The Planning Inspectorate

Appeal Decision

Site visit made on 29 November 2016

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 09 December 2016

Appeal Ref: APP/C4615/W/16/3158389
The Wine Shop, 238 Hagley Road, Halesowen, B63 4QQ.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
- The appeal is made by Mr G Sangha against the decision of Dudley Metropolitan Borough Council.
- The application Ref. P16/0523/PN3C, dated 28 April 2016, was refused by notice dated 22 June 2016.
- The development proposed is the change of use from Shop (Class A1) to a café /restaurant (Class A3) with proposed fume extraction.

Decision

1. The appeal is allowed and prior approval is granted under Class C of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for the change of use of the premises at The Wine Shop, 238 Hagley Road, Halesowen, B63 4QQ, from shop (Class A1) to a restaurant or café (Class A3) with proposed fume extractor, subject to the following conditions:

    1) The premises shall only be open for customers between the following hours: 0800 - 2300 Mondays to Saturdays (inclusive) and 1200 - 2300 on Sundays.

    2) Before the use hereby permitted takes place, equipment to control the emission of fumes and smell from the premises, and including details of the noise from the equipment, shall be installed in accordance with a scheme, to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.

Main Issue

2. The main issue is the effect of the use on the living conditions of occupiers of residential properties around the site in terms of causing noise and disturbance.

Reasons

3. The appeal site premises contain a shop at ground floor which lies in a short frontage of commercial properties in a local commercial centre with other institutional and residential uses close by. There are on-street parking spaces outside of the site which are restricted to short periods of stay. It is proposed to change the use of the premises to a café/restaurant.

4. Class C of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order generally grants planning permission for the change of use of a building from Class A1 shop to Class A3 café/restaurant subject to the conditions set out in paragraph C.2 which require the Council to be notified and to give a determination about whether specific impacts of the new use need to be considered.

5. The Council's objection relates to the effect of the proposed use on the living conditions of the occupiers of properties around the site by the smell/odour caused by cooking on the premises and by the coming and going of customers to the premises particularly at night.

6. I note the Council's description of residential properties in the vicinity of the site but at my site visit it appeared to me that some of the upper floors of the two storey neighbouring buildings were mainly in commercial or storage use. Nevertheless, I noted the residential properties (No's 222-2224) set back to the rear of the frontage and the rear gardens of the other houses fronting Red Leasowes Road. In order to avoid causing problems associated with odour, the appellant proposes an extraction system for the kitchen, including silencers and carbon filters built into the system, and the plans show an external flue with the duct extending one metre above the flat roof of the rear two storey element of the building. I am satisfied that in principle, such an extraction system would reasonably control and mitigate cooking odour arising from the kitchen of a café/restaurant, but that the details of the extraction system should be agreed with the Council to ensure that the details of the equipment do not also give rise to other disturbance such as that caused by noise or vibration.

7. In terms of potential disturbance caused by customers, the appellant emphases that the normal hours of the shop over many years have been 7am till 11pm on Mondays to Saturdays and from noon to 10pm on Sundays. The times put forward for a café/restaurant use are for 0700 - 00.00 on seven days a week. Reference is made by the appellant to other cafes/restaurants locally stating that these open later but there is no evidence before me to establish what the opening times of these other premises lawfully are or their relationship with adjoining houses.

8. It appears to me that the closing time put forward would extend an active commercial use into a time which could be considered as anti-social in a residential area and the character of the use proposed is likely to be materially different to that of a simple 'corner shop'. I also noted the presence of car parking at the rear of the site shared with the neighbouring property and this could result in an increase in noise from car doors being closed and the vehicle moving off in close proximity to other houses. Therefore I do not consider that a closing time of midnight each day is an appropriate one.

9. On balance, it appears to me that a closing time of 2300 each night would strike a reasonable balance between the needs of any café/restaurant and their customers and maintaining the living conditions of people living around the site.

10. The provisions of the GPDO are designed to give some flexibility in changes of use as specified in the Order. Taking into account the nature of the site and the relationship with other uses and especially residential living

conditions, I am satisfied that with the conditions I have mentioned, the use proposed would not harm the living conditions of neighbours.

11. For the reasons given above I conclude that the appeal should be allowed.

David Murray

INSPECTOR