



Appeal Decision

Site visit made on 20 November 2017

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 23rd November 2017

Appeal Ref: APP/J4525/W/17/3181612
30 Chiswick Square, Sunderland, SR5 3PZ

- 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 Seyedmahdi Mohseniarmaki against the decision of Sunderland City Council.
 - The application Ref 17/00561/FUL, dated 16 March 2017, was refused by notice dated 12 May 2017.
 - The development proposed is change of use of hairdressers to takeaway and erection of extraction flue.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is the effect of the proposal on the living conditions of existing occupiers with specific reference to noise, smell and disturbance.

Reasons

3. The appeal property is a mid-terraced commercial unit situated within a parade of commercial properties. It is served by a parking area to the front with a large area of amenity space and a yard to the rear. It is currently in use as a barber shop and permission is sought to change the use to a hot food takeaway and to erect a flue to the rear.
4. Section 9.1a (ii) of the Development Control Guidelines Supplementary Planning Guidance (SPG) (2000) states that applications for hot food takeaways situated within a predominately residential area will not normally be permitted where the principal elevation of the nearest dwelling house or block of flats is less than 50m away.
5. There is a residential unit above the appeal property and a number of other residential properties present including numbers 29, 31, 33-34 and 35 Chiswick Square. A number of residential properties are within 50m of the unit on Cheadle Road and the front of the property would be situated around 40m from the nearest residential dwelling. Consequently, conflict arises with the SPG.
6. The existing unit could operate as an A1 Use Class retail unit and there are no restrictions currently imposed on opening hours. The determinative issue is, therefore, whether the hot food takeaway would result in an increase in noise, smells and disturbance above that which may be experienced by a retail use. The appellant is proposing to open 1000 to 2300 Mondays to Fridays; 1000 to 2330 on Saturdays and 1100 to 2300 on Sundays and Bank Holidays.
7. Hot food takeaways have the potential to adversely affect the living conditions of nearby residents by virtue of noise and odour caused by cooking inside the premises

and noise and general disturbance caused by customers and delivery vehicles coming and going outside the premises. Such effects can be particularly intrusive when they take place late into the evening when other background noise levels diminish.

8. I acknowledge that the adjacent convenience store opens until 2200, however, the nature and degree of any disturbance experienced by nearby residents associated with customers visiting the shop would, in my view, be considerably less harmful in terms of noise and disturbance than that associated with late evening and night time visitors to the proposed hot food takeaway. Customers to the shop would enter and leave the premises relatively quickly having purchased their required items; however, customers of a hot food takeaway would have to wait for their food whilst it was being prepared resulting in customers congregating in the waiting area or even outside. Furthermore, the proposal would be open later than the convenience store.
9. A suitable condition could ensure that extraction equipment was of an appropriate specification that would minimise disturbance through noise and odours arising from the flue. However, this would not address the issue of noise and disturbance arising from activity within and visitors to the premises. Any noise generated within the property is likely to be experienced particularly by the flat immediately above and flats above the adjacent premises. There is no evidence before me that any such noise would be attenuated.
10. There is a dedicated parking area in front of the parade of shops and thus visitors would not park on nearby residential streets. However, the proposed use would intensify the use of the parking area late at night which would result in additional noise and disturbance to occupiers of the residential flats above the unit and nearby premises.
11. Attention is drawn to a proposal for a hot food takeaway granted planning permission¹ on Tunstall Road. However, I note in this case that it was proposed to only open until 2100 and thus would not generate noise and disturbance in the latter part of the evening when residents could reasonably expect a degree of peace and quiet. This case is not, therefore, directly comparable to the appeal proposal which limits the weight which I can attach to it in my Decision.
12. It is recognised that the proposal would retain the unit in active use; however, I have no evidence before me to demonstrate that other uses, that would generate less noise and disturbance, are not a viable option. Indeed the unit is currently occupied by an A1 use.
13. For the reasons stated above, I conclude that the proposal would have a harmful effect on the living conditions of neighbouring occupiers with specific reference to noise and disturbance at a time when residents could reasonably expect a lack of any such disturbance. It would, therefore, be contrary to Policy B2 of the Council's Unitary Development Plan which states that new development should respect and enhance the best qualities of nearby properties. Conflict also arises with the SPG.

Conclusion

14. For the reasons stated and taking all other considerations into account the appeal should be dismissed.

Caroline Mulloy Inspector

¹ Planning application reference: 17/00072/FUL