

Appeal Decision

Site visit made on 30 January 2017

by Jameson Bridgwater PGDipTP MRTPI

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

Decision date: 06 March 2017

Appeal Ref: APP/P4605/W/16/3161714

3 Oldfield Road, Birmingham B12 8TT

- 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 Asif Hussain against the decision of Birmingham City Council.
 - The application Ref 2016/05339/PA, dated 20 June 2016, was refused by notice dated 7 October 2016.
 - The development proposed is described as 'change of use from Class A1 retail to Class A3 Restaurant use and extraction to rear'.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The appellant has described the development as 'change of use from Class A1 retail to Class A3 Restaurant use and extraction to rear'. The Council have amended the description on the basis of the submitted plans to describe the proposal as 'Change of Use from retail (Class A1) to a hot food takeaway (Class A5) and installation of extraction flue to rear'. The Council's amendment to the description was initially disputed; however, the change was accepted by the appellant in their email of 7 September 2016. Further, based on the evidence before me the proposed use would be similar to a 'Fried Chicken Shop'. As such, the amendment to the description would be consistent with the Shopping and Local Centres SPD, which sets out clearly that 'Fried Chicken Shops' will be considered as falling within (Class A5). I have determined the appeal upon this basis.

Main issue

3. The main issue in the appeal is the effect of the proposal on the vitality and viability of the Oldfield Road retail frontage.

Reasons

4. The appeal property is a retail unit (Use Class A1) and was vacant at the time of my site visit. It is located within a retail frontage containing 6 units, one of which is a hot food takeaway (Use Class A5). The appeal site is located adjacent to, but outside of the Primary Shopping Area of Ladypool Road Neighbourhood Centre. There are parking restrictions in the form of double yellow lines and a footway crossing outside the appeal site.
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5. Saved Policies 8.6 and 8.7 of the Birmingham Unitary Development Plan 2005 seek amongst other things to ensure that there is not an over concentration of restaurants, cafes and hot food take-away shops to the detriment of the vitality and viability of retail frontages. Further guidance is provided within the Council's Shopping and Local Centres SPD; which states, *'In order to avoid an over concentration of hot food takeaways (A5), within the Centre Boundary of Town, District and Neighbourhood Centres, no more than 10% of units within the centre or frontage shall consist of hot food takeaways. Applications for a change of use to A5 within the centre will normally be refused where this figure has been or will be, exceeded'*.
6. I have carefully considered the appellant's representations, particularly with regard to the overall mix of retail premises in the wider area and the Council's application of the frontage policy. However, as stated above, the appeal site is adjacent to, but outside the Ladypool Road Primary Shopping Area. Therefore, it is necessary for the proposal to be assessed in the context of the Oldfield Road frontage, rather than the wider area. Consequently, when combining the proposal with the existing takeaway, this would result in 2 out of the 6 units (33%) in the Oldfield Road frontage being in A5 use, significantly above the 10% threshold identified within the Council's SPD. Therefore, in this site specific location the proposal would result in an over concentration of A5 uses, even taking into account the unique character of the adjoining Ladypool Road with its tourism role as the Balti Triangle. Therefore, with no substantive evidence to lead me to a different conclusion the proposal would be likely to result in material harm to the vitality and viability of the Oldfield Road retail frontage.
7. Consequently, the proposed use of the site for a hot food takeaway (Use Class A5) would conflict with saved Policies 8.6 and 8.7 of the Birmingham Unitary Development Plan 2005.

Other considerations

8. The appellant within their appeal statement raised the issue of the time taken by the Council to determine the original application. However, this is a matter of local government accountability and even if the decision had been reached in a shorter timescale, I have no evidence before me to suggest that the decision would have been different.

Conclusion

9. For the above reasons, and having carefully considered all other matters raised. I conclude that the appeal should be dismissed.

Jameson Bridgwater

INSPECTOR