

Appeal Decision

Site visit made on 16 January 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 3rd February 2017

Appeal Ref: APP/G4620/W/16/3160620

18 Claypit Lane, West Bromwich, West Midlands B70 9UN

- 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 Noor Khan against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref DC/16/59649, dated 5 January 2016, was refused by notice dated 19 August 2016.
 - The development proposed is change of use from A1 to A3.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application form states the proposed development is a 'change of use from A1 to A3' for a 'fish restaurant'. However, the Council refer to a 'proposed change of use at ground floor from Shop (use class A1) to hot food takeaway (use class A5) and extraction chimney' on the decision notice. The appellant has ticked on the appeal form that the description hasn't been changed and yet includes the amended description. I sought further clarification from the parties and the appellant has confirmed that the proposal is for the development as set out on the appeal form. I have therefore determined the appeal on this basis.

Main Issues

3. The main issues are:
 - The effect of the proposal on the living conditions of neighbouring occupiers, with particular regard to noise and general disturbance.
 - The effect on highway safety.
 - Whether the proposal is in an appropriate location for such a use, with particular regard to the Sequential Test.

Reasons

Living conditions

4. It was evident from my site visit that Claypit Lane is a busy and well trafficked street with frequent comings and goings. Although many customers may well visit the appeal site on foot, given the availability of parking, others would be likely to arrive by car or other vehicle and would wish to park close to the site.
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5. There are dwellings directly opposite the appeal site and to the side, albeit that these are set back from Claypit Lane. The proposal indicates opening times of 11:00 hours to 23:00 hours Monday to Sunday, including Bank Holidays and therefore the use would operate well into the night when activity and background noise in the vicinity is likely to have reduced considerably.
6. In this context, customers congregating outside the unit and the general comings and goings would be likely to result in intrusive noise, including conversations, revving engines and the slamming of vehicle doors. This would lead to noise and disturbance during periods when local residents would expect a relatively quiet environment to allow rest and sleep and I am also mindful that the use would operate seven days a week with no respite. Whilst I note that the Council has suggested a condition restricting opening times to 22:00 hours and the appellant has confirmed agreement, the reduction in opening times by one hour is not sufficient, given the proximity of residential properties and does not persuade me that it would make the development acceptable in planning terms.
7. For these reasons, the proposal would cause significant harm to the living conditions of neighbouring occupiers in terms of noise and disturbance. It would conflict with Policy SAD DM9 of the Site Allocations and Delivery Development Plan Document 2012 ('SADDP') which, requires an assessment as to the effect of such uses on noise and disturbance and states that where adverse effects are likely to occur, the application will be refused.

Highway safety

8. Directly to the front of the appeal site there are parking restrictions but customers would be able to park on the highway in front of the neighbouring industrial units. This would not necessarily be an issue during the evening when such uses may no longer be in operation but the appeal site also lies opposite a secondary school¹. I witnessed at the site visit that the locality is extremely busy during lunchtime when there are a large number of students in the area. Such a use is likely to attract a significant number of students and to my mind, much more than an A1 use. The combination of opening hours and likely vehicle movements from residential properties, on street parking and the adjoining commercial uses is likely to increase the risks of conflict between users which would harm highway safety.
9. For these reasons, the proposal would cause harm to highway safety and would conflict with Policy SAD DM9 of the SADDP insofar as it requires consideration to be given to traffic generation, parking problems and highway safety and states that where adverse effects are likely to occur, the application will be refused.

Location

10. The site is within walking distance of the Carters Green Local Centre and for the purposes of Policy CEN7 of the Black Country Core Strategy 2011 ('CS') it represents an out of centre location, a point which is not disputed by the appellant. Both Policy CEN7 and the National Planning Policy Framework ('the Framework') require that a sequential test is applied to applications for main

¹ George Salter Academy.

town centre uses that are not in an existing centre and not in accordance with an up-to-date Local Plan.

11. The test requires such uses to be located within centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites, such as the appeal site, be considered. No such test has been carried out and the proposal therefore fails to demonstrate that it would not be more appropriately located in a centre. In this respect, it would conflict with Policy CEN7 of the CS and the Framework.
12. I am mindful that paragraph 27 of the Framework states that where an application fails to satisfy the sequential test it should be refused. However, on the evidence before me the appeal property has been vacant for some time and the proposal would result in some limited economic benefits. Moreover, the proposal would not result in the introduction of a town centre use on a site where no such use exists at present, given its lawful use for A1 retail. Rather, it would result in the substitution of one town centre use for another, within an existing building and with no increase in floorspace. Furthermore, no specific harm in terms of vitality and viability has been cited by the Council. I also consider the potential fall-back position to a main town centre use is more than a theoretical prospect and I attach considerable weight to it. Overall, these are strong material considerations which outweigh the conflict with Policy CEN7 of the CS and the guidance in the Framework.

Other Matters

13. The Council's Hot Food Takeaway Supplementary Planning Document ('SPD') states that new Hot Food Takeaways located within 400m of a secondary school or college site will not be permitted. Although there is some dispute regarding the distance from the appeal site, the SPD does not refer to distance from a main entrance and the conflict with the SPD gives weight to my decision to dismiss the appeal.
14. My attention has been drawn to the site of a 'new fast food place' at Heath Lane but as I have not been provided with the full details I cannot be certain that the circumstances are comparable to the proposal before me. Therefore it does not alter my view in relation to the main issues. I also note the substantial level of support for the proposal but this does not justify or outweigh the harm that I have identified.

Conclusion

15. Although the proposal would conflict with the CS and the Framework in terms of the sequential test, this conflict is outweighed by other considerations. Nonetheless, I have found that the proposal would cause significant harm to the living conditions of neighbouring occupiers, in terms of noise and general disturbance and harm to highway safety. In my view, these are the prevailing considerations and so, for the above reasons the proposal would conflict with the development plan, when read as a whole. This conflict would not be outweighed by other material considerations and having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

Richard Aston

INSPECTOR