
Appeal Decision

Site visit made on 4 October 2016

by G J Fort BA PGDip LLM MCD MRTPI

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

Decision date: 10 November 2016

Appeal Ref: APP/W4223/W/16/3152715

67 Burnley Lane, Chadderton, Oldham, Lancashire OL9 0BU

- 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 Abdul Monnah against the decision of Oldham Metropolitan Borough Council.
 - The application Ref PA/337915/15, dated 10 December 2015, was refused by notice dated 3 March 2016.
 - The development proposed is the change of use from hairdresser to a café with takeaway.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from hairdresser to a café with takeaway at 67 Burnley Lane, Chadderton, Oldham, Lancashire OL9 0BU in accordance with the terms of the application, Ref PA/337915/15, dated 10 December 2015 subject to the conditions in the schedule to this decision below.

Procedural Matter

2. The application that led to this appeal was retrospective, and I saw at my site visit that the change of use had already occurred.

Main Issues

3. I consider the main issues in this appeal to be firstly, the principle of the development in terms of local and national policy; secondly, the effects of the change of use on the living conditions of the occupants of adjacent properties in terms of noise and disturbance; and thirdly, the effects of the development on highway safety.

Reasons

Principle

4. This appeal concerns the ground floor of an end-terraced property. The wider area, although principally residential, includes a number of other uses mixed in within the area's long terraced blocks. There is a clustering of non-residential uses in the vicinity of the appeal premises including a hardware store, general store and barber's shop. The change of use to which this appeal relates is to provide a café and takeaway, and I saw at my site visit that the premises
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- included a moderate amount of tables and chairs internally to enable this use, as well as cooking equipment and a counter.
5. Policy 15 of the *Oldham Council-Joint Core Strategy and Development Management Policies Development Plan Document* (adopted November 2011) ('the Joint Core Strategy'), amongst other things, sets out the approach relating to proposals for food, drink and night-time economy uses. The policy states that proposals for hot food takeaways and cafes must demonstrate that "there is a need for the proposal, having regard to the number of existing and proposed establishments (including those already permitted) within the area." This policy is supported by the Council's *Vibrant Centres Supplementary Planning Document* (adopted July 2012) ('the SPD'), which provides further advice on how the various criteria of Policy 15 should be applied.
 6. My attention has been drawn to the National Planning Policy Framework ('the Framework'), particularly paragraph 23 which, although directed principally to town centres, establishes that planning policies should promote competitive centres that provide customer choice and a diversity of offer. Furthermore, I am mindful of the emphasis that the Framework places on securing sustainable economic growth more generally in paragraphs 17 and 19 to 22. In my reading of these aspects of the Framework I concur with the appellant that there is no national policy that explicitly requires applicants to demonstrate the need for hot food takeaways or cafes. Consequently, as the Joint Core Strategy predates the Framework, and following the guidance in paragraph 215 of that latter document, I give more weight to the national policy relating to consumer choice and demand, and the provision of a diverse offer in this case that to the necessity test of Policy 15.
 7. At my site visit, I saw only one other hot food takeaway in the wider area. This is located on Burnley Lane in an end terraced property a block away from the appeal premises. On Garforth Street I saw a sandwich shop several doors down from No 67, and a café in an end terraced property several blocks away. The dispersed nature of these uses is not indicative of the kind of concentration or clustering that the SPD seeks to avoid.
 8. Furthermore, onsite I saw the menu offered by the appeal development, and whilst mindful that these can change over time, I am persuaded that it comprises a different offer to the uses elsewhere in the area, firstly through clearly providing food that meets the dietary needs of a proportion of the community that may not be met by other nearby outlets; and secondly, in terms of the range of meals and snacks on offer. Moreover, the café element enabling customers to consume their food onsite clearly differentiates it from the closest hot food takeaway.
 9. The appellant comments that prior to the current use commencing the property had been empty for a considerable period of time. Although I have been supplied with little substantive evidence in this regard, I am mindful that an empty building in a prominent location, adjacent to residential uses, would do little to secure the vitality and viability of the area, and that the use has a substantially more positive effect in these regards.
 10. Consequently, taking these matters together, I am persuaded that the change of use provides consumer choice and adds to a diversity of offer in the area. Whilst the appellant has not demonstrated a need for the development, and thus this would conflict with Policy 15 of the Joint Core Strategy, I give more

weight to the Framework's policies in this instance. Moreover, I can discern no conflicts with Matters 1 to 3 of the SPD, which taken together and amongst other things seek to ensure that proposals enhance the vitality and viability of the general area in which they are located and avoid the concentration and clustering of A5 uses.

Living Conditions

11. The appeal property is situated in an end terrace; the property next door is a dwelling and the upper floor of No 67 is in residential use. I have considered the effects of the development on the occupants of these adjacent uses in terms of noise and disturbance.
12. I am mindful that the authorized use of the site, seemingly established by planning permission in 1987, as that of a hairdressing salon is within the A1 use class. This would enable a number of different uses of the appeal property without necessitating a formal change of use, including a range of retail operations such as off licences, newsagents or convenience stores. All of these alternative uses could have late opening times, and could have similar patterns of comings and goings. Consequently, I consider that there is no material difference between the current use and some of the other lawful alternative uses of the property, and as a result, can see no significant harm arising from the appeal development in this regard.
13. Whilst the appeal development differs in that it has a café element, I saw due to the limited amount of space this would only accommodate a modest amount of customers. Whilst this could create a limited amount of noise over and above that of some of the other alternative A1 uses mentioned, I consider that an adequately worded condition would secure soundproofing measures between the café and the flat above to mitigate any harmful effects in this regard. I thus consider that the appeal development would cause no significantly harmful effects to the living conditions of the occupants of the flat above in terms of noise and disturbance.
14. Moreover, my attention has been drawn to other uses in the area including the other hot food takeaway and the general stores across the road, which have similar opening hours to the appeal development, and are similarly mixed in with residential uses. I am thus persuaded that the general noise environment would be one where comings and goings in the evenings are by no means unusual. Thus I have no reason to believe, given the small-scale of the appeal development that it would exacerbate any noise and disturbance to a degree that would be of material harm to the living conditions of neighbouring occupants. Furthermore, there are no pubs or clubs in the immediate vicinity of the appeal premises, which would limit any demand arising from the customers of such establishments. This, taken together with the proposed closing time for the appeal premises leads me to the view that the potential for excessive late night noise and disturbance arising from the use would be extremely limited.
15. I note too, due to residential development around the appeal property's adjoining streets, that the development has a potentially large customer base that could conveniently access the site on foot. I am thus persuaded that excessive car movements resulting in harmful noise and disturbance to the occupiers of adjacent properties would not necessarily arise.

16. Consequently, as I have found that the development would cause no significant harm to the living conditions of the occupiers of adjacent residential property in terms of noise and disturbance arising from comings and goings associated with its use, I can find no conflict with Policies 9 and 15 of the Joint Core Strategy, or Matters 4 to 7 of the SPD in these regards. Taken together, and amongst other things, these policies seek to ensure that developments do not cause unacceptable impacts to the residential amenity of neighbouring occupants.

Highway Safety

17. The appeal property is close to the junction of Garforth Road and Burnley Lane. Immediately to the front of No 67 a traffic island separates Burnley Lane, providing a one way element of highway to the front of the terrace, at the end of which vehicles are restricted from performing right turns onto the main part of Burnley Lane. Across Garforth Road and located a number of metres beyond that down Burnley Lane there is a zebra crossing. Adjacent to this zebra crossing, on the opposite side of the lane to the appeal site there is a parking bay in front of the shops with limited waiting time. At the time of my site visit traffic along this stretch of Burnley Lane, and the immediately surrounding streets was generally quiet.
18. In these regards, I am once again conscious of the established use of the appeal premises. I have no substantive evidence before me to suggest that the current use would lead to a greater demand for parking or a larger turnover of visits than that of a hairdresser or other A1 use using the same premises. Indeed some other A1 uses, such as convenience stores, could have a greater frequency and turnover of vehicle movements associated with them. I am also mindful of the small-scale nature of the use, the availability of adequate parking opportunities nearby, but in the wider area, and the aforementioned propensity for customers to access the premises on foot. Taken together, these matters lead me to the view that the appeal development would not cause any material harm to highway safety in the vicinity of the appeal property.
19. Whilst I am aware of concerns relating to illegal parking that could happen near to the appeal site, I have been supplied with no substantive evidence to suggest that the development has either been the cause of this or exacerbated it to any substantial degree. I also note the unusual road layout around the traffic island to the front of the site, however, the road markings and signage are clear with regards to the types of movements that vehicles are expected to perform, and the priorities of the different lanes, and I consider that any competent driver would be able to understand these. Although I am conscious of the zebra crossing further along the lane, it is a considerable distance from the appeal premises; moreover, I have no substantive evidence before me to suggest that the development would lead to aggressive or difficult driving that would be of harm to the crossing's users.
20. Consequently, I consider that the development would not cause any significantly harmful effects to highway safety, and thus would not conflict with Policies 9 and 15 of the Joint Core Strategy or the SPD. Taken together, and amongst other matters, the policies and the SPD seek to ensure that proposals do not have adverse impacts on highway and pedestrian safety.

Other Matters

21. I am aware of concerns regarding anti-social behaviour more generally in the environs of the appeal site including revving of engines, loud music from cars and the possible use of drugs by people in cars. However, I have no substantive evidence to link these activities to the use which is subject to this appeal.
22. I am aware of concerns about litter. I am also mindful that a resident has seen rats in the back street of Burnley Lane. However, I have no substantive evidence to suggest that the appeal scheme has been the cause of these incidents. Moreover, the attachment of an adequately worded condition in respect of the storage and removal of refuse created in connection with the use would address any potentially negative effects in these regards.

Conditions

23. I have considered the list of conditions submitted by the Council against the tests given in paragraph 206 of the Framework, which states that "conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable and precise and reasonable in all other respects."
24. As the use is ongoing I have not found it necessary to attach the standard implementation condition. However, in the interests of certainty I have found it necessary to attach a condition which specifies the approved plans.
25. Given the nature of the use it is necessary to attach a modified version of the condition suggested by the Council relating to the control of fumes and odours emanating from the appeal property. This is clearly in the interests of the living conditions of the occupiers of adjacent properties.
26. Given the presence of the flat above the appeal premises, and the nature of the use, I have considered it necessary to attach a modified version of the Council's suggested conditions requiring the implementation of agreed soundproofing measures, to address any negative effects of noise.
27. In order that the use makes adequate arrangements for the storage and removal of waste, in the interests of the amenity of the surrounding area, I have considered it necessary to attach a condition requiring submission of details to, and approval by, the Council of the refuse facilities.
28. In the case of the above three conditions, due to the retrospective nature of the appeal I have modified the Council's suggested wording to give the appellant a reasonable amount of time to comply with the submission of the relevant details, without necessitating a cessation of use in the interim.
29. I have considered it necessary and reasonable to attach a condition limiting the hours of opening of the use. Due to the later opening times of other uses in the immediately surrounding area, however, combined with the condition requiring deployment of soundproofing measures, I have not considered it necessary to restrict opening to the extent suggested by the Council and have instead used the hours given in the application form, although with a closing time of 2200hrs on Sundays and bank and public holidays as suggested in the appellant's further comments. This will ensure that the development is

sensitive to the living conditions of the occupiers of its adjacent properties, by restricting opening in the very late night and very early morning.

Conclusion

30. Whilst the development conflicts with Policy 15 of the Joint Core Strategy in failing to demonstrate the need for the development, I give more weight to the Framework in this instance and I am persuaded that it would contribute to consumer choice and a diversity of offer within its immediate locale. All other aspects of the scheme comply with the policies of the development plan insofar as they have been brought to my attention. Accordingly I conclude, for the reasons given above, and having regard to all other matters raised, that the appeal should succeed.

G J Fort

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: 'CE/299 Proposed'.
- 2) Unless within 3 months of the date of this decision a detailed scheme for treating fumes and odours before their emission to the atmosphere so as to render them innocuous is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site shall cease until such time as a scheme is approved and implemented. The scheme shall detail how the extraction unit will be attenuated and mounted to minimise the transmission of airborne and structure related noise and vibration. The scheme shall include details of design, siting and external materials.
 - If no scheme in accordance with this condition is submitted within 3 months of the date of this decision, the use of the site shall cease until such time as a scheme approved by the local planning authority is implemented.
 - Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter remain in use.
 - In the event of a challenge to this decision to the High Court, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition shall be suspended until that legal challenge has been finally determined.
- 3) Unless within 3 months of the date of this decision a scheme to soundproof the floors and ceilings between the use hereby permitted and the flat above is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site shall cease until such time as a scheme is approved and implemented.
 - If no scheme in accordance with this condition is submitted within 3 months of the date of this decision, the use of the site shall cease until such time as a scheme approved by the local planning authority is implemented.
 - Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter remain in use.
 - In the event of a challenge to this decision to the High Court, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition shall be suspended until that legal challenge has been finally determined.
- 4) The premises shall only be open for customers between the following hours:
 - 0800-2300 Mondays-Saturdays and
 - 1100-2200 Sundays and Bank and Public Holidays.
- 5) Unless within 3 months of the date of this decision details of the facilities for the storage and removal of refuse and waste materials are submitted in writing to the local planning authority for approval, and unless the

approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site shall cease until such time as a scheme is approved and implemented.

- If no scheme in accordance with this condition is submitted within 3 months of the date of this decision, the use of the site shall cease until such time as a scheme approved by the local planning authority is implemented.

- Upon implementation of the approved details specified in this condition, that scheme shall thereafter remain in use.

- In the event of a challenge to this decision to the High Court, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition shall be suspended until that legal challenge has been finally determined.