



Appeal Decision

Site visit made on 18 July 2019

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 23 August 2019

Appeal Ref: APP/B1930/W/19/3228523

56A Waverley Road, St Albans, Herts AL3 5PE

- 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 Kirupakaran Vickneswaran against the decision of St Albans City & District Council.
 - The application Ref 5/18/2977, dated 6 November 2018, was refused by notice dated 27 February 2019.
 - The development proposed is change of use from Class A1 (Retail) to Class A5 (Hot Food Take-away) and new rear flue.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. An emerging plan was submitted to the Secretary of State in March 2019 and is currently under examination. It is not part of the adopted development plan. As it is not clear the extent to which any objections to its policies are unresolved or the extent to which its policies are consistent with the National Planning Policy Framework (the Framework), I give them limited weight and they do not alter my conclusions.
3. Saved Policy 57 of the current development plan, the City and District of St Albans District Local Plan Review (1994) (LP), sets criteria for Use Class A3 (food drink) as defined by legislation in force at the time the LP was adopted. The old Use Class A3 has been subsequently replaced by the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005 by Use Class A3 (restaurants and cafes), Use Class A4 (drinking establishments) and Use Class A5 (hot food takeaways). The latter Use Class is proposed in this appeal.
4. I do not consider Saved Policy 57 of the LP out-of-date for the purposes of Paragraph 11 of the Framework as amongst its aims is the protection of residential amenity associated with food and drink sites, including hot food takeaways. This is consistent with the Framework's requirement under Paragraph 127 that developments should create places which promote health and well-being, with a high standard of amenity for existing and future users.

Main Issue

5. The main issue in this appeal is the effect of the proposed development on the living conditions of nearby residents.

Reasons

6. The appeal property is a commercial unit at ground floor level, with the first and second floors above Nos 56 and 56A occupied as one-bedroom flats. The unit has been empty for some time. Before that it was, for a brief period, a sandwich shop which according to the appellant was not viable. Previously, the unit had operated as an off-licence. The appeal site is located in a primarily residential area. In addition to the flats above, there are houses close-by in Chene Mews to the north east.
7. The appellant is seeking opening hours of Monday to Saturday 11.00 – 22.00, Sunday and Bank Holidays 11.00 – 18.00. Next door at No 56 is a convenience shop which according to evidence submitted by the Council is open to 22.00 each day and nearby is a pharmacy which is open to 18.30 on Mondays to Fridays and to 13.00 on Saturdays.
8. Although the proposed use will operate no later on weekdays than the neighbouring convenience store and will close 4 hours earlier on Sunday and Bank Holidays, and notwithstanding that there might be some trips to the hot food takeaway in combination with the other commercial premises, the appeal proposal would result in a net increase in comings and goings within the relatively close-knit residential context of the site. In my judgement, due to the nature of a hot food takeaway there would be a strong likelihood of a concentration of visitor activity around meal times and in the evening, including by patrons of the Waverley Sports and Social Club opposite the appeal site. Neither the previous sandwich bar or off-licence operations are materially similar in this respect. There would be increased noise and disturbance to the close residents, particularly in the evening at times of peak demand for hot takeaways.
9. Further, under the proposal there would be a commercial kitchen extract system with a discharge duct terminating close to, and below, windows serving upper floor flats. There would also be an extractor fan unit mounted on the ceiling below the residential accommodation. There is therefore a significant potential for nuisance to residents within the flats from noise, vibration and also odours emitted from the discharge below their living accommodation and windows.
10. Although the plans indicate the inclusion of measures to mitigate noise, vibration and odour there has been very limited information submitted of a technical nature to demonstrate that these would be effective given the very close proximity of residential receptors. No information has been supplied in relation to existing background noise levels nor has the noise impact of the proposed equipment been assessed in relation to those levels, nor has the attenuating effects of the mitigation measures been demonstrated.
11. Paragraph 54 of the Framework requires that decision-makers should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. Given the residential proximity to the extract system, and the unknown efficacy of any mitigation measures that might be possible, I am not satisfied that conditions could be attached which would render the proposal acceptable. Further, any mitigation measures which might be necessary such as increasing the height of the discharge point above the windows in the roof space might not be acceptable in planning terms due to

harm to character and appearance. It would therefore be inappropriate to approve a proposal which could not be rendered acceptable through conditions.

12. There are three litter bins (albeit two for recycling) outside the premises and the appellant proposes a fourth inside the premises. In addition, the appellant proposes a litter management plan which could be secured by condition. Accordingly, I do not consider that there is sufficient evidence to satisfy me that there would be any adverse material impact in respect to litter.
13. For the above reasons, the proposed development would cause substantial harm to the living conditions of nearby residents. As such it is in conflict with Saved Policy 57 of the LP which seeks to protect residential amenity in respect to proposed food and drink sites, including hot food takeaways. It is also in conflict with Paragraph 127 of the Framework.

Other Matters

14. The Framework encourages a strong and competitive economy and the need to support economic growth, taking account of both local business needs and wider opportunities for development. I place significant weight on this, taking into account that the unit has been vacant for some time and that there may be retail viability issues at the location in part due to competition from the adjacent convenience shop. However, this does not outweigh the substantial harm I have identified to the living conditions of nearby residents.
15. As the appeal has failed on the main issue of dispute between the main parties, it has not proven necessary to address concerns raised by interested third parties relating to highway safety.

Conclusion

16. The proposed development would not accord with the development plan as a whole and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Andrew Walker

INSPECTOR