

Appeal Decision

Site visit made on 8 November 2016

by Alexander Walker MPlan MRTPI

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

Decision date: 22 November 2016

Appeal Ref: APP/N4205/W/16/3153236

30 St Helens Road, Bolton BL3 3NH

- 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 Asif Adam Govaria against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 95612/16, dated 7 January 2016, was refused by notice dated 24 March 2016.
 - The development proposed is the change of use from an A1 butchers to A3/A5 hot food takeaway with seating and internal alterations.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - i) the effect of the development on the vitality and viability of the Daubhill Local Shopping Centre; and
 - ii) the effect on the living conditions of the occupants of neighbouring residential properties, with particular regard to noise and disturbance.

Reasons

Vitality and Viability of the Daubhill Local Shopping Centre

3. The appeal property consists of the ground floor of a two-storey, red brick end-terrace building which forms part of a row properties that comprise retail and commercial units at ground floor and generally residential units above. The row of properties is one of a number of similar terraces that line St Helens Road and lie within the Daubhill Local Shopping Centre.
 4. Policy CG4 of Bolton's Core Strategy Development Plan Document (DPD) 2011 states that new development should be compatible with surrounding land uses and should not generate unacceptable nuisance or noise. In addition to this, the Council's Location of Restaurants, Cafes, Public Houses, Bars and Hot Food Takeaways in Urban Areas Supplementary Planning Document (SPD) 2013 identifies the proliferation of hot food takeaways as being a particular problem in local shopping centres in the Borough. In particular problems of litter, noise and the proliferation of premises which have roller shutters closed during normal retail opening hours are having an unacceptable impact on residential
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occupiers and local shopping areas. In response to this, paragraph 29 of the SPD states that, with the exception of Bolton Town Centre, an unacceptable proliferation of A5 uses shall be considered to occur where, as a result of a new proposal, there would be more than two existing, or approved, A5 uses within a 50 metre radius of the application site.

5. The Council states that there are currently three hot food takeaways within a 50m radius of the appeal property; Nos 40 (Raja's Pizza Bar), 24 (Mash's Wing Ranch) and 17 (Ashby's Chippery) St Helens Road. The appellant states that there are only two A5 units within 50m. Based on the observations I made on site, I concur with the Council's findings.
6. As there is already an existing proliferation of hot food takeaways in the locality, which exceeds the SPD's guidance of no more than two units within a 50m radius, the proposal would exceed this further, resulting in an increase in the number of units with roller shutters closed during the daytime. Consequently, this would have a harmful effect on the overall balance of daytime and night time activities in the Local Shopping Centre, which at present predominantly comprises daytime uses.
7. The appellant argues that the Council's concern is with regard to the proximity of the site to a school. This is referred to in the Council's email dated 4 April 2016. The SPD¹ states that applications for hot food takeaways within 400m of a secondary school could be refused. However, this is a separate matter to their main concern which is the proliferation of A5 uses, irrespective of their proximity to schools.
8. I find therefore that the proposal would significantly harm the vitality and viability of the Daubhill local Shopping Centre, contrary to Policy CG4 of the DPD and the SPD.

Living Conditions

9. The proposed use would be open until 2330 hours Monday to Thursday and 2400 hours Friday and Saturday. Compared with the existing use, this change of use would likely lead to significant numbers of customers on foot and in vehicles until relatively late in the evening along with possible deliveries of supplies. I acknowledge that the nearby existing hot food takeaways are also open late at night and therefore the effects I have mentioned above would already likely occur. However, the proposal would exacerbate these effects, in particular, increasing the level of noise and disturbance through vehicle doors closing, engines running and people conversing inside and outside of the premises. Therefore it would have an adverse effect on the living conditions of the occupants of nearby residential properties, primarily the flat above the appeal property and those above other units in the terrace row, particularly late at night when it could disturb their sleep. I note that the two first floor flats of Nos 28 and 32 St Helens Road are not occupied as residential accommodation. Nevertheless it would still harm the living conditions of the occupants of other neighbouring properties.
10. I find therefore that the noise and disturbance as a result of the proposed change of use would significantly harm the living conditions of the occupants of neighbouring residential properties. As such, it would be contrary to Policy

¹ SPD paragraphs 33-37

CG4 of the DPD and the SPD, which seek to ensure that new development protects amenity and does not generate unacceptable nuisance or noise.

Other Matters

11. I have had regard to the appellant's suggestion that security could be internal and that the opening hours could be extended to include normal hours. However, the use would still operate during the evenings and it would not be possible to enforce the daytime opening hours. Even with internal shutters, the premises would not have an active frontage when it is closed. Furthermore, this would not address the harm I have identified above with regard to the effect on the living conditions of the occupants of neighbouring residential properties as it would still operate late into the evening.
12. I have also had regard to the appellant's argument with regard to the requirement for an A1 use. However, there is no evidence before me to suggest that an A1 use in this location is no longer viable. Therefore, I attribute this matter limited weight.

Conclusion

13. For the reasons given above, having regard to all matter raised, the appeal is dismissed.

Alexander Walker

INSPECTOR