
Appeal Decision

Site visit made on 3 May 2019

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2019

Appeal Ref: APP/B0230/W/19/3220437
262 Ashcroft Road, Luton LU2 9AE

- 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 S Ghunman against the decision of Luton Borough Council.
 - The application Ref 18/00412/FUL, dated 16 March 2018, was refused by notice dated 4 January 2019.
 - The development proposed is the change of use from storage area to hot food takeaway (Class A5) and new shop front.
-

Decision

1. The appeal is dismissed.

Main issues

2. The main issues are firstly, whether the site is an appropriate location for a hot food takeaway with regard to the sequential test; secondly, the effect of the proposal on the living conditions of the occupiers of nearby properties with reference to potential noise, smells and general disturbance; and thirdly, the effect of the proposal on the health and well being of local residents.

Reasons

Location

3. The proposal is primarily to alter and convert the rear storage area of a retail shop at the junction of Ashcroft Road and Yeovil Road to a hot food takeaway. Unlike the existing shop, the appeal premises do not fall within the shopping parade frontage as defined on Figure 4 of the Local Luton Plan 2011-2031 (LP). Consequently, I share the Council's opinion that the site occupies an edge of centre location.
4. The National Planning Policy Framework (the Framework) requires that a sequential test be applied to planning applications for main town centre uses that are not in an existing centre. The Framework explains that such uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available should out of centre sites be considered. LP Policy LL21 broadly echoes this approach.
5. The Glossary to the Framework notes that leisure uses and restaurants are included within the definition of main town centre uses. As the new hot food takeaway would involve the sale of food and drink and there would be sufficient space within the appeal premises for customers to sit at a table and eat in, it

would operate in a similar way to that of a restaurant. In my experience, hot food takeaways are a familiar feature on the High Street. For these reasons, the proposal should be regarded as a main town centre use.

6. The sequential test has not been carried out. Consequently, I cannot be sure that there are no suitable sites available within a town centre to accommodate the proposal. The appeal scheme therefore conflicts with LP Policy LLP21 and the Framework. Paragraph 90 of the Framework states that where an application fails to satisfy the sequential test it should be refused.
7. The appellant contends that the site is within the defined shopping parade frontage although the LP extracts provided clearly indicate otherwise. For that reason, I am unable to conclude that LP Policy LLP23, which deals with district and neighbourhood areas and shopping parades, is more relevant to the proposal than LP Policy LLP 21. I am not persuaded on the submitted evidence that the proposal should be excluded from the sequential test given its size.
8. The appellant also states that the proposal should be assessed as a retail shop (Class A1) and a hot food takeaway (Class A5) since these uses would operate within the same building. However, the submitted plans indicate that an internal wall would separate the new use from the storage area of the shop, unlike the existing premises. The proposed use would have its own access with cooking facilities and sufficient space within the premises to operate as an independent unit. The description of development also refers only to a hot food takeaway. Consequently, I am unable to share the appellant's opinion that the proposal should be regarded as a mixed Class A1 and A5 use.

Living conditions

9. Of the residential properties in the area immediately around the site, it is the occupiers of dwellings further along the same side of Ashcroft Road just beyond the service access to the host building that are most likely to be affected by the proposal. The residents of dwellings on the opposite side of Ashcroft Road to the site may also be affected, as these properties would directly face the entrance to the hot food takeaway and the proposed car parking bays.
10. The proposal, if permitted, would allow the hot food takeaway to be open to customers between 1100 to 2200 hours, 7 days a week. Broadly within these times, there is potential for noise associated with visitors and their vehicles to disturb nearby residents. This disturbance could arise from people acting inconsiderately by, for example, talking loudly outside the appeal premises, shouting across the parking area, slamming car doors, leaving car radios on, and accelerating their vehicles quickly away from the area. This type of behaviour can often result in a sudden, sharp difference in sound level or its pitch that can cause more disturbance than the more constant, continuous tone of passing traffic along Ashcroft Road, with which local residents are likely to be more accustomed.
11. Such inconsiderate behaviour might occur infrequently. However, the propensity of such events to cause irritation and disturbance would be significant given that they could occur later in the evening when nearby residents are more likely to be at home and reasonably expect quieter conditions in which to relax and sleep. It is at that time when background noise levels from passing traffic and the activities of people coming and going to other nearby shops and premises would generally be lower, because other

premises may be closed and so noisy activities would be more noticeable. In those circumstances, it is my view that, whatever the efforts of the appellant, some people would not be mindful of the needs of others when visiting the new hot food takeaway. I therefore agree with the concerns of an interested party that the proposal would lead to additional noise and disturbance and note that other nearby uses already cause some harm. Reduced opening hours would not provide effective mitigation in this case.

12. With regard to odour, some details of the proposed extraction system, which includes an external flue, have been provided. No evidence has been submitted to suggest that a modern extraction system and operated and maintained in accordance with the manufacturer's instructions would not be sufficient to control odour, noise and vibration. An appropriately worded condition would provide an adequate safeguard in this case. A condition could also be imposed with regard to the position and height of the external flue. The Council's Environmental Protection Officer has also recommended conditions be imposed to require further information if permission were to be granted.
13. Notwithstanding my finding on this matter, I conclude on the second main issue that the proposal would harm the living conditions of the occupiers of nearby residential properties. It therefore conflicts with LP Policies LLP1 and LLP25 insofar as they aim to safeguard residential amenity.

Health and well being

14. The Council considers that the proposal would run counter to its strategy to improve the health of the Borough's residents, which the policies of the Framework support, notably within Section 8. That Ashcroft High School and Rambridge Primary School are within walking distance of the site is of particular concern to the Council. However, few details have been provided to link a hot food takeaway at this location with effects that could be directly attributable to a material decline in the health and well being of local residents. While the appeal premises may be on route for pupils traveling between school and home there is nothing before to indicate that the proposal would encourage unhealthy eating as a result.
15. I have taken into account the Council's concern with regard to higher obesity levels in year 6 children than the national average and the laudable aim to improve the health of residents. However, there is insufficient evidence to conclude that the proposal would prejudice the ability of the Borough's residents to live a healthy lifestyle, or would materially harm the health and well being of the population. Therefore, I find no conflict with LP Policies LLP1 or LLP25 or the Framework.

Other matters

16. Once in place, the proposal would create 2 full time jobs and make efficient use of the space available within the building. A new shop front would be introduced following the removal of the existing roller shutter doors that contribute little positively to the character and appearance of the local area. The new use would widen customer choice and could encourage secondary spending in the other nearby shops. There are, therefore, economic, environmental and social benefits that weigh in support of the appellant's case. However, these considerations do not outweigh the significant harm that I have identified in relation to the first and second main issues.

17. A number of appeal decisions have been drawn to my attention. In my experience, it is rare that direct parallels can be drawn between one site and another. In this instance there are, it seems to me, significant differences in terms of location, proposals and characteristics between the various sites quoted such that preclude any valid comparisons between them and the proposal before me.

Conclusion

18. For the reasons set out above, I conclude that the appeal should be dismissed.

Gary Deane

INSPECTOR