



Appeal Decision

Site visit made on 17 June 2019

by R. Jones BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th July 2019

Appeal Ref: APP/J4525/W/19/3225878

1 Gordon Terrace, Ryhope, Sunderland SR2 0QR

- 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 Prakash Kitto against the decision of Sunderland City Council.
 - The application Ref 19/00064/FUL, dated 8 January 2019, was refused by notice dated 13 March 2019.
 - The development proposed is change of use from A1 (shops and retail outlets) to A1 (shops and retail outlets) and A5 (hot food takeaway).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the development on the living conditions of nearby residents with particular regard to odour, noise and disturbance.

Reasons

3. The appeal site comprises 1 Gordon Terrace (No 1), an end terrace commercial unit, formerly a carpet shop. The terrace is residential save No 1, which itself has a residential flat above at first floor. Permission is sought for the change of use from a shop to a mixed shop and hot food takeaway including erection of a flue to the side elevation.
4. Section 9.1a(ii) of the Development Control Guidelines Supplementary Planning Guidance (SPG) (2000) states that applications for takeaway hot food shops situated in a predominantly residential area will not normally be permitted where the principal elevation of the nearest dwelling is less than 50m away.
5. There is a flat above No 1 at first floor, as well as dwellings in very close proximity, notably 2 Gordon Terrace (No 2) which directly adjoins it. Residential dwellings are located well within 50m and although there is a convenience store and car garage both broadly opposite No 1 on Stockton Road and Station Road respectively, the area is predominantly residential. Consequently, a conflict arises with the SPG.
6. Hot food takeaways have the potential to harm the living conditions of nearby residents by reason of the noise and odour caused by cooking inside, but also the noise and general disturbance caused by the comings and goings of customers. An extract flue and ductwork is proposed on the side elevation of

No 1 to Station Road. Although I do not have a full specification before me, the details submitted by the appellant refer to a dampner, silencer and grease traps as a minimum. I am therefore satisfied that subject to a suitable condition to ensure an appropriate specification for the flue, noise and odours could be minimised.

7. However, this would not address the issue of noise and disturbance arising from customers to the premises. Due to its nature, there would inevitably be frequent customers and potentially delivery vehicles associated with the hot food takeaway use. Although not all customers would arrive by car, for convenience many would do so and there would be noise and disturbance caused by slamming doors and car engines. There is a small area of parking on the corner of Station Road and Gordon Terrace which I saw from my site visit was fully parked during the day. This limited parking could lead to a degree of parking on the short length of layby immediately outside Nos 2 and 3 Gordon Terrace. Whilst there is scope for parking to the rear, this would also be very close to the back of dwellings on Gordon Road, as well as No 12 Hedley Terrace and the new flats on the corner of Station Road.
8. Further, it is also likely that customers would congregate inside or outside the hot food takeaway on Gordon Terrace either consuming or waiting for food. Given the location of the front door on the front splayed elevation, this would be directly below the first floor flat and very close to the front bay window of No 2. Although not constant, these sources of noise and disturbance would be audible to the occupiers of both and there is no evidence before me that such noise would be attenuated. This noise and disturbance would therefore cause harm to the living conditions of the occupiers.
9. I have had regard to the opening hours suggested by the appellant. Although the hot food takeaway is not proposed to open later than 9pm Monday to Sunday, customers are likely to congregate later than this and it is still a time when residents might reasonably expect to enjoy relative peace and quiet and a lack of disturbance. Given the very close relationship with existing dwellings, I am not therefore satisfied that such a restriction would overcome the concerns I identify in respect of harm to living conditions, caused by noise and disturbance.
10. I have no details before me regarding the former use of No 1 as an off licence or its opening hours. I do acknowledge that a shop use could be recommenced which would lead to some disturbance from customers. The trading hours of a hot food takeaway business are, however, typically more focussed on the late afternoon and evening than a shop use, a more noise sensitive time of day.
11. As a consequence, I conclude that whilst the development would not result in harm to living conditions with regard odour, they would nonetheless cause harm by reason of noise and disturbance. They would therefore conflict with saved Policies B2 and S12 of the City of Sunderland Unitary Development Plan (1998) in-so-far as they state that new development should respect nearby properties and not have a detrimental effect on amenity. Conflict would also arise with the SPG.

Other matters

12. My attention is drawn to recent housing development in the area. Whilst I recognise that the proposed hot food takeaway could improve the range and

choice of facilities available for residents, this is a limited benefit that would not outweigh the harm to living conditions identified above, or the conflict with the development plan.

Conclusion

13. For the reasons above, and having regard to all other matters raised, the appeal should be dismissed.

R. Jones

INSPECTOR