
Appeal Decision

Site visit made on 11 April 2017

by I Jenkins BSc CEng MICE MCIWEM

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

Decision date: 26 April 2017

Appeal Ref: APP/B2355/W/17/3166509

8-10 Blackburn Road, Haslingden, Rossendale, BB4 5QQ

- 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 Zaman Khan against the decision of Rossendale Borough Council.
 - The application Ref 2016/0125, dated 22 March 2016, was refused by notice dated 11 August 2016.
 - The development proposed is a change of use from A1 to A5.
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Decision

1. The appeal is dismissed.

Procedural matters

2. Whilst the address of the appeal site is given as '*8 Blackburn Road*' on the planning application form, based on the other evidence submitted, it appears to be more accurately described as '*8-10 Blackburn Road*', as set out on the appeal form. I have used the latter address in the summary information above.

Main Issue

3. I consider that the main issue in this case is the effect of the proposal on the living conditions of neighbouring residents, with particular reference to odour and noise.

Reasons

4. The appeal property forms part of a block of terraced buildings, which wrap around a rear courtyard. Nos. 8-10 are located part way along the Blackburn Road frontage of the block. The properties within this frontage, which forms part of the Secondary Shopping Frontage within Haslingden Town Centre, contain commercial units at ground floor level and many have residential units above. This is the case at the appeal property and it appears to be the position at its immediate neighbour to the southeast, which includes loft accommodation served by a rear facing dormer window.
 5. The proposal involves a change of use of the vacant ground floor of the appeal property from class A1 to class A5. It would include the installation of an extract system for the proposed kitchen, the flue for which would be fixed to the rear wall of the property and would discharge just above roof level.
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The appellant has indicated that the system would be designed in accordance with Guidance on the '*Control of Odour and Noise from Commercial Kitchen Exhaust Systems*' published by the Department for Environment, Food and Rural Affairs (DEFRA). Whilst the details could be controlled by the Council, through the imposition of a suitable condition, the Council's Environmental Health Department has indicated that such systems would not necessarily eliminate all odours and noise nuisance from the system would be likely. I have not been provided with any compelling evidence to the contrary.

6. The Council's *Interim Policy Statement: Hot Food Takeaways, June 2011* (IPS) indicates that in practice, it is virtually impossible to completely eliminate all cooking smells, irrespective of the extraction system installed. Furthermore, the IPS indicates that when hot food takeaways operate at their peak, they can cause disturbance at a time when occupiers of residential properties place a high value on peace and quiet because background noise levels are low. It confirms that the operation of extraction systems can be expected to contribute to the noise arising from such premises. For these reasons, it indicates that planning permission for hot food takeaway establishments will not normally be granted where a unit of residential occupation exists directly above or adjacent to the proposed hot food takeaway.
7. In this case there would be a residential unit directly above the proposed class A5 use and another immediately to the southeast, contrary to the IPS guidance. The close proximity and similar height of the neighbouring dormer window to the proposed extract system discharge point is of particular concern. As a result of this relationship, I consider it is likely that cooking odours from the proposed kitchen and noise associated with the operation of the extract system would be likely to have a harmful impact on the living conditions of the residents of that neighbouring dwelling.
8. It may be that noise transfer from within the proposed unit to the residential accommodation above would be limited to an acceptable level by sound insulation required by the Building Regulations.
9. Nevertheless, I conclude overall, that the scheme would be likely to cause significant harm to the living conditions of neighbouring residents, with particular reference to odours and noise associated with the proposed kitchen extract system. In this respect it would conflict with the aims of Policies 1 and 24 of the *Core Strategy Development Plan Document: The Way Forward (2011-2026)* (CS), which between them seek to enhance the quality of places and require adequate consideration of pollution and protection of the amenity of the area. It would also conflict with the aim of the *National Planning Policy Framework* (the Framework) to secure a good standard of amenity for all existing and future occupants of buildings.

Other matters

10. The appellant has indicated that the town of Haslingden already has buildings in class A5 use and I saw a number during my site visit. However, I have not been provided with evidence to show that any of them are directly comparable to the proposal before me and in my view, the existence of other class A5 use in the town is not sufficient to justify the proposed harmful development at the appeal site.

11. The Council has indicated that the scheme would gain some support from CS Policy 11, which gives encouragement to the location of town centre uses, such as hot food takeaways, within defined town centres. Furthermore, it would result in the re-use of a vacant section of the building, adding to the vitality and viability of the town centre, and would create a small number of jobs. In these respects it would gain some support from CS Policy 1 and the Framework.

Conclusions

12. Nonetheless, having had regard to the likely economic, social and environmental impacts of the scheme, I conclude on balance that any benefits would be outweighed by the harm that I have identified and the proposal would not amount to sustainable development under the terms of the Framework. Furthermore, I consider that it would conflict with the Development Plan taken as a whole. For the reasons given above, I conclude that the appeal should be dismissed.

I Jenkins

INSPECTOR