
Appeal Decision

Site visit made on 4 January 2017

by V Lucas-Gosnold LLB MCD MRTPI

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

Decision date: 16th January 2017

Appeal Ref: APP/M4320/W/16/3157883

6 The Crescent, Thornton, L23 4TA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant [outline] planning permission.
 - The appeal is made by Mr Procopiou against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2016/00587, dated 22 March 2016, was refused by notice dated 7 June 2016.
 - The development proposed is Change of Use from A1 Retail unit to A5 Hot Food Takeaway with erection of extraction ducts to the rear of the unit.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council have referred to policies in their emerging Local Plan (LP). The Council are due to imminently adopt their LP at the beginning of 2017. It is therefore at an advanced stage in its preparation and I understand that the policies referred to in this appeal do not have any significant unresolved objections at this stage. In accordance with paragraph 216 of the National Planning Policy Framework I therefore attach weight to these policies.

Main Issue

3. The main issue is the effect of the development proposed on the living conditions of residents nearby, with particular regard to noise and disturbance.

Reasons

4. The appeal property is a ground floor shop within a small shopping parade that together form a crescent shape. The parade is set back from the signal controlled junction of Edge Lane with Moor Lane and there is a separate service road and small parking area behind the pavement that runs along the edge of the main highway. There is a mix of commercial uses within the Crescent including a post office, pharmacy, convenience store and a sandwich takeaway shop. There is an existing retail business at No. 6.
 5. The appeal proposal would see the change of use of the existing A1 retail unit to an A5 Hot food takeaway (HFTA).
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6. There has been a previous appeal¹ for a change of use from an A1 retail unit to an A5 HFTA within the same shopping parade as the appeal property. That appeal was dismissed in September 2016 for reasons including the effect on the living conditions of neighbouring residents, with particular reference to noise and disturbance. The previous Inspector considered that the proposed use would attract comings and goings on foot and by motor vehicle during the day and in particular into the night. He observed that the deep pavement in front of the appeal premises provides an opportunity for persons to congregate and that the proposal would lead to an increased potential for individuals or groups of people to create noise. The Inspector considered that the effect would be felt more keenly during evening hours, when many residents may reasonably expect a degree of peace and quiet once other premises in the parade close and on days when other premises are not open.
7. The appeal proposal before me differs slightly from the previous appeal regarding the proposed opening hours. The previous appeal scheme proposed to close at 10pm. Although no opening times are specified on the original application form for the proposal before me, the appellant confirmed to the Council during their determination of the proposal that the opening hours would be Mondays to Fridays 11:00am - 2:00pm and 4:00pm - 9:30pm; Saturdays 11.00am - 2.00pm and 4.00pm - 9.30pm; and Sundays & Bank Holidays 4.00pm - 9.30pm. The appellant's final comments refers to a revised proposed closing time of 9pm however this has not been the subject of consultation with the Council or other interested parties, including local residents, as far as I am aware.
8. There are flats above the ground floor commercial units in the Crescent. Whilst some units, specifically the one directly above the appeal property, may be used in connection with the businesses, other units are in residential use. There are also dwellings close by along Moor Lane, Edge Lane and Thornfield Road which runs along the side of the Crescent. Therefore are there numerous residential properties close to the appeal building.
9. Due to the busy nature of the area there will be an existing level of noise and disturbance that will be likely to be noticeable to residents living close by. Specifically, both Moor Lane and Edge Lane are busy thoroughfares with a steady stream of traffic travelling along the highway. The signalled controlled junction where the Crescent is situated is also busy with high volumes of traffic passing through it. The parade of shops at the Crescent also appears to be well used with cars regularly pulling in and out of the parking area and customers visiting the different businesses.
10. However, the majority of businesses within the parade are not open later in the evening. I note the sandwich takeaway closes at 7pm which is the early evening and just after the typical rush hour period. The closing time of this business therefore corresponds with the point at which traffic along the adjacent road network will begin to reduce and, as a consequence, background levels of noise in the wider environment will become less. Whilst the convenience store may be open until 9pm, the nature of this type of store is different to that of a HFTA as the average customer will be likely to pop in for a specific item of shopping and visits later in the evening are therefore likely to be few and of short duration only. There is a small supermarket further along

¹ Appeal Ref: APP/M4320/W/16/3153546 Decision date: 19 September 2016

Edge Lane open until 11:00pm and a larger supermarket on the opposite side of Moor Lane open until 10:00pm. Both these supermarkets are set back from the road and the larger supermarket is sited away from residential properties. The nature of these stores is also different to that of a HFTA for the same reasons I have described in relation to the convenience store within the Crescent.

11. As the previous Inspector observed, the pavement is quite wide outside the premises along the Crescent. This feature, along with the separate service road and parking area would be likely to provide the opportunity for visitors to a HFTA to congregate outside the premises either whilst waiting for their food order to be cooked or to eat their food once they had purchased it. There will also be noise as a result of customers coming and going to the appeal property whether on foot, such as conversations overheard within the street, or in a motor vehicle, such as the slamming of car doors, the turning over of car engines and vehicles manoeuvring within the parking area itself.
12. This would all be at a time when vehicle noise from the surrounding road network is much less and the majority of businesses within the area have closed. It is at these times, later in the evening and after 7pm in particular that residents living close by are entitled to expect a reasonable degree of peace and quiet as they watch television, get younger children ready for bed or otherwise wish to relax within their homes. The noise and disturbance as a consequence of the proposed HFTA would therefore be harmful to the living conditions of nearby residents. Therefore even if a condition were to be attached restricting the opening hours of the proposed HFTA to 9pm, this would not overcome the concerns that I have identified.
13. I note the information submitted regarding a previous chip shop within the crescent. However I understand that the use ceased several years ago in around 2004. As such that use is no longer extant and this is not a relevant planning consideration. Whilst there may be other chip shops operating in the surrounding area, I have assessed this appeal proposal on the main issue that I have identified which is necessarily a place specific assessment. Whilst the Council may have referred to the principal of the proposal being acceptable in general given that it would be a commercial use situated within established parade of shops, it is the specifics of the proposal regarding its effect on the living conditions of nearby residents that they have raised concerns about. For the reasons I have given above, I am in agreement with the conclusions of the Council on this issue and those of the previous Inspector in so far as the previous appeal is relevant to the proposal before me.
14. The Council have also referred to a policy in their emerging Local Plan (LP) regarding their approach to HFTA's close to schools. I understand that the policy is designed to tackle obesity. On that basis, the Council have suggested a condition that would restrict the opening hours of the proposed business during the school day so as to prevent school children visiting the proposed HFTA to purchase food. If the appeal proposal had been acceptable in other regards, this is a matter on which I would have requested further information from the parties including whether the existing sandwich takeaway business which is open during the school day was a relevant planning consideration and the effect of restricting the opening hours from 5pm to 9pm would have had on the viability of the proposed business.

15. Accordingly, I conclude on this issue that the development proposed would be harmful to the living conditions of residents nearby, with particular regard to noise and disturbance. The proposal would therefore conflict with policies CS3, MD6, H10 of the Council's Unitary Development Plan (Adopted 2006) and policy HC3 of the Council's emerging LP which together seek to ensure that development will not be permitted if it would cause significant harm to amenity; and that it would not have an unacceptable impact on the living conditions of neighbouring properties.

Other Matters

16. Based on the information before me the appeal proposal would be acceptable with regard to highway safety, parking provision and the character and appearance of the area. However a lack of harm in these respects is a neutral matter. Whilst the proposal would result in the creation of some jobs, it would be small scale and this does not therefore amount to a significant economic benefit that would outweigh the harm that I have identified above.

Conclusion

17. For the reasons given above, I conclude that the appeal should be dismissed.

V Lucas-Gosnold

INSPECTOR