



Appeal Decision

Site visit made on 5 May 2019

by A. J. Boughton MA (IPSD) Dip.Arch. Dip.(Conservation) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

Appeal Ref: APP/P0119/W/19/3222786

21 Park Avenue Winterbourne Bristol South Glos. BS36 1NH

- 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 Dharmesh Patel against the decision of South Gloucestershire Council.
 - The application Ref PT18/2527/F, dated 23 May 2018, was refused by notice dated 21 August 2018.
 - The development proposed is change of use from general store to A5 hot food takeaway and installation of a flue to the rear elevation with associated internal alterations.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use from general store to A5 hot food takeaway and installation of a flue to the rear elevation with associated internal alterations at 21 Park Avenue Winterbourne Bristol South Glos. BS36 1NH in accordance with the terms of the application, Ref: PT18/2527/F, dated 23 May 2018, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with Drawing No. 2 submitted with the application.
 - 3) Before the use hereby permitted takes place, equipment to control the emission of fumes and odour shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. Such scheme shall include details of the flue and measures to control odour and noise emanating from the premises, and details of the cleaning/operating regime for its effective use. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.
 - 4) The use hereby permitted shall not be open to customers, nor shall despatches of any food be made or deliveries received, before 09.00 or after 23.00 daily.

Preliminary Matters

2. The Council has raised no objection other than with respect to the information provided being insufficient to ensure the operation of the cooking equipment and related extraction would prevent odour, noise and disturbance.

Main Issue

3. Accordingly, the main issue is the effect of the use proposed on the living conditions of residents in the area with particular regard to odour and noise.

Reasons

4. The appeal site is a small retail unit with ancillary residential accommodation on the upper floor. Located in a small shopping parade within the large village of Winterbourne the appeal premises were formerly part of a convenience store which has reduced in size. The area has a mixed, but predominantly suburban character. The extract flue would be on an unobtrusive rear elevation and, due to the intervening parking area, at a reasonable distance from surrounding residential gardens.
5. Notwithstanding the information provided, the Council have concerns as to as to the lack of detailed information with regard to the extraction and odour prevention. However, paragraph 54 of the National Planning Policy Framework indicates that decision-takers should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. As it is entirely normal that such information, including details of noise suppression, would be provided by the designer/manufacturer of the equipment prior to manufacture this is also capable of being presented for the Local Planning Authority to determine the adequacy and effectiveness thereof.
6. On that basis the conflict with the policies identified falls away and I therefore conclude the proposal would accord with Policies PSP8, PSP21 and PSP35 of the South Gloucestershire Local Plan, Policies, Sites and Places plan (2017) which seek amongst other things to prevent unacceptable impacts from noise, odours and other forms of nuisance from the type of use proposed, and thereby the proposal accords with the development plan taken as a whole.

Other Matters

7. I have no reason to disagree with the Council's conclusions that the various concerns of interested parties as to viability, behaviour, litter and parking would justify refusal nor that the use (subject to opening hours condition) would itself cause disturbance. Although the refusal reason makes reference to Policy CS9 of the South Gloucestershire Local Plan Core Strategy (2013), this does not add to the Council's case.

Conditions

8. A 'plans' condition is appropriate to ensure the development proceeds in accordance with the permitted use. For the reasons explained a condition requiring full details of the extraction system to be approved and another limiting the hours of operation (as suggested by the Council) are necessary to protect living conditions in the area.

Conclusion

9. The appeal is allowed.

Andrew Boughton
INSPECTOR