

Appeal Decision

Site visit made on 25 October 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: 18 November 2016

Appeal Ref: APP/Q4625/W/16/3155085

10 Knightsbridge Road, Olton, Solihull, West Midlands B92 8RL

- 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 Surinder Singh against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2016/01062/COU, dated 1 April 2016, was refused by notice dated 28 June 2016.
 - The development proposed is described as "*change of use of existing A1 retail premises to A5 hot food takeaway for fish and chip shop*".
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is the effect of the proposed development on the living conditions of neighbouring occupiers with particular regard to noise and disturbance.

Reasons

3. The appeal property is currently vacant and is part of a small parade of retail units at the junction of Knightsbridge Road and Castle Lane. The parade includes a convenience/off-licence store, a Chinese café, other retail units and a children's day nursery. However, the surrounding area is predominantly residential in character and there are residential properties in close proximity to the appeal site.
 4. I noted at my site visit that there is a service road in front of the parade that is utilised for parking. The hot food takeaway would be open until 21.30 and I note that the appellant states that both the off-licence/convenience store and the Chinese café have later closing times than that proposed.
 5. The Council's Officer Report refers to the planning history and recent appeal decisions in relation to the Chinese café (No 8). I understand that previous Inspectors considered that a hot food takeaway use would result in an unacceptable increase in noise and disturbance in this location. However, I have not been provided with the full details of the previous schemes or the background to the previous appeal decisions. In any case, I am required to determine this appeal on its own merits.
 6. The Council have stated that even though No 8 has planning consent for a restaurant use a condition attached to the planning consent restricts hot food to be consumed off the premises to be by delivery only. As such, it would appear that No 8 does not operate as a hot food takeaway with customers arriving to order and collect food.
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7. Hot food takeaways can generate significant levels of activity which can affect residential living conditions. I consider that residential occupiers near the site will be used to higher levels of activity than if the area were purely residential but it is still likely that general activity in the area will significantly reduce as the evening progresses. Furthermore, they are entitled to a reasonable degree of peace and quiet in their homes, particularly in the evening period when they can expect to be relaxing and children may be sleeping. I acknowledge that some of the customers would walk to and from the premises, but the likelihood is that the majority would use a car.
8. I consider that the existence of the off-licence combined with the proposal, both of which would be open in the evening and could generate significant trade, in such close proximity in the same small parade of shops, would result in excessive noise and disturbance from customers. This could include additional comings and goings of pedestrians and vehicles, car radios, shutting of car doors, revving of engines. No doubt on occasions it would be likely to lead to customers congregating on the footway outside the premises, especially during warm weather and there would be noise from the high-spirited behaviour and congregation of customers. These activities would be clearly audible at these later times of up to 21.30 hours.
9. As such, I consider that the proposed change of use would be likely to lead to a significant increase in noise levels in the immediate vicinity and consequent disturbance to adjoining occupiers. I acknowledge that sliding doors in the appeal property would negate the noise of the shop doors opening and closing and that CCTV cameras would be installed but they would not address the potential harm I have identified above.
10. Therefore, I conclude that material harm would be caused to the living conditions of adjoining occupiers by the noise and disturbance which would result from the proposed development. It follows that the proposal would not comply with Policy P14 of the Solihull Local Plan which, amongst other things, seeks to protect and enhance the amenity of existing and proposed occupiers.

Other Matters

11. I note that there is local concern about littering. However, there are a number of litter bins in close proximity to the site and there is no substantive evidence to demonstrate that the proposed development would significantly exacerbate an existing problem.
12. The proposal would bring an empty retail unit back in to use and this would have economic and social benefits including providing a service for nearby residents who may have limited access to transport. However, these benefits do not outweigh the identified harm to the living conditions of nearby residents.
13. I acknowledge that parking and highway safety issues did not form part of the Council's reason for refusal. However, a lack of harm in these respects is a neutral consideration.

Conclusion

14. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

D. Boffin

INSPECTOR