
Appeal Decision

Site visit made on 27 September 2016

by Sue Glover BA (Hons) MCD MRTPI

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

Decision date: 05 October 2016

Appeal Ref: APP/P4605/W/16/3143816
8 St Stephens Road, Birmingham, B29 7RP

- 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 Amir Younis against the decision of Birmingham City Council.
 - The application Ref 2014/09514/PA dated 20 December 2014, was refused by notice dated 30 December 2015.
 - The development proposed is described in the application as "the change of use from A1 shop to an A5 shop in order to create an Indian takeaway that sells hot food for consumption off the premises; the shop was previously a wine shop with an A1 licence, which has recently been converted to an Indian takeaway".
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Decision

1. The appeal is allowed and planning permission granted for the change of use from A1 shop to an A5 shop in order to create an Indian takeaway that sells hot food for consumption off the premises; the shop was previously a wine shop with an A1 licence, which has recently been converted to an Indian takeaway, at 8 St Stephens Road, Birmingham, B29 7RP, in accordance with the terms of the application, Ref 2014/09514/PA, subject to the schedule of conditions set out in the annex to this decision.

Clarification

2. The application to the Council refers to an existing use selling cold Indian foods that can be heated on the premises in a microwave if the customer wishes. This was apparent from my site visit with cold food available for customers to purchase.
3. The change of use and internal layout changes are to enable hot food to be prepared and sold on the premises. The external flue at the rear and the internal alterations are not as yet in place. Whilst a proportion of the food sold may be hot food, there is no substantive evidence before me to indicate that a material change of use has already taken place.

Main Issue

4. The main issue is the effect of an A5 hot food takeaway on the safety and free flow of highway users.
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Reasons

5. The appeal premises is within a small neighbourhood centre located around the junctions of St Stephens Road and Dogpool Lane with Pershore Road. The public house is now closed, but there is a post office, an existing hot food takeaway, a barbers' shop and several other small shops and businesses. There are housing areas to the west and north of the appeal site.
6. The junctions are busy and awkward for vehicles to manoeuvre with no traffic light controls except for the pedestrian lights nearby. There is evidence of traffic accidents in the vicinity of the junctions, including 2 serious accidents, although I have no details about the specific causes of the accidents.
7. Street parking is already restricted by double yellow lines along Pershore Road and on St Stephens Road and Dogpool Lane close to the 2 junctions. There is no street parking immediately outside of no. 8 or most of the other shops, and the forecourt at no. 8 is too small to accommodate a vehicle without conflict with pedestrians on the footway. I am mindful that any unlawful parking on double yellow lines or on footways would be subject to traffic control.
8. There is on-street parking in the remainder of St Stephens Road and in the residential side streets nearby. There is no persuasive evidence before me of a lack of nearby on-street parking for short stay trips serving no. 8 or other shops. Moreover, the shop's former occupation as a "wine shop" had potential to also attract short stay parking, as does the sale of food by the existing occupier.
9. Taking into account the parking restrictions in place, the nearby on-street parking, and the existing shop use, I find no significant additional risk to highway safety or the free flow of traffic from a change of use from a shop to a hot food takeaway. There may be existing risks to highway safety from an awkward junction at a neighbourhood shopping centre, but existing risks may be addressed by other measures as indicated in policy 6.49 (Improvement Lines) of the Birmingham Unitary Development Plan 2005 (UDP).
10. I do not find insufficient parking nearby or that traffic movements from the appeal proposal would be likely to cause any significant additional traffic hazard, or that the cumulative impact of traffic generation would be unacceptable. There is therefore no conflict with UDP Policies 8.7, 6.49A and 6.49B.
11. The development plan policies are broadly compatible with paragraph 32 of the National Planning Policy Framework, which says that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. There is no conflict with the policies of the Framework in this respect.
12. I have noted comments regarding the potential for litter and anti-social behaviour, and the proximity of a bus stop, but there are insufficient grounds to dismiss the appeal for these reasons. The West Midlands Police recommend the installation of CCTV as a deterrent to crime, but it is not a necessary condition for a change of use to take place.
13. I have imposed conditions in respect of noise protection and extraction equipment, which is essential to be in place before the use takes place to protect the living conditions of nearby residents, including in the flat above. There is also a condition restricting the hours of operation as set out the

application to the Council in order to protect nearby residents' living conditions. There is existing refuse storage in the rear yard so that a condition about refuse storage is not necessary. A condition is necessary to ensure development is undertaken in accordance with the approved plans as this provides certainty.

14. I have taken into account all other matters, including all the policies in the Framework, and other national planning policy and guidance, but I find none that merit dismissal of this appeal.

Sue Glover

INSPECTOR

Annex

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans except as otherwise amended by this schedule of conditions: location plan and drawing nos. 614/01 and 614/02 dated October 2015.
- 3) No development shall take place until details of the extract ventilation and odour control equipment, including details of any noise levels, noise control and external ducting have been submitted to and approved in writing by the Local Planning Authority. The extract ventilation and odour control equipment shall be implemented in accordance with the approved details and thereafter maintained.
- 4) The rating levels for cumulative noise from all plant and machinery shall not exceed 5dB below the existing LA90 background levels and 10dB below the existing LAeq at any noise sensitive premises as assessed in accordance with British Standard 4142 (2014) or any subsequent guidance or legislation amending, revoking and/or re-enacting BS4142 with or without modification.
- 5) No development shall take place until a scheme of noise insulation between the commercial ground floor use and the residential first floor use has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details prior to the change of use and thereafter maintained.
- 6) The use hereby permitted shall only take place between the following hours:
1000 - 2200 Mondays to Fridays,
1000 - 2300 Saturdays, Sundays and Bank Holidays.