

Appeal Decision

Site visit made on 25 June 2019

by Kate Mansell BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2019

Appeal Ref: APP/W4705/W/19/3223206

137 Legrams Lane, Listerhills, Bradford BD7 2AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Mohammed Nawaz against City of Bradford Metropolitan District Council.
 - The application Ref 18/03185/FUL, is dated 22 June 2018.
 - The development proposed is change of use from Class A1 retail sales shop to Class A5 takeaway hot food shop 2 no dormer windows and access stairs to flat.
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matter

2. On 19 February 2019, the Government published an updated revised version of the National Planning Policy Framework (the Framework). In relation to the main issues in this appeal, Government policy has not materially changed, and no parties have been prejudiced by my having regard to it.

Background and Main Issues

3. The appellant submitted the planning application that is the subject of this appeal in June 2018. The Council confirm that they gave the required publicity to the proposal. No representations from interested parties have been provided to me nor any responses from consultees. Furthermore, other than a copy of relevant policies and guidance, the Council have not provided an officer report or statement of case within the appeal timescales.
4. Consequently, from the limited information before me and from my observations on site, the main issues in this appeal are the effect of the proposal on:
 - The living conditions of the occupiers of the flat above the premises, with particular regard to noise and disturbance;
 - Its effect on the character and appearance of the host property and the surrounding area;
 - Whether it is an appropriate location for the proposal in respect of an over-concentration of such uses and healthy lifestyles.

Reasons

Living conditions

5. Legrams Lane is a busy thoroughfare of mixed character with buildings of a traditional appearance in both residential and commercial use. The appeal site at No 137 occupies a mid-terrace position within a small parade of 10 properties. It comprises storage at basement level, a retail unit on the ground floor with a self-contained flat above.
6. Along the parade are a range of other retail/food and drink premises, including one hot food take-away. The floors above appear to be primarily in residential use. A parking bay on the adjacent highway offers either permit or short-stay one-hour parking during the day. To the rear, the premises have a yard that backs onto a service road between Rugby Place and St Margaret's Road.
7. The appeal proposal would change the use of No 137 from a retail unit within Use Class A1 to a hot-food take-away within Use Class A5. The application form states the opening hours would be between midday and midnight Mondays to Saturdays and between midday and 23.30pm on Sundays and Bank Holidays. A self-contained flat would be retained above.
8. The proposal would result in an increase in comings and goings from the premises late into the evening in comparison to the existing retail use. It would therefore result in increased noise and disturbance to those within the flat above. I have nothing before me to indicate that the appellant would be willing or able to accept alternative hours of opening to mitigate this harm.
9. The Council's Hot Food Takeaways Supplementary Planning Document (November 2014) (HFT SPD) also advises that appropriate sound proofing of ceilings should be provided where necessary to ensure that there is no unacceptable noise disturbance from the hot food take away for residential occupiers directly above. I have no substantive evidence to indicate that such measures could be achieved.
10. In relation to the extraction system, the Council's Hot Food Takeaways Supplementary Planning Document (November 2014) (HFT SPD) advises that it should, where practicable, be installed within a building. In this case, I also acknowledge that the internal flue would be fitted within an insulated shaft with one-hour fire resistance and mounted to the wall with rubber bushes to avoid vibrations.
11. However, as well as passing adjacent to the kitchen and bedroom of the self-contained flat above the premises, it would also protrude through the roof immediately adjacent to the proposed rear dormer window. Furthermore, having regard to the HFT SPD, I have no existing background noise levels before me, as measured or calculated at this nearest residential property, in order to establish whether the extraction system would be suitable. In the absence of such information, the proximity of the extraction unit within the upper floor flat and to the rear dormer window would result in a significant increase in noise and disturbance for these occupiers.
12. For these reasons, I conclude that the proposal would harm the living conditions of the occupiers of the flat above the premises. It would therefore conflict with Policy DS5 of the City of Bradford Core Strategy (July 2017)

(CBCS). This policy requires development to ensure that it would not harm the living conditions of existing or prospective users and residents. It would also be contrary to the objectives of the HFT SPD to ensure that hot food take-aways do not have an adverse impact on the amenity of neighbouring occupiers.

Character and appearance

13. The proposed works associated with the change of use would introduce an 'L' shaped galvanised steel staircase onto the rear elevation of the appeal property, to provide direct access to the first floor flat. The character of development beyond the rear of No 137 on the adjacent streets, including Rugby Street and St Margaret's Road, is largely residential. In contrast, the metal staircase would have an industrial appearance.
14. I recognise, however, that there are adjoining premises that already have metal steps projecting from the rear yard to a first-floor doorway, as well as others within the locality. But these are typically straight and extend directly up to the doorway. This results in a degree of symmetry to their appearance and they are less prominent as a result.
15. The design of the staircase to the appeal property would incorporate a 90 degree turn within the yard. It would therefore extend in front of part of the rear elevation of No 137 at ground floor level. It would also present a side profile to the service road at the rear of the site, from which it would be particularly visible. Consequently, it would, in my view, be conspicuous within the street scene.
16. To the front and rear roof slopes, the proposed rear dormers would be set up from the eaves and sit below the ridge, as well as being modestly set-in from each side. In this regard, they would not be unduly dominant in relation to the host property or the surrounding area, particularly given the prevalence of dormer windows of various sizes within the terrace to both the front and back.
17. Accordingly, whilst I find that the dormer windows would not be harmful to the host property or the surroundings, I conclude that the external staircase would result in harm to the character and appearance of the surrounding area. It would therefore conflict with Policies DS1 and DS3 of the CBCS. These policies seek generally to secure good design and high-quality places that respond to existing positive patterns of development.

Appropriate location for a hot food take-away

18. The Council's Supplementary Planning Document on Hot Food Takeaways (November 2014) (HFT SPD) includes an intent to reduce the negative impacts of takeaways on childhood health. Principle 2 of the SPD advises that planning permission will not usually be granted for hot food takeaways that fall within 400 metres (approximately a 10-minute walk) of the boundary of either a primary or secondary school or youth-based facility or any recreation grounds or parks. Additionally, Principle 1 seeks to avoid an over-concentration of such uses. This approach is consistent with objectives of the Framework to enable and support healthy lifestyles, especially where this would address identified local health needs.
19. I observed only one hot-food take away within the same terrace as the appeal proposal, as well as another opposite the site and one within a nearby parade. However, given the mix of uses within the immediate vicinity, this would not, in

my view, constitute a cluster of hot food take-aways and in this regard, the proposal would not result in an over-concentration of A5 uses within the locality.

20. From the evidence before me, there are also no schools within the range set out by the HFT SPD, with the closest at approximately 800m and further. Indeed, no parks, schools or youth facilities were obvious on my site visit.
21. Consequently, I conclude that the appeal site would be an appropriate location for the proposal in that it would not result in an over-concentration of A5 uses and it would be sufficiently far from parks and schools with regard to securing healthy lifestyles. Therefore, I do not find that it would be contrary to guidance within the HFT SPD or within the Framework.

Other Matters

22. I acknowledge that the proposal would bring the unit back into economic use and it would also create some employment opportunities of up to six full time equivalent staff for residents from the local and wider area. Whilst these factors weigh in the scheme's favour, they do not outweigh the harm that I have already identified.

Conclusion

23. Whilst I find that the proposal would be an appropriate location for a hot food take-away with regard to avoiding an over-concentration of such uses and healthy lifestyles, I find that it would result in harm to the character and appearance of the surrounding area in respect of the external staircase and it would also harm the living conditions of the occupiers of the flat above the proposal.
24. For these reasons, I conclude that the appeal should be dismissed.

Kate Mansell

INSPECTOR