



Appeal Decision

Site visit made on 28 June 2017

by John Morrison BA (Hons) MSc MRTPI

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

Decision date: 10th July 2017

Appeal Ref: APP/W3710/W/17/3171162

Unit 2, Chesterton Drive, Galley Common, Nuneaton CV10 9QR

- 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 K.S Sandhu against the decision of Nuneaton & Bedworth Borough Council.
 - The application Ref 034539, dated 14 November 2016, was refused by notice dated 11 January 2017.
 - The development proposed is the change of use from retail unit (A1) to hot food takeaway (A5) (Fish and chip shop)
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. I have taken the description of development as it appears on the appeal form. Whilst this differs from that shown on the planning application form it most accurately describes the development to which the appeal relates. It is clear that the Council are content with this approach since the same description appears on their decision notice. I have proceeded on this basis.

Main Issues

3. There are two main issues. These are the effect of the proposed development on the living conditions of existing neighbouring occupiers and whether or not the proposed development would make adequate provision for car parking in the interests of highway safety.

Reasons

Living Conditions

4. The appeal site is part of a single storey building comprising one large and two smaller retail units. The largest is in use as a local supermarket and one of the two smaller ones is a hair salon. The appeal site itself is the second smaller unit and it is currently vacant. It is located at the north eastern end of the building, separated from private rear gardens to the east (side, Wells Close) and north (rear, Auden Close) by the width of a vehicular access and an enclosed servicing yard respectively. The site is on a noticeably lower ground level to the dwellings at the side and rear.

5. The proposed development would change the use of the unit to A5. It is the appellant's intention to operate it as a fish and chip shop. In order to try and mitigate the effect of odour release from the cooking process, such uses often require mechanical ventilation and specialist odour extraction systems. The proposals show such a system to be located on the side elevation, towards the rear.
6. The distance between the proposed use and the dwellings that front Wells Close and Auden Close would be below the minimum standard set out by Policy S7 of the Local Plan¹ by degrees that would be, in my view, more than marginal. This standard is set as a minimum (my emphasis) in the interests of the potential effect of noise and odour on nearby residential uses.
7. Given the unit's location, there are a limited number of places an extraction system could be sited. In effect, and allowing for a shop frontage, it would likely have to be on the side elevation. This would be directly opposite, adjacent, and in close proximity to neighbouring dwellings as I have set out. Its single storey design would also mean such a system would have to have a stack height of some significance to allow emanating odour to disperse satisfactorily. It is difficult to envisage how this would be reasonably practical, especially given how much higher the neighbouring dwellings are relative to the unit.
8. My concerns in this respect are not limited to the problem of unwelcome odour, but also operational noise. The opening times would not extend any later than the nearby supermarket and I am mindful that there is a wide variety of uses that could operate from the unit under its lawful use. However, the cooking process, the potential for congregating outside as well as elevated conversion level are additional noise factors that are more prevalent in association with A5 uses than A1. This would be in addition to and not instead of, operational noise associated with the remainder of the wider site.
9. I am thus concerned that the proposed use would not be able to operate in a manner that would be acceptable in the context of the living conditions of neighbouring occupiers. Specifically the closest dwellings that front Wells Close and Auden Close and how they would be disturbed by noise and odour. Such that it would fail to comply with Policy S7 of the Local Plan. This Policy seeks to ensure, amongst other things and along with one of the core principles of the Framework², an acceptable standard of amenity for existing and future occupiers of land and buildings. Specifically, that such is not adversely affected by the proximity of new A5 uses to them.

Parking Provision

10. The proposed use would rely on the existing car park for patrons. This comprises 13 spaces plus one disabled space. It already provides parking for the supermarket and the hair salon. It would also provide parking for an A1 use in the vacant unit. The Council's concerns in this respect appear to stem from the resulting congestion effect of over demand for parking within the existing site such that it may result in parking on the unrestricted road to the front, affecting the free flow of traffic to the detriment of highway safety

¹ Nuneaton and Bosworth Local Plan 2006

² The National Planning Policy Framework 2012

11. The amount of parking currently provided on site, taking into account the fact that it is intended to serve three units, strikes me as low. That said, I can appreciate that the businesses currently occupying the majority of the building rely to some extent on visitors on foot given its close proximity to a populated area. It seems logical to me that the same could be said for those visiting the proposed use. In addition, there would always be an upsurge in demand for parking on site should another use occupy the vacant unit. This could be a number of different uses permitted under the A1 umbrella as I have alluded to above.
12. Undertaking a parking survey would be of assistance in determining the parking demand that would arise out of the proposed use. Without it actually being in situ however this would still be largely estimation based on likely numbers of visitors, which in itself would still be a variable factor at best. In terms of parking provisions expected by the Council, their 2003 standards³ specify a maximum rather than minimum figure. There would clearly be compliance here in this regard.
13. Taking into account the above, I am not persuaded that the demand for parking would be so significantly different for the proposed use than that which could lawfully operate from the existing unit regardless of the outcome of this appeal. Some harm may arise in respect of this main issue by virtue of the proposed use but not to the extent that would justify the withholding of planning permission for this reason. Essentially therefore, I do not see any clear conflict with the Framework; specifically how it sets out that development should create safe and secure layouts that minimise conflict between traffic, and cyclists or pedestrians.

Other Matters

14. In some cases, it may be appropriate to attach a condition to a planning permission to secure the pre agreement of a scheme for mechanical extraction and/or odour abatement prior to the commencement of development. Indeed, I have considered this option in my approach to this appeal. However, and without any compelling argument to the contrary, I cannot reasonably see how this would be practical given the siting or nature of the unit relative to neighbouring residential use. The appellant also presents positive aspects of the proposed development such as the potential to create jobs. It would also be within easy reach of a populated area as I have set out above. When weighed against the harm I have found however, these factors are not sufficient to justify the proposed development.

Conclusion

15. Whilst I have not found harm in respect of highway safety, this is not sufficient to make the proposed development acceptable in light of the harm that would be caused to the living conditions of existing neighbouring occupiers in the manner that I have set out. It is for this reason, whilst having regard to all other matters raised, that the appeal is dismissed.

John Morrison

INSPECTOR

³ Nuneaton and Bosworth Car Parking Standards 2003