The Planning Inspectorate

Appeal Decision

Site visit made on 31 January 2017

by John Felgate BA(Hons) MA MRTPI

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

Decision date: 17 February 2017

Appeal Ref: APP/P4605/W/16/3161683
134 Yardley Road, Acocks Green, Birmingham B27 6LR

- 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 Mohammad Qasim against the decision of Birmingham City Council.
- The application Ref 2016/07080/PA, dated 12 August 2016, was refused by notice dated 13 October 2016.
- The development proposed is "change of use from Class A1 retail to A5 hot food takeaway, and installation of rear extraction".

Decision

1. The appeal is allowed and planning permission is granted for change of use from Class A1 retail to A5 hot food takeaway, and installation of rear extraction, at 134 Yardley Road, Acocks Green, Birmingham B27 6LR, in accordance with the application, Ref 2016/07080/PA, dated 12 August 2016, subject to the following conditions:

   1) The development hereby permitted shall be commenced not later than 3 years from the date of this decision.

   2) The development shall be carried out in accordance with the approved plan entitled *'Layout Plan, Elevations, Extract System Details'*.

   3) The use hereby permitted shall only take place between the hours of 11.00 – 23.30 on any day.

   4) The rating levels for cumulative noise from all plant and machinery shall not exceed 5dB below the existing LA90 background levels and 10dB below the existing LAeq levels at any noise sensitive premises, as assessed in accordance with British Standard 4142(2014) or any successor document specifically amending or replacing that guidance.

Main Issue

2. The single main issue in the appeal is the effect of the proposal on the vitality and viability of the Yardley Road Neighbourhood Centre.

Reasons

3. The appeal property forms part of a parade of shops, and former shops. The parade forms part of the Yardley Road Neighbourhood Centre, but is outside its designated primary shopping area. The existing use is as a sandwich shop, selling cold snacks to take away, and the proposal is to expand the range of items sold, to include hot food such as Asian, Italian and Far Eastern dishes.

4. Saved Policy 8.7 of the UDP[1] sets out various criteria for hot food shops, restaurants and cafes. One of these is that account is to be taken of the impact on the vitality and viability of the frontage, and of the shopping centre as a whole. Outside the primary frontages, account is to be taken of the character and prosperity of the centre. In the Council's SPD[2], Policy 4 states that hot food takeaways should not exceed 10 per cent of the units within any shopping centre or frontage.

5. In the present case, according to the Council's survey, the Neighbourhood Centre's eastern frontage already has 5 takeaways, equating to 11.9%, and the Centre as a whole has 6, equating to 10.3%. Both the centre and the frontage therefore already exceed the Policy 4 threshold, and the appeal proposal would increase these percentages further. In the light of these figures, I accept that the change of use now proposed would not accord with Policy 4.

6. However, on my visit, I saw that the Neighbourhood Centre's non-primary frontage to the north of Cottesmore School, which includes the appeal site, currently presents a rather bleak picture. Out of what would appear to have once been around 30 or so shop units, about half were now appeared either vacant, or no longer in active use, or to open only intermittently. At least a dozen units, although apparently occupied, were closed and shuttered, despite it being 11.30 – 12.00 am on a Tuesday morning, in fine weather. A significant number of other units were in either permanent or temporary residential use, or other uses unrelated to the area's retail function. The physical fabric of many of the buildings was in poor condition. Although there was some foot traffic, few people in this part of Yardley Road appeared to be shopping or browsing. Whilst my visit lasted for only half an hour or so, I have no reason to doubt that what I saw was representative of conditions likely to be experienced in this part of the Neighbourhood Centre. These observations were in sharp contrast to the Centre's primary area, to the south of the School, which was vibrant and well-used.

7. Based on all that I saw, it seems to me that the northern part of the Yardley Road Neighbourhood Centre currently exhibits the signs of significant economic decline. In such conditions, there is an obvious risk of a spiral effect in which the remaining businesses find it harder to survive. Despite the terms in which the 10% threshold is set out in Policy 4, it is clear that one of the main purposes underlying both the SPD, and Policy 8.7 of the UDP, is to maintain the vitality and viability of the city's shopping centres, rather than weaken them. The appellant contends that the change of use now sought would help him to keep his business going, and indeed to take on additional staff. I have no reason to doubt these submissions.

8. In the circumstances I conclude that the conflict with Policy 4 is outweighed by the proposal's potential benefits to the local economy. I am therefore allowing the appeal. In doing so, I have imposed conditions to ensure compliance with the approved plan, for reasons of certainty, and to control the opening hours and noise, to protect neighbouring occupiers.

John Felgate

INSPECTOR

[1] The Birmingham Unitary Development Plan, adopted 2005
[2] The Shopping and Local Centres Supplementary Planning Document, adopted March 2012