
Appeal Decision

Site visit made on 27 March 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 10 April 2017

Appeal Ref: APP/W4325/W/16/3165809

1 Coronation Drive, Bromborough CH62 3LF

- 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 Rahman against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/16/01325, dated 28 September 2016, was refused by notice dated 23 November 2016.
 - The development proposed is 'change of use to hot food takeaway with amended shop frontage and self-contained apartment above'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development provided by the application form has been updated in subsequent documents. I adopt the description provided in the appeal form accordingly as it more accurately reflects the proposal before me.

Main Issue

3. The main issue is the effect on the living conditions of occupiers of nearby residential properties, with particular regard to matters of noise and disturbance.

Reasons

4. The appeal site consists of a single storey property in commercial use as an accountancy office which lies in a corner position adjacent to the junction of Coronation Drive and New Chester Road (A41) in a primarily residential area as identified by the Unitary Development Plan for Wirral (UDP) Proposals Map, adopted February 2000. The property forms part of a small shopping parade and adjoins a row of two storey properties that face Coronation Drive and are in mixed use comprising retail/commercial units at ground floor level and residential accommodation above. Surrounding properties to the opposite side of Coronation Drive and New Chester Road are in residential use.
 5. The hot food takeaway as proposed would occupy the existing commercial unit with opening hours on Mondays to Fridays between 1630-2330; on Saturdays from 1630 until 0000 on Sundays; and also on Sundays between 1630 and 2300. The appeal proposal would also involve a new shop front and the
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- creation of a 4-bedroom self-contained flat via a first floor extension to the property and accommodation within the resultant roof space.
6. Policy HS15 of the UDP relates to non-residential uses in primarily residential areas. It states, amongst other requirements, that changes of use for non-residential uses will only be permitted where the proposal will not: be of such scale as to be inappropriate to surrounding development; result in a detrimental change in the character of the area; and, cause nuisance to neighbouring uses, particularly in respect of noise and disturbance, on-street parking and deliveries by vehicle. The reasoned justification of Policy HS15 does, however, recognise that primarily residential areas contain many small shopping parades, the uses within which normally cause little nuisance and are essential to local residents who wish to shop locally or have jobs close to their homes.
 7. Having regard to the above, Policy SH4 of the UDP relates specifically to small shopping centres and parades in primarily residential areas. Policy SH4 states that development falling within Class A1, Class A2 and Class A3 of the Town and Country Planning (Use Classes) Order 1987, will be permitted, subject to Policy HS15 and additional criteria relating to Class A3 uses. The additional criteria relates to preventing detrimental effects on neighbouring uses and amenity in terms cumulative levels of noise and disturbance on streets with similar establishments, inclusion of measures to mitigate smell and internally-generated noise and the location of such uses a reasonable distance from the principal elevation of the nearest house or block of flats.
 8. Policies HS15 and SH4 of the UDP significantly pre-date the publication of the National Planning Policy Framework (the Framework) and also the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005, which substituted Class A3-A5 for the previous Class A3 of the Town and Country Planning (Use Classes) Order 1987. In the latter respect, the approach of Policy SH4 of the UDP in terms of its references to Class A3 and related criteria are relevant to a proposed hot food takeaway which now consists of a Class A5 use, but would have fallen within Class A3 at the time the UDP was adopted. Furthermore, the policies are consistent with the Framework, including the core planning principle that a good standard of amenity should be provided for all existing and future occupants of land and buildings. Policies HS15 and SH4 of the UDP are, therefore, afforded significant weight when having regard to paragraph 215 of the Framework.
 9. The interpretation of Policies HS15 and SH4 of the UDP is supplemented by the Wirral Supplementary Planning Document 3 - Hot Food Takeaways, Restaurants, Cafes and Drinking Establishments (SPD), adopted October 2006. The guidance, amongst other things, indicates that in order to reduce the degree of subjectivity when assessing the potential impact from noise and disturbance, proposed uses within Use Classes A3, A4 and A5 should be at least 40 metres away from the main elevation of a dwelling house or a building used solely for self-contained flats, when measured along the public highway.
 10. To my mind, Policies HS15 and SH4 of the UDP as supplemented by the guidance in the SPD seek to achieve a balance between provision of local services, business needs and protection of the living conditions of local residents. The nearest residential properties on the opposite side of Coronation

Drive have main front elevations which are significantly less than 40m away from the site and the proposal, therefore, conflicts with the SPD.

11. The proposal includes a new shopfront which would relocate the existing entrance from the Coronation Drive elevation onto the New Chester Road elevation, which is a dual carriageway that provides a greater separation distance to properties opposite beyond that road. However, takeaway premises, by their nature, result in comings and goings of people and vehicles with resultant external noise from, amongst other things car engines and doors closing, together with audible conversations. The off street parking spaces which serve the site and the adjoining small shopping parade are located directly opposite to the nearest properties on Coronation Drive and would be a focal point for such activity irrespective of the position of the entrance. There are other existing takeaways and an off licence within the parade with a similar relationship to properties on Coronation Drive, together with a busy dual carriageway adjacent, which suggests that residents living in close proximity would experience a degree of existing noise and disturbance during the day and into evenings. However, I observed that the existing uses within the parade appeared to be closed after 2300 on Mondays to Saturdays and after 2230 on Sundays.
12. Having regard to the above, the proposed takeaway use would increase the noise generated on Coronation Drive associated with comings and goings relating to evening uses in the shopping parade. In this respect, during the early evening, the resultant cumulative effect on properties in Coronation Drive would not be significant in terms of noise and disturbance given the background noise associated with peak traffic flows along the New Chester Road dual carriageway. However, the proposal seeks opening hours that would extend activity within the small shopping parade later into evenings, when traffic levels along New Chester Road and associated background noise levels reasonably would be reduced far below peak levels. This would be during a period when residents in close proximity on Coronation Drive would expect a quieter living environment and may be trying to sleep. Consequently, the noise and disturbance generated by the proposal for an extended period of time into the late evening on each day would have an unacceptable impact on the existing living conditions of occupiers of neighbouring properties on Coronation Drive.
13. In reaching the above findings, I have taken into account that the increased separation distances to properties along New Chester Road would ensure no detrimental impact on the living conditions of occupiers of those properties, given the intervening presence of the dual carriageway. Furthermore, I am satisfied that suitable noise mitigation and fume extraction measures could be provided to mitigate any significant effect upon the proposed upper floor flat in terms of internal noise generation or surrounding properties in terms of odours. The submission of such details and implementation of the measures could be secured by condition if the appeal were allowed. However, the absence of concern in those respects is a neutral factor and does not override the harm arising from the noise generated by customers arriving and leaving, which based upon the opening hours proposed would not be satisfactorily controlled.
14. The separation distance from the self-contained apartment and its facing windows to surrounding properties on Coronation Drive and 493 New Chester Road at the rear, would be similar to the existing relationship of other upper

floor flats along the terrace with those properties. Furthermore, the separation distance to properties opposite on New Chester Road would be considerable. As a consequence, the proposal would not have a significant effect in terms of overlooking and the privacy of occupiers of neighbouring properties. However, the absence of concern relating to matters of privacy is a neutral factor.

15. I conclude that the development would result in significant harm to the living conditions of occupiers of nearby residential properties on Coronation Drive through unacceptable noise and disturbance. The proposal would, therefore, conflict with Policies HS15 and SH4 of the UDP, the associated guidance in the SPD and the Framework.

Other Matters

16. The Council have offered no objection to the proposed development with respect to highway safety and parking arrangements. I have no reason to take a different view based on the evidence before me. It is reasonable that a significant proportion of customers would live locally and would walk to the site. In this respect, the available car parking spaces on Coronation Drive would be adequate to meet demand arising from the proposal during the evening given that a number of the units in the parade are only open during the daytime.
17. The proposal would not result in a substantial change in character to a parade where other hot food takeaways are present. Furthermore, the first floor extension to provide the self-contained apartment would also not have an adverse impact on the character and appearance of the site and the surrounding area, subject to matching materials, given that it would maintain a similar roof form and ridge height to the adjoining terraced row. However the absence of concern in those respects is a neutral factor.
18. A hot food takeaway in this location could make a positive contribution to the local economy through new employment opportunities. However the weight that I can give to that matter is limited, as the benefits are somewhat offset by the loss of an existing Class A2 unit and there is no evidence to demonstrate that other uses, that would generate less noise and disturbance, would not be a viable alternative. The proposal would make a positive contribution to the supply of housing. However, based on the scale of development, such benefits would be limited and therefore, do not outweigh the harm identified.

Conclusion

19. For the reasons given above and taking all other matters into consideration, I conclude that this appeal should be dismissed.

Gareth Wildgoose

INSPECTOR