

Appeal Decision

Site visit made on 4 April 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 21st April 2017

Appeal Ref: APP/P4605/W/16/3161567

149 Lea Hall Road, Birmingham B33 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 Abdul Khaliq against the decision of Birmingham City Council.
 - The application Ref 2016/05925/PA, dated 11 July 2016, was refused by notice dated 25 August 2016.
 - The development proposed is for alterations to shopfront and change of use from a large shop - Class A1 Retail to a smaller shop Class A1 Retail and Hot Food Takeaway – Class A5 with external extract at the rear.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The description in the application differs to that described in the Council's decision notice. The Council's decision is preferred as it accurately describes what is proposed in a succinct manner and I have considered the appeal on the basis of the subdivision of existing A1 unit to create 2 no. units comprising of 1 no. A1 and 1 no. A5 with rear extraction system.
3. Since the application was determined by the local planning authority, the Council has adopted the revised Birmingham Development Plan (BDP), which has replaced policies of the Unitary Development Plan (UDP). As such there is now a suite of new policies relevant to the determination of this appeal. These are material changes in circumstances that are directly related to the appeal. The appellant would have been aware of these changes of circumstances given that they were explained in the Council's Statement of Case. Furthermore, the new policies of particular relevance to this appeal are similar in substance to former policies contained in the UDP. Accordingly, I do not consider that the appellant has been prejudiced by this new information.

Main Issues

4. The main issues in this case are firstly, the effects of the appeal scheme on the vitality and viability of local centres and secondly, its effect on living conditions of adjacent occupiers in terms of noise and general disturbance.

Reasons

Vitality and viability

5. The appeal unit is located in a predominantly residential area on the site of a small supermarket and newsagents. Just two doors is the only other shop in this part of the street, an off-licence. Either side of the unit are two storey residential properties. The frontage to the property consists of a tarmac hard surfaced area that is used for off-street visitor parking.
6. The Council's Shopping and Local Centres Supplementary Planning Document (SPD) sets out a hierarchy of shopping centres (exclusive of Birmingham City Centre), which the Council contends the appellant should have considered in relation to a sequential assessment of potential alternative sites for the appeal proposal. While not forming part of the development plan, the SPD nonetheless seeks to add further detail to relevant development plan policies, including policy TP21 of the recently adopted BDP and I therefore give it considerable weight. Moreover, Policy TP21 and the SPD are consistent with paragraphs 23 and 24 of the National Planning Policy Framework (the 'Framework'). A sequential test is considered necessary and has not been undertaken. Consequently, it cannot be concluded that there are not more appropriate sites available for the appeal proposal, which may support the vitality and viability of established local centres.
7. Having regard to the above factors, I conclude that the appeal proposal has failed to demonstrate that there are no alternative sites available that would enable it to contribute to the vitality and viability of established centres. The Council refers to Policy 5 of the SPD that seeks to encourage new A5 uses within the Centre Boundary of Town, District and Neighbourhood Centres. This is also the main thrust of the BDP. Accordingly, whilst hot food takeaways can often form an important part of the wider mix of uses within a local neighbourhood, I give more weight to the Council's development plan policies that seek to protect the vitality and viability of local centres in this case. I am particularly mindful of the relatively close proximity of the site to both Lea Hall and The Meadway, the latter having been identified as a district growth point and a focus for significant growth in east Birmingham.
8. The objectives of those policies are contingent with those of the National Planning Policy Framework, particularly paragraph 17, which states that planning should be "genuinely plan-led...and take account of the different roles and character of different areas." The proposal would introduce a further non-retail use of a type that should be directed to local centres and thus helping to prevent the cumulative erosion of the retail function of such local centres. Consequently, the proposal would clearly be a significant departure from the policies of the development plan, particularly BDP Policy TP21.

Living conditions

9. Either side of the appeal premises are two storey family dwellings. For all intents and purposes, the immediate area has the characteristics of a residential area and the appeal site would be in close proximity to several residential properties.
10. Although it is not intended to provide an eat-in facility at the proposed takeaway, I consider it likely that, despite the appellant's best intentions, some customers will congregate in the vicinity of the appeal premises to eat their food and also whilst waiting for food orders to be cooked. Given the close proximity of neighbouring properties and the residential character of the area, this would inevitably result in significant levels of noise and disturbance for

local residents despite the potential for linked trips alongside the existing A1 use. This would be at a time in the evening when nearby residents might reasonably expect a quieter environment. Given the location of the appeal premises along a busy road, I also consider that the proposal will be likely to generate significant additional passing trade. I consider that the parking forecourt will be extensively used and the increase in customers visiting the premises by car during the evening together with their comings and goings, including the slamming of car doors and revving of engines, would result in significant levels of noise and disturbance for nearby residents and particularly the occupiers of the immediate neighbouring properties who would be living cheek by jowl to this potentially intensive activity. I do not accept that a restriction on opening hours would be of sufficient mitigation in this case.

11. Accordingly, I conclude that the proposal would result in significant harm to the living conditions of nearby residents with particular regard to noise and disturbance. This would be contrary to UDP Policy 8.7 that seeks to locate hot food takeaways to shopping areas or areas of genuinely mixed commercial development to lessen the impact on amenity levels.

Conclusion

12. For the reasons given above and, having considered all other matters raised, I conclude that the appeal should not succeed.

Gareth W Thomas

INSPECTOR