
Appeal Decision

Site visit made on 7 August 2017

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 24 August 2017

Appeal Ref: APP/V4305/W/17/3170134

5 The Parade, Wood Road, Halewood L26 1UT

- 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 Ting Xing Chen against the decision of Knowsley Metropolitan Borough Council.
 - The application Ref 16/00779/FUL, dated 30 November 2016, was refused by notice dated 8 February 2017.
 - The development proposed is change of use from A1 to A5, takeaway.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue raised by this appeal are the effects the proposed development would have on the living conditions of occupiers of nearby residential properties, in particular the effect of any noise and disturbance or cooking odours which may arise.

Reasons

3. The appeal property is the end unit in a short parade of shops which has on-street parking in front of it. Apart from the parade and nearby schools the area is predominantly residential in character. The appeal proposal would change the use of the existing unit to a hot food takeaway with associated extraction flue mounted on the flank elevation and would be open until 2300 every day.
4. A row of flats are situated directly above the shops including one above the appeal property. Houses face the Parade and are located next to the appeal property on Wood Road. The close proximity of these surrounding dwellings mean that they have a particularly sensitive relationship to the appeal site, in particular 2 Wood Road next door and the flat above which has an outdoor terrace to the rear. Based on my observations and representations from interested parties, the occupiers of adjacent and nearby dwellings currently experience a noise environment generally in keeping with a residential area and would therefore be sensitive to change in the locality, particularly in the evenings and at night.
5. The appeal scheme would introduce an activity that would generate noise and disturbance outside the premises caused by customers coming and going, on foot and in vehicles, as well as possibly congregating outside. Similar noise

and disturbance effects would be caused outside by the comings and goings of delivery drivers and their vehicles. At night such activity would increase noise levels of an intrusive character that would be harmful to the reasonable living conditions of nearby residents, in particular residents of flats above the parade of shops.

6. The appellant intends to install extraction, air treatment and fresh air ventilation systems and provide sound attenuation to the equipment and the external flue, the specification of which has been prepared in response to a risk assessment following DEFRA guidelines¹. However, whilst the extraction specification includes some details of noise performance there is no comparison or evaluation of the effects the extraction equipment itself or that of extracted air moving through the flue would have relative to the existing noise environment currently experienced by sensitive receptors such as the occupiers of the flat above and No 2. I cannot be certain, therefore, that this would avoid neighbours being disturbed by the extraction system as well.
7. These effects would be particularly intrusive and harmful when they take place late into the evening and night when general levels of noise and disturbance can reasonably be expected to diminish. I note that I have reached a similar view on this matter to an Inspector in a previous appeal² against refusal of a similar scheme at the appeal site.
8. Some other units in the parade open late into the evening, including an off-licence which the Council advise is open until 2200 every day. However this is located at the other end of the parade. As well as having a different relationship with surrounding dwellings, the type of activity associated with such a retail use is materially different to that of a hot food takeaway. Therefore, even with the appellant's suggested mitigation in the form of an earlier closing time of 2200, this would not significantly reduce the effect of noise and disturbance occurring well into the late evening and night.
9. The existing area would be very sensitive to the effects of cooking odours given the absence of any existing hot food takeaways or similar uses in the vicinity. However, even if the appellant is correct in his assertion that the proposed systems would almost eliminate odours from cooking reaching the outside, there would remain a residual risk that some cooking odours may escape, as well as the effects of the extraction system being negated to a degree, should doors to the premises be open during cooking.
10. Given that kitchens can be hot places to work there is the potential that doors would be left open, particularly during warmer weather when neighbours windows would also be more likely to be open and occupiers of the flats above use their outside terraces. Whilst a ventilation system could minimise the need for doors to be open to control heat internally, there is no substantive evidence that any 'air curtain' to the doors (the appellant's original application details and subsequent statement differ as to which this would apply) would prevent odour escaping if doors were to be left open
11. For the same reason, even if the extraction system, flue and the unit itself could be adequately soundproofed, noise from cooking and activity within the

¹ Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems, Department for Environment, Food and Rural Affairs, 2005.

² APP/V4305/W/16/3148887.

unit could be experienced by neighbours in such circumstances. In light of the existing environment, even odours of limited concentration or intensity, or experienced for a limited duration could have an adverse effect on nearby occupiers' living conditions, particularly given that the use would operate every day until well into the night. This adds to my concerns over the noise and disturbance which would arise.

12. Whilst occupancy of the flat above the unit by an employee might mean that they could be working during many of the hours that disturbance and odours may occur, they may well have family members also living there and in any event they could not be reasonably expected to be out of the flat at all hours and all days that the business would be in operation. I do not consider that such an arrangement would necessarily avoid occupiers experiencing harm and this would have no effect on the occupiers of other flats or houses nearby.
13. The development would materially harm the living conditions of occupiers of adjacent and nearby dwellings. It would therefore be contrary to Core Strategy³ Policies CS2 and CS19 and saved UDP⁴ Policies H5, S2, S7 and ENV2 which together, amongst other criteria, seek to ensure development avoids unacceptable effects on residents, including by way of effects on air quality and noise, particularly in residential areas. The proposal would not accord with the National Planning Policy Framework's (the Framework) core planning principle of always seeking to secure a good standard of amenity for all existing and future occupants.
14. I can appreciate that the appellant has attempted to overcome concerns raised in respect of the previous scheme, however I am not satisfied that the proposed development would avoid harming neighbours' living conditions. The appellant advises that similar extraction and filtration systems have been used elsewhere within residential areas. However I have not been directed to any particular locations and in any event I have considered the appeal proposal on its own merits and in the specific context of the appeal site.
15. I would agree with the appellant that there is no certainty that any existing issues with persons congregating outside the off-licence would necessarily be replicated with the proposed development. However, neither is there any evidence that the presence of another late night use would necessarily have a positive effect on any existing issues or, even if it were to, that this would outweigh the identified harm.

Other Matter

16. The Council's officer report concludes that the proposal would have detrimental effects on the local school's healthy living and eating initiatives and the health of its students. However, this does not form a reason for refusal and I note that the Inspector in the previous appeal found no conflict with local or national policies in this respect. As I have found reasons to dismiss the appeal on other grounds I have therefore not pursued the matter further.

Conclusion

17. For the above reasons, and having had regard to all matters raised, the proposed development would harm the living conditions of occupiers of nearby

³ Knowsley Local Plan Core Strategy, 2016.

⁴ Knowsley Replacement Unitary Development Plan, 2006.

residential properties, contrary to the development plan and the Framework.
The appeal is therefore dismissed.

Geoff Underwood

INSPECTOR