
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: 7 September 2017

Appeal Ref: APP/M0655/W/17/3175956
135 - 139 Long Lane, Warrington WA2 8QB

- 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 Wendy Davies against the decision of Warrington Borough Council.
 - The application Ref 2016/29208, dated 4 November 2016, was refused by notice dated 16 March 2017.
 - The development proposed is use of the ground floor of the property as two hot food takeaways, erection of single storey rear extension, creation of an additional residential unit at first floor level, installation of two fume extraction systems and minor alterations to the elevations.
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Decision

1. The appeal is allowed and planning permission is granted for use of the ground floor of the property as two hot food takeaways, erection of single storey rear extension, creation of an additional residential unit at first floor level, installation of two fume extraction systems and minor alterations to the elevations at 135 - 139 Long Lane, Warrington WA2 8QB in accordance with the terms of the application, Ref 2016/29208, dated 4 November 2016, subject to the conditions set out in the Annex hereto.

Main Issues

2. The main issues are:-
 - Whether the proposed development would lead to an undue concentration of hot food takeaways to the detriment of living conditions for local residents by reason of noise, disturbance and other forms of nuisance; and
 - Whether the proposed development would unacceptably exacerbate traffic problems at the nearby Long Lane junction.

Reasons

3. The appeal site is the central part of a terrace of 5 properties situated near a significant convergence of thoroughfares at the southern extremity of an extensive residential area, from which it is separated by a rear alleyway, so far as the nearest house on Densham Avenue is concerned. A parking area separates it from the nearest house on Northway, whilst to the west a motor dealership is the dominating land use and roads and open space predominate

to the east and south. At first floor level the appeal site is a house in multiple occupation or HMO but it is proposed that this is to be divided into two self-contained flats.

4. No 141 at the western end of the terrace is a café (eat-in/take-out) which appears to trade from early morning through till lunch-time. No 133 at the eastern end is a fish and chip shop. The intervening unit at ground floor level (which is proposed to be subdivided to form the two A5 units) has apparently been lawfully used as a betting shop but now presents a blank and un-prepossessing frontage to the public domain of the converging highways and the open space that has been laid out south of the highway connection to the car dealership. This is effectively a spur off Long Lane (A50) which effectively forms the way into the gyratory system of Densham Avenue and Northway.
5. To the west of this immediate locale is Winwick Road (A49), a major arterial route, and beyond that is a retail park with various enterprises including food and drink. South of the site in the south-east quadrant of the junction formed by Winwick Road, Hawleys Lane and Long Lane is the campus of Warrington Collegiate.
6. The planning history of the site is especially relevant in this case as a previous, effectively identical, proposal (2016/27492) was refused under delegated powers - primarily for lack of information, including the absence of information required to satisfy the sequential approach required by local policy to favour established centres as the location for A5 uses. What were regarded as excessively long hours of operation were also cited together with inadequate information regarding the ability of odour extraction and other equipment to operate without unduly disturbing neighbouring residents.
7. The application subject to appeal has addressed these previous concerns and was recommended for approval; but the Council exercised its prerogative to refuse the application contrary to officer advice for reasons that are relevant to planning, namely residential amenity and traffic. I therefore take the appeal as I find it in the light of relevant policy, evidence and the circumstances of the site.

Residential amenity

8. The terrace of buildings to which the appeal site is central is a de facto parade of commercial uses of a type not infrequently found embedded in residential areas. However, the location is unusual in that the parade of units is not embedded within the adjacent residential area but at its periphery in a location which is characterised by a mix of uses. Moreover, there is some parking to the front, limited to 30 mins weekdays, a parking area to the side on Northway and unrestricted parking alongside the car dealership on Densham Avenue, albeit some of that capacity was used on the day of my visit, as one would expect of such opportunity in an area of commercial activity. There is also parking to the front of the car dealership which is restricted weekdays.
9. It is likely that a proportion of the traffic visiting the premises would use the gyratory system formed by Densham Avenue and Northway, but these are residential distributor roads on which a moderate amount of traffic is to be expected. Both of have some on-road parking marked out primarily to serve residential properties fronting them. There is no objection on parking grounds from the Council's highways department and, bearing in mind the typical

pattern of car-borne usage at take-aways, especially with the common option of pre-ordering by telephone, with consequential reduced waiting, I would not expect the proposed takeaways in this instance would lead to undue interference with residential amenity on Densham Avenue and Northway by reason of parking. Most customers arriving by car would aim to park as close as possible to the appeal site, which would mean in the parking spaces available on street outside, the car park on Northway or alongside the Car dealership and to the front of it in the evening. Some might park further afield if spaces were unavailable but, given the pattern of short-term visits associated with uses of this type, it is likely that the more convenient spaces away from residential properties to the north would be the primary focus of activity. The potential disturbance late at night from visiting vehicles (when the busy thoroughfares in the vicinity are likely to be quieter and less intrusive in respect of living conditions of local residents more generally in the vicinity) could be effectively mitigated by a planning condition to hours of operation.

10. Such a condition, in combination with others, would help to mitigate the potential for disturbance by comings and goings not only of vehicles but of people on foot at the front of the property, and also by the noise of external plant and machinery.
11. Whatever commercial use the appeal site is put to, it is likely that there would need to be an element of servicing, including the commercial removal of trade waste and, subject to appropriate control, this would not present problems of sufficient severity to call into question the use proposed in this instance.
12. Litter is primarily a consequence of inconsiderate behaviour by individuals and does not necessarily occur near the point of generation given that car-borne and even customers on foot, if they are going to litter, will do so at whatever location they choose. Aside from prosecution, the provision of bins is the main method of encouraging responsible behaviour and the immediate locality is already well served in that regard. I am conscious that the Longford Residents' Association has raised the matter, but I saw no evidence of excessive littering as a consequence of the existing A5 uses. The potential for vermin to be attracted is a concern with any food uses but is subject to appropriate control under public health legislation in any event.
13. All in all, whilst it would certainly be the case that the small parade of units would be entirely devoted to A5 uses, I am conscious that this is not a local shopping centre where the loss of retailing might be an issue and that the particular circumstances of this essentially mixed use area on the fringe of a residential are more favourable than those of many such parades to accommodating A5 uses without undue problems of amenity arising. On balance, therefore, taking all the particular circumstances of the site within its context into account, I consider that there would be no significantly harmful conflict, by reason of noise, disturbance and other forms of nuisance, with the intention of policy QE6 of the Council's Local Plan Core Strategy to protect living conditions of local residents, or the equivalent intention of the guidance in the Council's Hot Food Takeaways Supplementary Planning Document (HFTSPD).

Traffic

14. The manner in which the roads serving the residential area hereabouts converge at the junction with Long Lane clearly must put it under some

pressure at times, albeit the nearby signal controls for the A49 help to platoon traffic so as to ease difficulties of egress onto it. There is no evidence of undue highway safety problems at present and it is pertinent that the Council's highways department raises no objection to the proposed development at issue.

15. The impact of traffic is likely to be spread and, in the context of the totality of movement at the junction, relatively insignificant. I have no evidence of a real problem being likely to be caused by the traffic likely to be generated such that there would be unacceptably harmful conflict with the relevant intentions of policy QE6 of the Council's Local Plan Core Strategy, or their equivalent in the Council's HFTSPD. In any event paragraph 32 of the Framework advises that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. There is no cogent evidence to suggest that such a threshold would be approached in this case.
16. All in all, notwithstanding the convergence of a number of roads including Densham Avenue and Northway, as indicated in the Council's decision notice, I do not consider the proposed development would unacceptably exacerbate traffic problems at the nearby junction with Long Lane.

Other matters

17. Both parties pray in aid other appeal decisions to support their cases, but within the general framework of relevant policy, decisions such as this turn very much on their particular local circumstances. In this case, these tend to favour the proposal, bearing in mind the satisfaction of the sequential approach required and the enhanced level of information supplied - matters which serve to distinguish the application subject to appeal from the previous refused application.
18. The Council contends that the complexity of the conditions required by its Environmental Protection Officer bears witness to the marginal acceptability of the proposal as recommended for approval by its officers. However, there is nothing to suggest that the conditions put forward by the Council are anything other than workable and the Framework is very clear at paragraph 203 what the approach should be. In this instance I am clear that the proposed development can be made acceptable by the imposition of conditions and that those suggested by the Council, moreover, are necessary and for the most part appropriately drafted.
19. The suggested condition 9 arises from an important consideration in the Council's HFTSPD, namely its concern regarding childhood obesity. The Warrington Collegiate, which educates teenagers of secondary school age, is well within the 400m threshold identified for the purposes of conditioning opening hours to prevent ready attraction of children of secondary school age at lunch-time. The appellant does not dispute the necessity of the condition. The implementation of the appeal proposal is likely to increase the range and variety of hot food outlets such that increased consumption of takeaways by the college pupils is an entirely credible scenario. This would be counter to the Framework core principle which includes the advice that planning "*should take account of and support local strategies to improve health, social and cultural wellbeing for all*".¹

¹ National Planning Policy Framework - paragraph 17

20. Although the condition is therefore necessary in principle, the appellant's suggestion regarding permitted hours of opening varying as between term-time and vacation periods at the college seems to me to be reasonable in the circumstances; and should in practice be enforceable with little difficulty as term-times will of course be well-publicised and well known in the locality. Should any hot food operator at the appeal site wish to open for longer weekday hours, for example to pick up additional trade at holiday times, such a condition would enable that aspiration. The Council's suggested condition can readily be adapted to incorporate the appellant's suggestion in that regard.
21. For the above reasons, and having taken all other matters raised into account, I conclude that the appeal should be allowed.

Keith Manning

Inspector

Annex: Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby approved shall be carried out in accordance with the following approved plans:-
 - Site location plan – drawing 11/16/LP
 - Proposed elevations – drawing 11/16/6 Rev A
 - Proposed roof plan – drawing 11/16/5RP
 - Proposed floorplans – drawings 11/16/4 Rev A and 11/16/5A
- 3) Notwithstanding any description of materials in the application, no above ground construction works shall take place until full details (including samples if so required by the local planning authority) of materials to be used externally on the development hereby permitted have been submitted to and approved in writing by the local planning authority. Such details shall include the type, colour and texture of the materials. Only the materials so approved shall be used, in accordance with any terms of such approval.
- 4) The flues serving the fume extraction systems hereby approved shall be colour treated in black prior to installation and shall be maintained as such thereafter.
- 5) The use hereby permitted shall not commence until a scheme for the upgrading of soundproofing and odour proofing of the building has been submitted to and approved in writing by the local planning authority. Once approved, all agreed measures shall be implemented in strict accordance with the approved details prior to the commencement of use of the A5 element and shall thereafter be maintained and retained as per the approved scheme.
- 6) Any externally mounted plant or equipment shall not cause an increase in the ambient background noise level at the boundary of the nearest residential property. Any equipment not able to meet this requirement

shall be acoustically treated prior to the commencement of the use hereby permitted to a specification and performance level to be approved in writing by the local planning authority. For the avoidance of doubt, calculated rated noise levels from any externally mounted plant or equipment at the boundary of the nearest noise residential property should not exceed the existing background level in accordance with the results of a BS4142:2014 noise assessment, the results of which shall be provided to the local planning authority for confirmation in writing as having been properly conducted.

- 7) Details of the cooking equipment and associated air extraction and filtration system shall be submitted to the local planning authority for approval prior to the commencement of the A5 use hereby permitted. The details shall form part of a scheme to control odour from the proposed development and to reduce the impact at nearby residential properties. Once the scheme is approved in writing by the local planning authority, it shall be implemented as approved prior to the commencement of trading and the installed equipment shall thereafter be operated and maintained in accordance with the manufacturer's instructions and shall be used at all times when any cooking activities are occurring. To enable the local planning authority to assess the suitability of a ventilation scheme, the information shall be provided as set out in Guidance on the Control of Odour and Noise from Commercial Kitchens, Defra 2005.
- 8) Acoustically treated mechanical ventilation shall be installed to the bedrooms along the front façade of the property. Details of proposed units shall be submitted to the local planning authority for approval in writing. Once approved, all agreed ventilation equipment shall be installed and commissioned prior to first occupation of the site and shall be maintained and retained thereafter.
- 9) The A5 uses shall only be permitted to operate between the following times:- 5pm to 10pm Monday to Friday during the published term-times for Warrington Collegiate (or any successor institution providing secondary education at the same location); 8.30am to 10pm Monday to Friday outside those published term-times; 8.30am to 10pm Saturdays and 10am to 9pm Sundays and Bank Holidays.
- 10) The collection of commercial refuse from the site shall be limited to between the hours of 7am and 8pm Monday to Friday, and to between 8am and 8pm on Saturday. There shall be no such collections on Sundays or Bank Holidays.
- 11) Prior to the commencement of development a scheme for the incorporation of flood resilient measures shall be submitted to the local planning authority for approval in writing. The approved scheme shall be implemented in full prior to the first use of the site as approved and maintained as such thereafter.

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