



Appeal Decision

Site visit made on 21 November 2017

by Siobhan Watson BA(Hons) MCD MRTPI

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

Decision date: 27 November 2017

Appeal Ref: APP/P4605/W/17/3181080

1 West Heath Road, Northfield, Birmingham, B31 3TQ

- 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 Amir Farakh against the decision of Birmingham City Council.
 - The application Ref 2016/10037/PA, dated 1 December 2016, was refused by notice dated 26 January 2017.
 - The development proposed is the change of use from A1 (shop) to A5 (hot food takeaway).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development upon (i) the vitality and viability of the shopping area and (ii) the living conditions of neighbouring occupiers in relation to noise and disturbance.

Reasons

Vitality and Viability

3. The Council's Shopping and Local Centres Supplementary Planning Document (SPD) seeks to ensure that there is an appropriate balance between retail and non-retail uses in shopping areas and that a choice of goods and services to serve the local community is retained. Policy 6 of the SPD says that in order to avoid an over concentration of hot food takeaways (HFTs), no more than 10% of units within a frontage shall consist of HFTs. It says that applications for a change of use to HFTs will normally be refused where this figure has, or will be, exceeded. The footnote to the policy indicates that in parades fewer than 10 units, one HFT may be permitted.
4. The Glossary to the SPD defines a "local parade" as "a small group of local shops". There is some subjectivity in relation to defining what constitutes a "small group". However, I will treat the continuous run of retail units, on the same side as the appeal site as one parade (including the detached print shop and the shop beyond the undercroft). There are some 14 business premises on the same side of the road as the appeal site, one of which is a HFT. Two HFTs out of 14 would be above the 10% threshold. Therefore, the proposal would be contrary to Policy 6 of the SPD. Furthermore, there is a much smaller group of shops opposite the site which also contains a fish and chip shop. Adding a further HFT to the two that already exist in close proximity to each other would unacceptably increase the concentration of such uses in the shopping area.

5. I note the appellant's comments that the premises has been vacant for 3-4 years but, in spite of the letter from a local letting agent, the appellant has not provided substantive evidence of a concerted effort to market the unit for A1 use.
6. I therefore find that the proposal would harm the vitality and viability of the shopping area. Consequently, I find conflict with Policy PG3 of the Birmingham Development Plan 2017 (BDP) and Policies 8.6 - 8.7 of the Birmingham Unitary Development Plan (UDP) which, in combination, seek to ensure that streets and public spaces are functional, that neighbourhoods are sustainable, and that shopping areas are prosperous.

Living Conditions

7. The unit is in a mixed use area on a road described by the Council as a "busy route". In addition, there are other evening uses nearby such as the Co-op, take-aways, a "gentleman's club" and a petrol filling station. Even though there are flats above the parade, given that the use would be within such an area, I do not consider that, subject to conditions controlling opening hours, the proposed take-away would have a significant additional impact upon the living conditions of nearby residents. Furthermore, fume extraction systems are common within local shopping parades and I have nothing to convince me that such a system would cause harm in respect of smell or noise.
8. I therefore find no harm to the living conditions of neighbouring occupiers in relation to noise and disturbance. Consequently, I find no conflict with BDP Policy PG3 or UDP Policies 8.6 and 8.7; or the Shopping and Local Centres SPD which, in combination, seek to ensure that places are attractive and to avoid adverse impacts upon amenity.

Other Matters

9. The Council has said that as there are no details of the extraction and ventilation system, it could not judge the visual impact of the proposal. However, these matters could have been dealt with at a later date.
10. I note the appellant's reference to an appeal¹ that was allowed for a hot food takeaway. However, this appeal related to another area of Birmingham and the proposal was for a change from a bank (A2 use) rather than from retail (A1 use). Therefore, the two appeals are not directly comparable.
11. I have had regard to all other matters, including the representations from interested parties, but none outweigh the conclusions I have reached.

Conclusion

12. Although I find no harm to living conditions, this does not overcome the harm I find to the vitality and viability of the shopping parade and therefore, I dismiss the appeal.

Siobhan Watson

INSPECTOR

¹ APP/P4605/A/14/2223976