
Appeal Decision

Site visit made on 13 March 2017

by Paul Singleton BSc (Hons) MA MRTPI

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

Decision date: 24th March 2017

Appeal Ref: APP/V4305/W/16/3163663

The Best One, Westhead Avenue, Northwood, Kirkby L33 0XE

- 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 Gnanachchandran Tharmalingham against the decision of Knowsley Metropolitan Borough Council.
 - The application Ref 16/00258/FUL, dated 7 April 2016, was refused by notice dated 2 June 2016.
 - The development proposed is change of use of part of existing shop to form hot food takeaway (Use Class A5) together with installation of extraction flue to side.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have adopted the description of development given in the decision notice and appeal form as providing a clearer description of the development proposed than that used in the original application form.

Main Issue

3. The main issue is the effect on the living conditions of the occupiers of dwellings in Westhead Walk with regard to noise, disturbance and odour.

Reasons

4. Paragraph 123 of the National Planning Policy Framework states that planning decisions should aim to avoid noise giving rise to significant adverse impacts on health and quality of life as a result of new development. Hot food takeaways can generate significant levels of activity as well as potential noise from odour extraction systems which can affect residential living conditions.
 5. The retail store that occupies the major part of the former public house represents an isolated commercial use in a predominantly residential area. That store is open until 23.00 hours 7 days a week but the appeal proposal would result in significantly increased levels of activity in the late evenings and at weekends. That increased activity would take place in much closer proximity to the residential properties on Westhead Walk than that associated with the existing retail store.
 6. Notwithstanding the proposed blocking off of the door at the corner of the building the entrance to the hot food outlet would be in close proximity to the
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houses at numbers 53-59 Westhead Walk which face directly onto the site. The occupiers of those houses would be likely to suffer noise disturbance from the comings and goings of pedestrians and vehicles to the outlet. The siting of a hot food takeaway in this location would also lead to an increase in the frequency with which people gather in front of the building as reported in the third party representations. Such gatherings would be outside of the control of the operator of the outlet and would have the potential to cause considerable noise and disturbance to local residents as a result of general chatter and high-spirited behaviour. These activities would be clearly audible in the later part of the evening given the proposed opening times of up to 23.00 hours.

7. My observations on my site visit were that the vast majority of customers to the retail store arrive by car. Most of those vehicles waited close to the store entrance while a passenger went into the shop and all of the vehicles I saw accessed the site from Westhead Avenue and left via the exit onto Westhead Walk. It is possible that some of the customers using the proposed takeaway would walk to and from the premises but the likelihood is that the majority would use a car. Hence, the proposal would be likely to result in a concentration of parked and waiting vehicles in that part of the site closest to the residential properties and in a significant increase in the number of vehicles using the exit onto Westhead Walk. Given the proximity and aspect of their houses the occupiers of Nos 49-53 would be adversely affected by noise from the coming and going of vehicles, car radios, opening and closing of car doors and the revving of engines, particularly as vehicles leave the site.
8. I accept that measures could be adopted to ensure adequate control of noise emissions from the proposed extractor system. However, the noise and disturbance from customers and associated vehicles could have a significant adverse impact on the living conditions of those occupiers. Those residents are entitled to a reasonable degree of peace and quiet in their homes, particularly at weekends and in the late evening when they might be relaxing or asleep. Neither should they be required to keep living room and bedroom windows closed on warm days or evenings in order to enjoy their homes.
9. I saw on my site visit that there was a noticeable amount of litter on the pavements close to the retail store and observed the measures that at least one resident has taken to try (unsuccessfully) to keep litter from blowing into their garden. Whilst it would be possible, through a planning condition, to require the provision of litter bins on the site the operator would have no means of ensuring that customers would use these. Although not a reason for refusal the proposal would be likely to exacerbate the existing problems of litter in the immediate vicinity of the site.
10. I note the Council's concerns re the shortcomings of the odour extraction system as currently proposed. However, I consider that an adequate system could be designed and installed in the location proposed and that the outstanding issues could be resolved by means of an appropriately worded planning condition.
11. In light of the above considerations I find that the proposed change of use of to a hot food takeaway would have a significant adverse effect on the living conditions of the occupiers of nearby dwellings in Westhead Walk with regard to noise and disturbance.

12. The proposal would conflict with saved Policy H5 of the Knowsley Replacement Unitary Development Plan (2006) (UDP), which states that development in primarily residential areas will be permitted provided that it would not have an unacceptable impact on the amenity of neighbouring occupiers by reason of noise and disturbance, and with UDP Policy ENV2, which states a presumption against development that would cause an unacceptable increase in noise. The proposal would also conflict with Policy CS19 of the Knowsley Local Plan Core Strategy (2016) (Core Strategy) which requires that new development should avoid unacceptable impacts on existing residents and future occupiers. The Council's decision notice also alleges conflict with Policies SD1 and CS2 of the Core Strategy but, on my reading of those policies, I do not consider that any conflict arises.

Other Matters

13. I note the appellant's submissions with regard to the alcohol licence for the retail store and the considerations that are taken into account when granting such a licence. However, the proposed hot food outlet would be a quite different type of use with different patterns of trade and potential effects and would be located in much closer proximity to the properties on Westhead Walk.
14. I accept the appellant's statement with regard to the benefits that have been secured by his conversion and reuse of a rundown, former public house to provide a convenience store serving the local community. However, no evidence has been submitted that a hot food takeaway is the only viable use for the former 'off sales' area or that the continued operation of the convenience store is dependent upon finding a use for that part of the building.
15. The proposal would have economic benefits in bringing a currently vacant part of the building into beneficial use and through the creation of 3 jobs. However, I do not consider those benefits sufficient to outweigh the harm that would be caused to the living conditions of nearby residential occupiers or the resultant development plan conflict.

Conclusions

16. For the reasons set out above and having regard to all matters raised I conclude that the appeal should be dismissed.

Paul Singleton

INSPECTOR