News, 86 Coventry Road, Exhall, Coventry CV7 9EU

- 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 Dulinjeevana Antonlalithraj against the decision of Nuneaton & Bedworth Borough Council.
 - The application Ref 033957, dated 1 March 2016, was refused by notice dated 13 April 2016.
 - The development proposed is described as "*change of use from A1 Off Licence, convenience store to a mixed use of A1 Off Licence and A5 Hot food fried chicken, burger take away*".
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on the living conditions of the neighbouring occupiers with particular regard to noise, disturbance, fumes and odour.

Reasons

3. Policy S7 of the Nuneaton and Bedworth Borough Local Plan 2006 (the LP) indicates that outside a town or district centre, permission for A5 uses (among others) will only be permitted if specified criteria are met. Criterion b) to LP Policy S7 requires that there should be sufficient separation between the development proposed and the nearest residential property, having regard to the size and nature of the proposal and the character and nature of the surrounding area. In order to protect the living conditions of neighbouring residents, the explanatory text to the policy indicates that this is unlikely to be less than 30 metres and, in some circumstances, may need to be more.
 4. In this case there are neighbouring residential properties including the flat above the existing retail unit that are within 30m of the proposed use. However, I acknowledge that the question that needs to be addressed is whether there would be any harm to the living conditions of the nearby occupiers as a consequence of the proposal.
 5. Criterion c) to LP Policy S7 requires that sufficient ventilation and extraction facilities are provided. The decision notice cites criterion d) instead of c) but this appears to be a clerical error as criterion d) is not relevant to ventilation and extraction. Criterion f) to LP Policy S7 requires that hot food takeaway proposals should not cause additional disturbance to the occupiers of nearby residential properties.
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6. Paragraph 120 of the National Planning Policy Framework (the Framework) states that to prevent unacceptable risks from pollution, decisions should ensure that new development is appropriate for its location. Paragraph 123 of the Framework indicates that decisions should aim to avoid noise giving rise to significant adverse impacts on health and quality of life as a result of new development.
7. I appreciate that in some cases details of how fumes and odours are to be dealt with can be left to a condition. However, this requires a reasonable certainty that there is a viable and effective means of controlling fumes and odours without giving rise to unacceptable noise. In this case no details have been provided about the design or specifications of any equipment to deal with fumes and odours or the type and level of noise it might give rise to. I acknowledge that the extraction equipment could be sited adjacent to the rear elevation of the two storey part of the building. However, as such it would be in close proximity to the flat above the retail premises. The neighbouring residential properties and their gardens would also be in close proximity to the proposed use.
8. This is a sensitive relationship and I am not persuaded that it has been clearly shown that there is a reasonable certainty that a viable and effective solution would be available. Consequently, it would not be reasonable to attempt to deal with this matter by condition. In these circumstances there is a significant risk that neighbours could be subjected to unacceptable levels of fumes, odour, noise and disturbance from the extract equipment which would adversely affect the living conditions they currently enjoy.
9. In relation to noise and disturbance from customer movements the appeal site is located on a busy road. Whilst I acknowledge that some levels of noise and disturbance may arise in relation to customers and staff coming and going to and from the proposed development, there is no objective evidence before me to demonstrate that this would result in any material increase over and above any noise and disturbance that currently exists. In this regard, I am mindful that there are several other commercial uses in the vicinity of the appeal site and that there is already a general level of noise and disturbance associated with the opening hours of the existing uses.
10. I am especially mindful, in this regard, that the suggested opening hours until 23.00 every day correlate with the opening hours of the existing retail use on the site and this could be controlled by way of a planning condition if I were minded to allow the appeal. As such, I do not consider that the proposal would substantially harm the living conditions of the neighbouring occupiers in relation to noise and disturbance from customer movements. I acknowledge that the appellant has no objections in relation to a condition restricting the floor space of the proposed A5 use but this would not address the potential harm that I have identified above.

Conclusion

11. Consequently, the proposal fails to demonstrate that it could be developed without causing significant additional disturbance to the living conditions of neighbouring occupiers in relation to fumes, odour, noise and disturbance from the extraction equipment. Furthermore, from the information before me it appears likely that there is the potential to cause such harm. It follows that the proposal would conflict with LP Policy SP7 and paragraphs 120 and 123 of the Framework. There would be economic benefits associated with the

additional employment stemming from the proposal. However, the potential harm arising from the proposal would clearly outweigh the limited benefits. As such I conclude that the proposal would not be in accordance with the development plan, read as a whole, and the appeal should be dismissed.

D. Boffin

INSPECTOR