
Appeal Decision

Site visit made on 25 April 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 11 May 2017

Appeal Ref: APP/J4423/C/16/3165708

Land at 126 Birley Spa Lane, Sheffield S12 4EJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Cafer Zahidli against an enforcement notice issued by Sheffield City Council.
 - The enforcement notice was issued on 05 December 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission:
 - i) The unauthorised change of use of the premises at the Land from a shop within Use Class A1 to a hot food take-away with ancillary seating area within Use Class A5
 - ii) The unauthorised siting of a flue extraction system at the Land;
 - iii) The unauthorised change of use of part of the Land for the siting of a metal storage container at the Land
 - The requirements of the notice are:
 - i) Stop the unauthorised use of the premises at the Land as a hot food takeaway
 - ii) Remove the unauthorised extraction system from the rear elevation of the premises; and
 - iii) Remove the storage container from the Land.
 - The period for compliance with the requirements is:
 - 1) For requirement (i) immediately once the notice comes into effect;
 - 2) For requirement (ii) 8 weeks from the date the notice comes into effect; and
 - 3) For requirement (iii) 8 weeks from the date the notice comes into effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Appeal on Ground (a)

2. An appeal on ground (a) is made on the basis that planning permission should be granted for the breach of planning control, as described in the notice. In other words, that is for the development that has already been carried out which, in this case, is the material change of use to a hot-food takeaway, the erection of a metal flue and the alleged change of use of land for the siting of a storage container.
 3. Planning permission has previously been refused for the change of use of the premises to a hot-food takeaway and the erection of the metal extraction flue on the rear elevation of the property. An appeal against that refusal was
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dismissed on 01 November 2016. Consequently, the issues in relation to the change of use of the premises and the erection of the extraction flue have been considered previously at appeal. Nothing has been presented to indicate that there has been any change in the relevant material considerations since that time and the main issues in respect of those aspects remain as identified by the previous Inspector; namely the effect of the development on the vitality of the shopping parade and the effect of the scheme on the living conditions of residents in the vicinity.

4. The enforcement notice also relates to an alleged material change of use of land for the siting of a storage container. That element did not form part of the development considered by the previous Inspector. From the information before me, the main issue in respect of the shipping container is its effect on the character and appearance of the area.

The Effect on the Vitality of the Local Shopping Parade

5. The national and local planning policy position remains unchanged from the time of the previous appeal. Policy S10 of the Sheffield Unitary Development Plan identifies that, within shopping areas, change of use will be permitted provided that it would not lead to a concentration of uses that would prejudice the dominance of preferred uses within the area. The previous Inspector noted a significant concentration of hot-food takeaways within the parade and that situation has not changed since that decision was issued. The Council notes that the proposal would reduce the number of A1 retail units within the parade to less than 50%. To my mind, that is a level that would affect the dominance of the retail element and have negative effects on the ability of the parade to meet local shopping needs, contrary to the aims of policy S10.
6. I note that the appellant contends that one additional 'non retail' unit would not make a significant difference but such matters are often finely balanced and I consider that the increased concentration of hot-food takeaways would have a harmful impact not only because of the numerical percentage within the area and the reduction in the number of retail units but because of the effect on the vibrancy of the area during daytime hours. If approved the development would result in three food related premises in a row within the heart of the parade. None of the three units were open during the middle of the afternoon at the time of my visit and the metal shutters presented a bleak and unappealing outlook which, to my mind, has a negative effect on the feel of the parade with a likely consequential impact on its vitality. Thus, it seems to me that a concentration of non-retail units side by side would have a harmful impact.
7. The appellant contends that the retail unit had been vacant for a considerable period and that it has been marketed, unsuccessfully as a retail unit during that period. However, limited information is before me with regard to any attempts to market the unit and, thus, there is little evidence to suggest that a use other than a hot-food takeaway would be unviable. Equally, whilst the occupation of the unit would provide local employment I am not satisfied that the benefits in that regard would outweigh the harm to the vitality of the parade as a whole as a result of the over-concentration of non-retail uses, including the harm to the attractiveness of the area as a result of the continued stretch of dead frontage during daytime hours.

8. For those reasons, I see no reason to reach a different conclusion to the previous Inspector and consider that the development has caused harm to the vitality of the parade, contrary to policy S10 of the UDP.

The Effect on the Living Conditions of Neighbouring Residents

9. The previous Inspector concluded that the concentration of hot-food takeaways within the parade would be likely to have harmful effects on the living conditions of neighbouring residents, particularly in the evenings. Policy S10 acknowledges that it may not be possible to achieve the same living standards in shopping areas as in housing developments but, nonetheless, those living directly above the parade have a reasonable expectation of good living conditions. Paragraph 17 of the Framework identifies that planning should seek to secure a good standard of amenity for all existing and future occupiers of land and buildings. I find that the concentration of hot-food takeaways, as described above, would have unacceptable effects as a result of increased comings and goings and customer congregations within a relatively small area, to the detriment of the living conditions of those living above the parade.
10. Moreover, the metal flue is positioned directly outside the rear window of one of the residential units at the rear. The proximity of the flue has the potential to cause disturbance as a result of noise, vibration and odour and no technical information has been submitted to allay those concerns. Moreover, the visual effect of an industrial metal flue is unsightly and an issue, of itself, that has an unacceptable effect on the outlook from the adjacent residential unit.
11. In view of the above, I conclude that the development has had an unacceptable and harmful effect on the living condition of neighbouring residents, contrary to the aims of policy S10 of the UDP and paragraph 17 of the Framework. I am not satisfied that those impacts could be overcome through the imposition of conditions. Conditions would not overcome the concerns regarding the concentration of hot-food takeaways and no details of any alternative extraction system have been provided to suggest that an alternative and acceptable solution for the dispersal of cooking odours would be possible. The suggestion of an 'extraction box' below ridgeline would not necessarily be effective in dispersing any odour away from adjacent windows.
12. In any event, I am required to determine the ground (a) appeal on the basis that planning permission is sought for the development, as built. For the reasons given, the existing flue is unacceptable. It appears to me that an alternative system may well represent an act of development for which planning permission would be required. Adjacent residents would have a legitimate expectation to be able to comment on such an application and the imposition of a condition would deprive them of the opportunity to do so. Consequently, in addition to my concerns regarding the potential to secure an acceptable solution, I am not satisfied that it would be appropriate to attach a condition relating to an alternative form of development having regard to the limited scope of an appeal under ground (a).

The Effect of the Container on the Character and Appearance of the Area

13. The container is situated on open land to the rear of the unit, directly in view from surrounding houses and public vantage points on the footpaths and highway which run past the rear of the site. It is an industrial and unattractive feature that appears out of place in its surroundings which are dominated by

car parking and open areas. The appellant does not seek to argue that the effect of the container is acceptable and I conclude that it represents an incongruous addition to the street scene.

Overall Conclusion on Ground (a)

14. For the reasons given, the development has caused harm to the vitality of the local shopping parade. That harm represents a negative economic impact. It has also caused harm to the living conditions of neighbouring residents and the character and appearance of the area, matters that weigh against the development in environmental terms. The development is therefore contrary to the requirements of policy S10 of the UDP and the aims of the Framework, as expressed at paragraphs 17. Moreover, having regard to the three-stranded definition at paragraph 7 of the Framework, the environmental and economic harm are such that the development cannot be considered as a sustainable form of development. Consequently, I consider that planning permission should not be granted and I shall dismiss the appeal on ground (a).

The Appeal on Ground (f)

15. An appeal on ground (f) is made on the basis that lesser steps would overcome the breach of planning control, as alleged, or the injury to the amenity, as the case may be. In this case, the requirements of the notice are to cease the use and remove the flue and container. The stated reasons for issuing the notice relate to the economic impacts on the vitality of the local shopping parade and not simply the injury to amenity. As such, it is clear that the requirements of the notice are to remedy the breach of planning control.
16. The appellant has suggested that an alternative solution would be to remove the current extraction system and impose a condition to require that an alternative system is installed, in accordance with details to be agreed. For the reasons set out in relation to ground (a) I am not satisfied that it is within the scope of my decision to impose such a condition, nor am I satisfied that it would be effective in remedying the injury to amenity. Consequently, it would be inappropriate for me to grant planning permission subject to such a condition. Moreover, the measures proposed by the appellant would not remedy the breach of planning control in relation to the unauthorised change of use or the siting of the storage container. Accordingly, the appeal on ground (f) must fail.

Chris Preston

INSPECTOR