

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/19/3225954

37-39 Highfield Lane, Keighley BD21 2DJ

- 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 Saj Hussain against the decision of City of Bradford Metropolitan District Council.
 - The application Ref 19/00068/FUL, dated 30 December 2018, was refused by notice dated 5 March 2019.
 - The development proposed is described as 'the premises is currently used as a Desert Bar and the client wishes to include Hot Foods to the menu to meet demand of customers. This includes serving hot drinks, Soups and Hot deserts. Also to install this equipment there is a requirement to install a new internal extract flue'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are the effect of the proposal on:
 - The living conditions of neighbouring properties, with particular regard to noise and disturbance, as well as cooking odours;
 - Highway safety in respect of car parking provision, as well as pedestrian safety relating to bin storage and;
 - Whether it is an appropriate location in respect of healthy lifestyles.

Reasons

Living conditions

3. Highfield Lane is a broadly residential road extending uphill from Keighley town centre. It is characterised by mainly traditional terraced two and three storey dwellings set back modestly from the road with a small number of ground floor commercial/retail uses along the street.
4. The appeal premises is a detached single storey building with its main entrance fronting Highfield Lane. To one side, it adjoins an access road running between Highfield Lane and Broomfield Road. To the other, it borders the rear gardens of dwellings at No 30 to No 36 Eagle Street. It is presently in retail use as a 'dessert bar' with inside seating. The appeal proposal would change it to a mixed-use, to also include the sale of cold and hot foods to take-away. There would be some seating for consumption of food on the premises.

5. I understand that the unit was empty for many years and it has a history of businesses closing after a short period of trade. The current occupier has operated for the last 2 years. The proposal would seek to continue opening the premises as per the existing hours, between 5pm and 11pm Sunday to Thursday and 5pm to 'late' on Fridays and Saturdays.
6. As a consequence of diversifying and extending the 'offer' to a range of hot and cold foods, including for take-away, there would, however, be an increase in comings and goings from the premises. Even taking a delivery service into account, this would not preclude customers visiting the premises to eat in or stopping to collect take-away food. Given the proximity of residential properties and the opening hours extending into the late evening, the proposal would therefore result in increased noise and disturbance to nearby occupiers.
7. The proposal would also include the provision of an internal flue in a broadly central position on the building, projecting through the roof on the pitch that slopes down towards the access road. It is shown to extend to approximately the ridge height of the building. I note, however, that the consultation response from the Council's Environmental Health Officer, which the appellant has had the opportunity to review, states that the ducting should discharge at least 1 metre above the ridge height of the building to have an effect on the dispersion and dilution of the odour.
8. Whilst the appellant indicates that no pizzas would be made or cooked at the premises, the proposal relates to the cooking and sale of hot foods generally. These would still generate odour, albeit of a different nature to fumes from vehicles. Furthermore, even if the flue were triple filtered, it would extend to or exceed the ridge height of the building. It would also be positioned close to the rear windows of the houses at 30-36 Eagle Street. These have short rear gardens and sit at a higher level to the appeal site, overlooking the roof. Consequently, cooking odours/fumes would significantly affect these neighbouring residents.
9. For these reasons, I conclude that the proposal would be harmful to the living conditions of neighbouring properties, with particular regard to noise and disturbance as well as cooking odours. It would therefore conflict with Policies DS5 and EN8 of the City of Bradford Core Strategy Development Plan Document (July 2017)(CBCS). These policies seek to ensure, amongst other matters, that proposals do not harm the living conditions of existing residents and that potential nuisance issues (including odour) can be addressed and minimised to protect general amenity.

Highway safety

10. Highfield Lane is a relatively busy thoroughfare where speed bumps have been installed as a traffic calming measure. I observed that on-street car parking was prevalent on both sides of the road and that the majority of dwellings along the street do not benefit from any off-street car parking. A further parking area was evident along the access road running to the side of the appeal site, which is appropriate for one-way traffic only. This through road also has restricted visibility at its junction with both Highfield Lane and Broomfield Road, due, in part, to the parked cars along these streets.
11. The parking standards set out within the Bradford Core Strategy for a Use Class A3 food and drink/A5 hot food take-away use would give a requirement

for 20-21 spaces on the basis of the proposal's floorspace, compared to 2 to 3 spaces for the existing use. In this regard, in the absence of any off-street parking provision, the proposal is significantly below the guidance.

12. Whilst some customers may walk to the premises, I have no substantive evidence before me to demonstrate that most would live locally. It is therefore an assertion to which I can attach limited weight. I therefore consider that the intensification of the use would give rise to an intensified demand for on-street parking on an already busy road. It would also encourage increased use of parking along the access road with its sub-standard entrances, with consequent risks to highway safety.
13. In relation to bin storage, I saw the existing trade bin located to the rear of the building opposite. However, it is on land outside the red line boundary of the site and it is not shown to be within the appellant's control. Accordingly, its continued siting in this location could not be secured by means of a planning condition. I have nothing before me to demonstrate any alternative means of provision, such as space for storage within the building. Consequently, the storage of trade refuse bins associated with the intensified use of the premises on the pavement would hinder the free flow of pedestrians or impede users of the narrow access road. This would increase the hazard to highway users.
14. For these reasons, I conclude that the proposal would be harmful to highway safety. With regard to parking, it would conflict with Policy TR2 of the CBCS, which promotes consideration of the Council's parking standards and the integration of parking into the overall layout. In relation to bin storage, it would conflict with Policies DS1 and DS5 of the Bradford Core Strategy. These policies seek, amongst other matters, to take opportunities to improve places and to include appropriate arrangements for waste handling, recycling and storage.

Health

15. 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 by, in particular, guiding their proximity to parks and schools. 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. This approach is, in my view, consistent with objectives of the National Planning Policy Framework (the Framework) to enable and support healthy lifestyles, especially where this would address identified local health needs.
16. The appellant states that 'healthy' hot meals will be served, consisting of soups, hot vegetables and pasta, for which there is a third-party representation in support of the proposal. However, I have not been provided with any details of menus to attach any significant weight to this assertion.
17. The parties also disagree as to whether there are any schools, youth facilities or parks within the vicinity of the appeal site. Whilst I saw the adjacent tutoring premises, this does not constitute one of these specified facilities and none were obvious on my site visit. I appreciate the Council's assertion that there are several close to the application property but, in the absence of any substantive evidence that the appeal proposal lies within 400m of these locations, this is also a matter to which I can afford limited weight.

18. On the information before me, I am therefore not persuaded in this instance that the proposal would be harmful to the quality of the food environment as a result of its proximity to facilities utilised by young people, or, unduly influence their future diets. Consequently, I conclude that it would not be an inappropriate location for the proposal in respect of healthy lifestyles and I do not find that it would be contrary to guidance within the HFT SPD or within the Framework.

Other matters

19. The appeal site is within 7km of the South Pennine Moors Special Protection Area (SPA)/Special Area of Conservation (SAC). It is protected as a European Site of Nature Conservation Importance and is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017. These impose a duty on local planning authorities as the competent authority, to consider whether any proposal may have a significant effect on such a protected area either alone, or in combination with other plans and projects. The Council's position is that the effects of this proposal could be mitigated by a developer contribution secured via the Community Infrastructure Levy (CIL).
20. Regardless of that, it is necessary for me to address the effects of the proposal on the integrity of the SPA/SAC. Consequently, an appropriate assessment (AA) would be required to ensure compliance with the Habitats Directive. I am unable to determine whether the Council carried out an AA as no documents relating to this assessment were presented as part of its case in relation to the appeal. If I had been minded to allow it, it would therefore have been necessary for me to go back to the parties to seek further information in order to complete an AA for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.
21. I appreciate that the reason for refusal No 4 (car parking) on the Council's decision notice refers to the location of the premises on West Street. However, from the plans before me and the highway consultation response in particular, I am satisfied that the reference to West Street on the decision notice is a typographical error.

Conclusion

22. Whilst I do not find the appeal site to be an inappropriate location in respect of healthy lifestyles, for the reasons set out above, it would be harmful to the living conditions of neighbouring properties and to highway and pedestrian safety. I therefore conclude that the appeal should be dismissed.

Kate Mansell

INSPECTOR