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## Appeal Decision

Site visit made on 27 March 2019

**by David Storrie DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22<sup>nd</sup> July 2019**

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**Appeal Ref: APP/P4605/W/18/3219343**

**68 York Road, Erdington, Birmingham, B23 6TG**

- 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 Ms Morna Dodd against the decision of Birmingham City Council.
  - The application Ref 2018/06024/PA, dated 18 July 2018, was refused by notice dated 1 October 2018.
  - The development proposed is Retention and continued use of a change of use from showroom to hot food takeaway (Use Class A5) and enclosed outdoor seating area.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. I have taken the description of the development from the Council decision notice as this more succinctly describes the development.

### Main Issues

3. The main issues in the consideration of the appeal are;
  - The effect of the use on the vitality and viability of the District Centre of Erdington;
  - The effect of the use on the living conditions of the occupiers of neighbouring properties with specific regard to noise and general disturbance; and
  - The effect of the use on pedestrian and highway safety with specific regard to car parking provision.

### Reasons

#### *Effect on the District Centre*

4. The appeal site is a two storey end terraced property located at the junction of York Road and Summer Road. Residential properties exist on York Road whilst the New Inns Public House adjoins the northern boundary of the site. Erdington District Centre is located some 100m to the east of the site. At the time of my visit the premises were closed, although the parties are agreed that the takeaway use has already commenced. The appellant advises that the property was formerly in use as a showroom/shop.

5. There is no dispute between the parties that the appeal site lies outside the district centre. Policy TP21 of the Birmingham Development Plan (2017) (BDP) seeks to resist proposals for main town centre uses outside of the boundary of the district centre in order to maintain and enhance the vitality and viability of such centres. BDP Policy T24 seeks to encourage a diverse range of facilities within identified centres, including takeaways.
6. The use is one that is appropriate in the district centre and I see no reason why it cannot be accommodated there. The appellant says that a unit was viewed in Erdington District Centre but ruled out due to lack of parking. However, I am mindful that there is no dedicated parking at the appeal site either.
7. Whilst I appreciate that the takeaway use serves the needs of the local community, this would be the case for a unit within the district centre that is only some 100m away. In practical terms, despite the former historic commercial use of the property, due to its location away from the defined centre, the appeal scheme undermines the Council's strategy to locate town centre uses in District Centres such as Erdington which are a focus for services and local community life in accessible locations. As a result, it fails to maintain or enhance the vitality and viability of the Erdington District Centre and detracts from its important role as a focus for such uses.
8. I therefore conclude on this main issue that the use is harmful to the vitality and viability of Erdington District Centre. As such, the development is in conflict with BDP policies TP21 and TP24 and the National Planning Policy Framework (2019) (The Framework) Section 7, paragraph 85 which advises that planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.

#### *Living conditions*

9. The appeal site is located within a predominantly residential area. Whilst a public house adjoins the northern boundary of the site and it is located close to the identified district centre, York Road is a residential street comprising terraced properties. The appeal property adjoins a residential property at 66 York Road.
10. I understand that the appeal property was formerly in commercial use as a showroom/shop, although no further details have been provided. Nevertheless, the operation of a take away, that would be open until 22.00 hours, including Sundays and Bank Holidays, is likely to give rise to a number of comings and goings associated with customers including those made in cars. The provision of a delivery service and outdoor seating area would add to these movements. This activity is likely to result in noise and disturbance arising from customers car doors banging, engines revving and music playing. This is likely to be intrusive in what is a residential area and detrimental to the living conditions of nearby occupiers and erode their quality of life.
11. I therefore conclude on this main issue that the use is harmful to the living conditions of the occupiers of neighbouring properties with regard to noise and general disturbance. This is contrary to Policy 8.7 of the Birmingham Unitary Development Plan (2005) and Policy PG3 of the BDP that seek to confine takeaways to shopping areas or areas of mixed commercial development to avoid issues arising from late night opening such as noise, disturbance, litter

and smell and support development that reinforces a positive sense of place. It would also be contrary to paragraph 127 (f) of the Framework that, amongst other things, seeks to ensure new development provides a high standard of amenity for existing and future users.

#### *Highway safety*

12. I have seen no evidence of any off-street parking provision for the takeaway use. Parking restrictions in the form of double yellow lines exist immediately outside the premises and at the time of my site visit around midday, York Street was fully parked up. The Council advises that on-street parking in the area is heavy and in short supply and this accords with my own observations. Whilst spaces are available in the district centre, I consider it unlikely that customers of the takeaway would park over 100m away. Instead I agree with the Council that the use is likely to result in an increase in demand for short stay, close proximity on street parking (particularly around lunchtimes and evening peak traffic hours).
13. In the absence of any on-site parking provision for the use and in the context of the lack of available on-street parking in the vicinity of the site, in my view inconsiderate parking to the detriment of highway and pedestrian safety is likely to arise closed to the appeal property.
14. I therefore conclude on this main issue that the use is harmful to pedestrian and highway safety with regard to car parking provision. Thus, it conflicts with the aims of BDP policies TP44 and PG3 that, amongst other things, seeks to prevent development on transport grounds where the residual cumulative impacts are severe, and to provide attractive environments.

#### **Other Matters**

15. I appreciate that the appeal property has been owned by the appellant's family for many years and note her view that the takeaway use is supported by the local community. However, these are not reasons to allow development that is harmful.

#### **Conclusion**

16. For the above reasons and having considered all matters raised, I conclude that the appeal should be dismissed.

*David Storrie*

INSPECTOR