
Appeal Decision

Site visit made on 23 May 2017

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 16 June 2017

Appeal Ref: APP/P4605/W/17/3170281

343 Vicarage Road, Brandwood, Birmingham B14 7NN

- 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 Mrs D Hear against the decision of Birmingham City Council.
 - The application Ref 2016/05220/PA, dated 17 June 2016, was refused by notice dated 26 August 2016.
 - The development proposed is a change of use from retail (Use Class A1) to takeaway (Use Class A5) and associated ducting to rear elevation.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. Since the application was refused planning permission, the Council has adopted the Birmingham Development Plan 2017 (BDP). This has replaced the Unitary Development Plan 2005 (UDP) with the exception of its Saved Policies, which will remain until the adoption of the Council's proposed Development Management DPD. Consequently, UDP Policies 3.8 and 3.10 which are referred to in the Council's first reason for refusal have been revoked. The Council's submission explains that it will now rely on BDP Policy PG3. The appellant has opportunity to comment on this and has referred to the change in development plan in her statement of case. No party has therefore been prejudiced.

Main Issues

3. The main issues are the effect of the development on:
 - the living conditions of the occupiers of No 343 Vicarage Road and other neighbouring dwellings with particular reference to outlook, noise and disturbance; and
 - the vitality and viability on the parade of shops.

Reasons

Living conditions

4. The appeal relates to a two storey, mid terrace property in a parade of seven commercial properties fronting onto Vicarage Road. Two currently operate as takeaways, one as a convenience shop, one as barber and one as a shop for car accessories. The appeal site and the adjoining unit are vacant.
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5. The rear part of the ground floor and first floor of the appeal property is in use for residential purposes. The proposed plans show that the extract canopy and fan would be positioned at the rear of the commercial unit, close to the internal wall separating it from the ground floor residential part of the property. The ducting would then run through this separating wall into the residential aspect and would run for nearly its full depth before exiting via the roof and running up the side of the building above the adjacent ridge level. Whilst the appellant states that this is an outside area with a roof, this is not reflected in the plans and by own observations which are of an internal area with an open linkage to the adjacent kitchen space. It also provides the sole access to the residential unit.
6. This is very sensitive and potentially intrusive relationship. Whilst it may be possible to conceal the system within a roof void to avoid significant visual harm, I have no details of how this would be achieved in this case. I note that no objections, subject to conditions, were raised by the Council's Environmental Pollution Control team, nevertheless, I have significant concerns over how the ducting would be fixed to the roof and the potential for unacceptable noise and vibration disturbance when in use. In these circumstances, even if designed to appropriate modern standards, I am not persuaded to any reasonable degree of certainty that a viable and effective solution would be available for the manner of the ducting route proposed. Consequently, it would not be appropriate to deal with this matter by condition.
7. Moreover, the size and location of the flue is such that it would also be a dominating feature when viewed from the first floor rear facing window of the residential unit. The industrial appearance of the flue would set it apart from the more domesticated nature for log burners in residential properties. Whilst this harm on its own would not be sufficient to warrant withholding planning permission, it does add to my above concerns. Therefore, although the flat is within the ownership of the appellant and the current occupiers have not have objected, I have nonetheless found that the proposal would be harmful to their living conditions and that of any future occupants.
8. In terms of a wider effect, the upper floors of the neighbouring units also appear to be residential use, save for No 345 Vicarage Road which I saw was being used for storage. These properties and No 343 face out onto a wide pedestrian area which includes a bus stop with shelter and a busy main road beyond. Moreover, the existing convenience shop and takeaways already operate until late into the evening. Such factors will therefore already create a considerable degree of activity and associated noise.
9. I accept that the operation of the proposed takeaway would be likely to result in some additional noise and disturbance, through customers arriving and leaving by car as well as customers talking and comings and goings and general activity. I have also noted the Council's concerns over the cumulative effect of three takeaways in terms of anti-social behaviour and the response of the West Midlands Police Crime Prevention Design Advisor (CPDA) that late night opening premises have the potential to encourage people to remain longer in an area than they would normally do and that this creates opportunities for anti-social behaviour and crime and a fear of the same. However, the CPDA does not object to the proposal and has requested that consideration be given to the imposition of a condition requiring a CCTV system to be installed to reduce opportunities for crime and anti-social behaviour.

10. In my view, if the opening hours of the proposed development were to be controlled, the hot food takeaway would not add significantly to the noise and disturbance already created by existing businesses within the parade and from the main road it faces, or to the number of people who may congregate in the area. Moreover, although the immediate area beyond the shopping parade is primarily residential in character, their physical relationship to the appeal site is such that they would not be materially affected.
11. I am not therefore convinced that the proposal would conflict with BDP Policy PG3, which states, amongst other matters, that new development should create safe environments that design out crime. Nevertheless, the likely noise and disturbance arising from the proposed positioning and routing of the extract system would be harmful to the living conditions of the occupants of No 343 and would be sufficient on its own to warrant withholding planning permission without the additional harm arising from the visual impact of the same. The proposal would therefore be contrary to paragraph 17 of the National Planning Policy Framework (the Framework) which seeks to secure a good standard of amenity for all existing and future occupants of buildings.

Vitality and viability

12. The Council acknowledge that permission was granted on appeal in 1998 for the use of the property as a takeaway and that this was renewed in 2004. I have not been provided with a copy of that decision but nevertheless, the principle of such a use has been previously accepted at this site.
13. However, the appellant has confirmed that this permission was not implemented and has now lapsed. The use of the premises as a takeaway would therefore amount to a new use and as such Saved Policies 8.6 and 8.7 are applicable to the appeal proposal. These policies give general guidance as to where new hot food shops can be acceptably located.
14. Since the renewal of the previous approval at this site in 2004, there has been a material change in planning circumstances with the adoption of the Council's Shopping and Local Centres Supplementary Planning Document (SPD) in March 2012. Policy 6 of the SPD states that in order to avoid an over concentration of hot food takeaways, no more than 10% of units within a frontage shall consist of hot food takeaways. Applications for such a change of use will normally be refused where this figure has, or will be, exceeded. The appeal proposal would amount to the third takeaway within a frontage of seven units. The 10% threshold has therefore already been exceeded and the appeal proposal would further increase this breach.
15. Whilst recognising that takeaways offer a popular service to local communities, support the local economy and provide employment opportunities, the SPD highlights that they can have a detrimental impact on the amenity of the area. It is stated that a proliferation of such uses and their clustering together can lead to dead frontages during the daytime and an overconcentration which may affect the viability and vitality of a centre, undermine the predominantly retail function of the shopping centre and collectively impact upon the amenity of the surrounding area.
16. I recognise that mid-morning on a Tuesday might well be a quiet time in the trading week but at the time of my site visit, the two existing hot food takeaways had roller shutters down, as did the vacant unit next door to the

appeal site. Whilst the proposed opening hours start at 11am, it is also likely that a hot food takeaway at the appeal site would concentrate its main opening times during evening. In doing so, the appeal proposal would reinforce this multiplication of similar uses and daytime closing and potentially detract from the vitality of the parade. However, the appeal site is currently vacant and has roller shutters which would likely be down if it wasn't for my site visit. The existing convenience shop frontage is also largely covered by vinyl graphics and has a low degree of visual permeability. The parade therefore already suffers during the daytime from shuttered, dead and largely inactive frontages which detract from the area.

17. The appellant has advised that the ground floor has been empty for over 20 years and that it is has not been possible to find a tenant to occupy the property. Although I have no marketing evidence to verify this, the proposal would not result in the loss of an existing viable Class A1 retail use or a retail unit that has recently been used for that purpose. The proposal would not therefore reduce the existing diversity of shopping facilities on offer to the local community. In addition, a persistent vacancy would not make a positive contribution to the vitality or viability of the parade. Indeed, bringing the vacant unit back into use could be beneficial in this regard.
18. Although not contiguous, I was also able to observe that the appeal site lies in close proximity to a much larger commercial area to the north east along Vicarage Road, which includes a doctor's surgery, pharmacy, shops, takeaways, restaurants, a post office, beauty services and vets. This would appear to be the main service hub for the area around the appeal site, providing a much greater range of services than the appeal parade. Kings Heath district centre is also located further to the north east and has an even larger range of shops and services. I do not consider therefore that one additional takeaway in this location would materially detract from the area's ability to meet a range of local needs or undermine its retail function.
19. I agree that the proposal would result in a significant grouping of takeaway uses. However, save for the harm arising from the extract system I have not found that the resulting culmination of takeaways would have an unacceptable effect on the living conditions of those living closest to them.
20. Accordingly, in the absence of any substantive evidence to the contrary, I find no reason to conclude that an additional takeaway in this location would have an unacceptable effect on the vitality and viability of the parade. In my view, this case therefore represents the exception envisaged by the wording of Policy 6 which refers to applications normally being refused where the 10% figure has been exceeded. Also, for the reasons set out above, I not find conflict with Saved UDP Policies 8.6 and 8.7.

Conclusion

21. Whilst I have not found that the proposal would adversely affect the vitality and viability of the parade, I have found that it would have an unacceptable effect on the living conditions of the occupants of No 343. For this reason, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Richard S Jones

INSPECTOR