



Appeal Decision

Site visit made on 23 August 2017

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 1 September 2017

Appeal Ref: APP/N4205/W/17/3176407
123 Higher Swan Lane, Bolton BL3 3AS

- 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 Goldenstone Properties Limited against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 97863/16, dated 4 November 2016, was refused by notice dated 16 January 2017.
 - The development proposed is change of use to hot food takeaway (Class A5) including roller shutters to front and extraction flue to rear.
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Decision

1. The appeal is dismissed.

Procedural matter

2. For clarity I use the fuller description of development on the Council's decision notice.

Main Issue

3. The main issue is the effect of the proposed development on the living conditions of nearby residents by reason of noise and disturbance.

Reasons

4. The Council's second reason for refusal, regarding the detail of the proposed roller shutters, could be addressed by the imposition of a planning condition and does not therefore constitute a main issue. Odour potential could be similarly controlled to a detailed specification greater than currently apparent.
5. The living conditions of nearby residents are a key consideration in a case such as this bearing in mind the last use of the now vacant appeal site as a hairdresser, which would have attracted some activity during business hours but at a low level. An alternative use within the A1 Use Class could give rise to more activity than has historically been the case but experience of hot food takeaways over time has demonstrated that they tend have a distinct range of effects and they are now in a Use Class all of their own as a consequence.
6. Policy CG4 of Bolton's Core Strategy seeks to protect the amenity of occupiers of property by seeking, amongst other things, to prevent unacceptable noise and nuisance. In that respect it accords with the core principle of the National Planning Policy Framework to always secure high quality design and a good standard of amenity for all existing and future occupiers of land and buildings.

7. Of lesser weight than the development plan, but material nonetheless and worthy of significant weight, is the relevant supplementary planning document (SPD) adopted by the Council in 2013.¹ The SPD cites four factors as particularly significant in the determination of planning applications for, amongst other food and drink uses, hot food takeaways. One of these factors is residential amenity and the SPD is clear that, whilst such uses would normally be permitted within groups of shops, they will not be acceptable where there is a residential property adjacent to the site concerned.
8. The SPD is equally clear as to what the Council means by 'adjacent', i.e. *"that which is next to or adjoining and also that which has an obvious and close relationship to. This therefore includes residential uses that are immediately above the premises, next door to the premises, or above premises next door. The definition also includes residential properties that are separate from the site in question, but considered to relate closely to it."*
9. The circumstances of the appeal site do not sit comfortably with national policy concerning amenity bearing in mind the development plan and more particularly the guidance of the SPD within that policy context. The area around the site is predominantly residential, albeit there is an established convenience store next door at 121 Higher Swan Lane and the appeal site itself has established A1 use rights. However, the two units taken together, seemingly the product of historic conversion from residential use, can barely be considered a group of shops as such; and in any event there is a residential use above and also next door at 125 Higher Swan Lane. The latter is one of a pair of semi-detached dwellings set on a modest plot and therefore in very close proximity to the appeal site, which I note has an area of paved forecourt directly in front and adjacent to the front side garden wall of No 125.
10. I consider it inevitable that there would be frequent instances of customers congregating noisily outside the proposed takeaway late into the evening at unacceptably limited distance from that dwelling, to the severe detriment of the privacy and more particularly the quietude of its occupants, quite apart from the nuisance by reason of disturbance that would be occasioned to residents above. In addition to the noise of congregating customers it is likely that there would be a degree of disturbance from the comings and goings of additional motor vehicles including the slamming of doors, albeit that must to some extent arise from passing trade at the existing shop.
11. All in all, the prospective conflict with the intentions of the SPD could not be clearer and bearing in mind its role in interpreting more broadly based policy including that of the development plan, I consider there would be a clear conflict with the adopted policy CG4 of the Core Strategy. This would require refusal of planning permission unless material considerations were to indicate otherwise. I have taken into account all other matters raised but no material considerations sufficient to outweigh that harmful conflict with the development plan have been identified. I therefore conclude that the appeal should be dismissed.

Keith Manning

Inspector

¹ Location of Restaurants, Cafés, Public Houses, Bars and Hot Food Takeaways in Urban Areas