



Appeal Decision

Site visit made on 12 June 2019

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 16th July 2019

Appeal Ref: APP/D0650/W/19/3224846

39 Bechers, Widnes, Halton WA8 4TE

- 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 Kujdesi Hasalamaj against the decision of Halton Borough Council.
 - The application Ref 19/00010/COU, dated 6 January 2019, was refused by notice dated 1 March 2019.
 - The development proposed is the change of use to A5 Pizza Takeaway.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the change of use on the mix of commercial units within the Local Centre;
 - The effect of the change of use upon the living conditions of occupants of the residential flats above the unit; and
 - Whether the proposed use would cause an unacceptable risk to the locality as a result of crime and disorder;

Reasons

Commercial mix

3. The appeal property is part of a row of 6 commercial units which forms a small local neighbourhood centre. Saved Policy BE1 of the Halton Unitary Development Plan 2005 (UDP) is supported by the Hot Food Takeaway Supplementary Planning Document (SPD) which specifies principles and criterion for hot food takeaways to adhere to. In Local Centres such as where the appeal site is located, no more than two units, or 10% of the floorspace (whichever is greater) should be in A5 use.
4. The purpose of this criterion is to resist the over-proliferation, dominance and clustering of A5 uses which in the Council's view can have an adverse impact on the vitality and viability of existing designated shopping Centres.
5. As there is currently an existing A5 use in this local centre, this unit already equates to 16% of units in A5 use, which already exceeds the mix of 10% as specified by the SPD.

6. As such the appeal scheme would double this percentage to mean that a third of the units in the local centre would be in A5 use. Taking this into account, the commercial mix of the local centre would clearly not be in accordance with the desired mix of commercial units. The appeal scheme would therefore conflict with Policy BE1, which amongst a number of principles for development seeks that uses are compatible with surrounding uses, of which is supported by HT1 of the SPD which seeks that there is not an over-proliferation of Hot Food Takeaways to a Local Neighbourhood Centre.

Living Conditions

7. On the first floor of each of the retail units along this small parade are apartments, which are set back from the fascia of the shopfront and have a small private garden/amenity space with openable doors and windows fronting this space. The former sandwich shop use which occupied the appeal site contained a small extraction system which had its flue mounted into the fascia sign to the front of the retail shop. According to the appellant this flue was utilised for the extraction for the cooking of sausage rolls and pies etc. The appellant states that they do not require a new extraction system to be installed as the current extraction is of adequate size to facilitate their new use which is a pizza oven.
8. Whilst this may be the case, evidence needs to be supplied in order to demonstrate that the existing system meets current environmental protection legislation and would not result in a loss of amenity to residents in the flat above in terms of odours, noise, vibration, disturbance etc. This would also be supported by FT4 of the SPD which seeks that hot food takeaways in close proximity to residential units with only be allowed where it is considered that there will be no significant adverse impacts on living conditions in terms of noise, vibration, odours, etc. The SPD also states that it is unlikely that planning permission will be granted for hot food takeaways where there is a flat located above, unless it is used in association with the takeaway.
9. Based on the information before me, it has not been demonstrated that the existing system is capable of meeting the current regulations for this particular use and that it would not cause increased harm to living conditions. As such the proposed scheme would not comply with Policy BE1 of the UDP which amongst a number of principles, seeks that uses are compatible with existing and surrounding uses and that development must not cause unacceptable levels of pollution or nuisance. This policy is supported by the SPD which seeks appropriate locations for hot food takeaways and that it can be demonstrated that there will be no adverse impact to residential amenity.

Crime and disorder

10. Policy BE1 of the UDP seeks that developments are designed in a way which minimises the fear and risk of crime. This is supported by Paragraph 91 of the National Planning Policy Framework which seeks that developments ensure that environments are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion.
11. The Council state that Cheshire Police have confirmed that there have been 14 incidents reported in the last 10 months, within a 100 metre radius of the appeal site. These have predominantly been nuisance youths, some alcohol related, but not all. There have been 8 crimes reported in a similar radius

which includes domestics, shop lifting and cash being stolen from users of the ATM. I also acknowledge comments from residents who also express concerns regarding the proposed use likely attracting anti-social behaviour and a potential increase of crime. The appellant runs the existing fish and chip shop in the neighbouring unit and states that they have not experienced an increase in crime as a result of their business operations.

12. The Council present details of a nearby appeal¹ also for the change of use to a hot food takeaway at No4 Danescroft, which although outside the Local Centre, the Council believe if both were approved would result in cumulative impacts to the local area in terms of crime and disorder. This appeal has recently been decided and the Inspector in that case considered that there is *'no firm evidence that such occurrences, which are ultimately a matter for the relevant authorities to manage, would be attributed to the proposed change of use. Crime and disorder does not seem to me to be an inevitable consequence of a hot food takeaway use, but is rather a question of individual behaviour and appropriate management.'*
13. I too concur with the Inspector's view, and find that the use on its own or cumulatively, in the absence of any compelling evidence, would not likely increase opportunities for crime and disorder. It follows that the scheme would not conflict with Policy BE2 of the UDP, which amongst a number of principles, seeks that development minimises the fear and risk of crime. This policy is also supported by the SPD which at HT9 seeks that in assessing applications for hot food takeaways, that the Council will consider the local context with regards to the potential for crime and disorder.

Conclusion

14. Whilst I do not consider that the appeal scheme would likely increase the risk of crime and disorder, based on the evidence before me, the proposed scheme would result in an inappropriate mix of retail units within the local centre, and is likely to cause harm to the living conditions of surrounding residential uses, which is an overriding concern. Therefore, having regard to all other matters raised, I conclude that the appeal should be dismissed.

J Somers

INSPECTOR

¹ Appeal Ref: APP/D0650/W/19/3222279