
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: 17th February 2017

Appeal Ref: APP/P4605/W/16/3163556

Rear of 433/435 Dudley Road, Winson Green, Birmingham B18 4HD

- 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 Ms Amera Campbell against the decision of Birmingham City Council.
 - The application Ref 2016/07528/PA, dated 31 August 2016, was refused by notice dated 3 November 2016.
 - The development proposed is change of use of part of the rear of the ground floor from Class A1 to a hot food takeaway unit (Class A5).
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Decision

1. The appeal is allowed and planning permission is granted for change of use of part of the rear of the ground floor from Class A1 to a hot food takeaway unit (Class A5), at 433/435 Dudley Road, Winson Green, Birmingham B18 4HD, in accordance with the application, Ref 2016/07528/PA, dated 31 August 2016, and the plans submitted with it, subject to the following conditions:
 - 1) The use hereby permitted shall be commenced not later than 3 years from the date of this decision.
 - 2) All on-site cooking operations shall be carried out only in the external barbecue area, as indicated on the approved plan No. 707/01, and shall be limited to a maximum period of one hour during any day.
 - 3) The use shall not be open to customers outside the following hours:
Monday – Saturday: 11.00 – 23.30
Sundays and Bank Holidays: 11.00 – 22.30

Main Issues

2. The main issues in the appeal relate to the effects of the proposed use on the vitality and viability of the Dudley Road Neighbourhood Centre, and the effects on other nearby occupiers due to cooking fumes, odours and other emissions.

Reasons

Effects on the Neighbourhood Centre

3. In neighbourhood centres, Policy TP24 of the Birmingham Development Plan (the BDP), adopted in January 2017, supports the creation of a diverse range of facilities and uses. Takeaway shops are included amongst these uses, provided that they do not exceed 10 per cent of the units within the particular centre. The policy's stated purpose is to promote the centres' vitality and

viability, and to protect retailing as their main function. Similar provisions are contained in the 'Shopping and Local Centres' Supplementary Planning Document (the SPD), adopted in March 2012.

4. At the Dudley Road centre, it appears that this threshold has already been exceeded. However, in the present appeal, the proposed hot food takeaway use would operate from the rear of the premises, with access from Moillett Street. The latter is a service road, with no established retail frontage. The proposed use would occupy a single backroom of No 435 Dudley Road, plus a small external yard. As such, it would not involve the loss of any existing retail unit, or any change to the existing retail frontage in Dudley Road.
5. Nor would the proposed new use require any loss of retail floorspace, since the room that it would occupy is nothing more than a small ancillary space, well away from the customer area. The hairdressers' shop that occupies the remainder of the ground floor would continue to have rear access via No 433, which it occupies together with No 435 as a double unit.
6. As a result, the appeal proposal would have no adverse effect on the vitality or viability of the neighbourhood centre, nor on its retail function. Indeed, since the new use would be additional to the existing, it would represent a net gain to the centre's diversity and range of attractions. In addition, the use would provide employment, and make good use of an existing building, and would bring some activity and passive surveillance to what is otherwise a somewhat lifeless and unattractive streetscape at the rear of the frontage properties.
7. Consequently, the identified conflict with BDP Policy TP24 and SDP Policy 4 is in this case clearly outweighed by the appeal scheme's positive benefits. In addition, the proposal would accord with the aims of the National Planning Policy Framework (the NPPF), at paragraph 23, to promote competitive town centres, support their vitality and viability, and to promote customer choice and a diverse retail offer, reflecting the centre's individuality.

Cooking emissions

8. Cooking would take place in the rear yard, on an open barbecue grill. The appellant states that this would take place for no more than one hour a day. The indoor space is proposed to be used only as a service counter and washing-up area, and I note that this would not appear to be large enough to accommodate any other cooking facilities of the kind normally used in commercial hot food outlets.
9. I appreciate the Council's concern for environmental conditions. However, the barbecue area is well away from the nearest residential property, and in this respect the appellant's estimate of 25m is not disputed by the Council. Although there are various shops, offices and warehouses which are slightly closer, people working in such premises are less susceptible to any adverse effects, because they tend to spend less time there than residential occupiers. In any event, with an operation carried out on the limited scale now proposed, there is no evidence that cooking fumes, odours or other emissions would cause any significant adverse effects to people in the locality.
10. In view of the above, I see no case for a refusal of permission on these grounds. Nor am I convinced that a requirement for the installation of mechanical ventilation or extraction equipment is justified. To my mind, the appellant's suggestion of a condition limiting cooking operations to the external

barbecue area, for a limited duration each day, is a more practical and proportionate solution.

11. Although the Council refers to BDP Policy PG3, I can see nothing in that policy which is directly relevant to this issue. Nevertheless, subject to the condition that I have referred to, I conclude that the proposed development would accord with the aim set out in NPPF paragraph 17, to ensure a good standard of amenity for all existing and future occupants of land and buildings.

Other matters and conclusion

12. In addition to the condition referred to above, I agree with the Council that a further condition is needed to restrict late-night opening, in the interests of controlling noise nuisance.
13. I have considered all the other matters raised, but none changes my conclusion. In the light of all the above, I find that the proposed change of use would cause no significant harm. The appeal therefore succeeds.

John Felgate

INSPECTOR