

Appeal Decision

Site visit made on 13 August 2019

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 2nd October 2019

Appeal Ref: APP/Q5300/W/19/3230082
24 Sterling Way, Edmonton N18 2XZ

- 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 Hasan Avcil against the Council of the London Borough of Enfield.
 - The application Ref 18/01937/FUL, is dated 04 June 2018.
 - The development proposed is change of use from A1 to A5.
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Decision

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

Procedural Matters

2. The Council failed to determine the application within the prescribed time limits. Following the submission of the appeal against non-determination, the Council has not clarified the position it would have taken on the application if it had had the opportunity to make a decision. In addition, the appellant's grounds of appeal simply state that "The applicant wants to hear the decision whatever is the outcome, thus support is required to help to hear the council decision."

Main Issue

3. Based on the evidence before me including the development plan policies submitted by the Council, representations from third parties and from what I saw on my site visit, I consider that the main issue in this appeal is the effect that the proposed change of use from a Class A1 shop to a Class A5 hot food takeaway would have on the living conditions of nearby residential occupiers, with particular regard to noise and disturbance.

Reasons

4. No 24 is an extended 3 storey terraced property fronting onto Sterling Way in the Angel Edmonton Shopping Area. The terrace is characterised by commercial ground floor premises with residential accommodation above, with the door to the flats above the appeal premises located immediately adjacent to the shop frontage. The terrace supports a mix of commercial uses, including cafes and restaurants. However, there is no evidence before me of late night uses such as hot food takeaways in close proximity to the appeal premises.
5. The proposed hot food takeaway would have a waiting area with seating to the front of the premises, with the kitchen and storage areas to the rear. It would operate from 11:00 to 23:00 every day of the week, including bank holidays.

6. Although Enfield Council's Development Management Document Adopted November 2014 (the DMD) acknowledges the importance of food and drink establishments, it also recognises that the operation of hot food takeaways in particular can result in negative impacts on the occupiers of nearby residential properties. The detrimental effects of hot food takeaways can include noise disturbance and odours, especially at times outside of normal retail hours.
7. In addition to noise generated from within the premises, which might transmit internally, the proposal would result in an increase in noise and disturbance around the premises as a result of the comings and goings of customers, including congregating outside the premises, and delivery drivers and their vehicles. Such noise, particularly later in the evening, would be likely to disturb nearby residential occupiers, including the occupiers of the flats above.
8. No 24 is in a shopping area, near to a supermarket and close to the busy road junction of the A1010 and the North Circular Road. As a result, the area is both busy and noisy during the day. However, in the absence of evidence to the contrary and given the location and the mix of uses that I saw during my visit, background noise levels would be likely to be reduced outside of normal retail hours, including weekday evenings, Sundays and bank holidays. The proposed hours of operation late into the evening would therefore result in an increase in noise and activity in and around the premises at otherwise quieter times when residential occupiers might reasonably expect to enjoy their homes free from significant noise and disturbance.
9. The Council's Environmental Health Officer has raised concerns about the potential adverse impact of noise on nearby sensitive receptors arising from the operation of the premises. In this respect, I note that the proposal includes measures to reduce potential effects on neighbouring occupiers, including an odour control system and sound and fire insulation. Various product specification sheets have also been supplied for vibration and shock isolators, activated carbon units, fans and silencers. However, there is nothing before me to demonstrate that there has been any assessment of noise or that any noise and disturbance arising from the appeal proposal could be effectively mitigated so as to avoid adversely affecting the living conditions of nearby residential occupiers.
10. I acknowledge that the proposal would result in an additional 2 part-time employment opportunities. While this would be a benefit of the scheme, it would not outweigh the harm that I have found.
11. Therefore, it has not been satisfactorily demonstrated that significant harm to the living conditions of the occupiers of nearby residential properties, as a result of noise and disturbance, would be avoided. The proposal would conflict with the residential amenity protection aims of the development plan, including policies CP17 and CP32 of The Enfield Plan Core Strategy 2010-2025 Adopted November 2010 and policies DMD27, DMD29, DMD32 and DMD68 of the DMD.

Conclusions

12. For the reasons set out above, the appeal should be dismissed.

Sarah Manchester

INSPECTOR