
Appeal Decision

Site visit made on 17 September 2019

by E Symmons BSc (Hons), MSc

an Inspector appointed by the Secretary of State

Decision date: 18 October 2019

Appeal Ref: APP/W4325/W/19/3231941

Haven Chemist, 36 Balls Road, Oxtou CH43 5RE

- 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 S K Lam (Haven Pharmacy) against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/19/00002, dated 21 December 2018, was refused by notice dated 1 March 2019.
 - The development proposed is a change of use of the ground floor (former pharmacy) to A5. Change of use of first and second floors to two residential units from staff accommodation and storage associated with pharmacy.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant considers Policies HS15 and PO3 of the Wirral Unitary Development Plan 2000¹ are out of date. Paragraph 213 of the National Planning Policy Framework² (The Framework) states that existing policies should not be considered out-of-date simply because they were adopted or made prior to its publication. Due weight should be given to them, according to their degree of consistency with the Framework (the closer the consistency, the greater the weight that may be given). Both policies are broadly consistent with the Framework as they consider the impact of proposals on the living conditions of neighbouring occupiers and effects upon the character and appearance of the area. I afford these policies full weight within my decision.
3. The appellant contends that the Council have incorrectly referenced paragraph 180 of the Framework. Although Section 15 of the Framework is titled 'Conserving and enhancing the natural environment', this includes the local environment. The Council's reference is therefore correct.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of the occupiers of neighbouring properties with respect to noise and disturbance.

¹ Metropolitan Borough of Wirral. Wirral Unitary Development Plan (Including Minerals and Waste Policies). Written Statement. Adopted February 2000.

² National Planning Policy Framework, 2019.

Reasons

5. This vacant property, which was previously used as a pharmacy, sits at the end of a short three-storey terrace which has retail use at street level. At the time of my visit this comprised a laundrette; a locksmith; a hot food takeaway; and two convenience stores, one incorporating a newsagent. No detail has been provided on the opening hours of the retail units other than for the existing hot food takeaway. This opens from 1130 - 1345 and 1630 - 2300 six evenings a week, being closed on a Monday. Other than this row of shops, the surrounding area is predominantly residential with dwellings opposite and directly adjacent.
6. The proposal would change the use of the retail unit from a pharmacy, use class A1 (shops) to A5 (hot food takeaway). The proposed opening hours would be 1200 to 2300 every day. This, in common with other shop uses, would result in general customer, staff and service delivery movements similar to the previous use as a pharmacy. That said, the proposal is more likely to result in customer visits during evening hours including weekends and bank holidays when residents might expect noise levels to be less. The potential effects would therefore be likely to be very different from the pharmacy which would have operated when background noise levels are usually higher, and noise and disturbance is generally more accepted. Whilst I acknowledged that it would be in the interests of the management to maintain order, customers may linger outside a hot food takeaway on the footway close to the adjacent dwelling causing noise and disturbance which would affect nearby residents.
7. The appellant considers that the existing takeaway has operated since 1976 without creating nuisance. However, neighbours have raised concerns with this takeaway regarding food odours within the house, litter, disturbance and parking congestion. Potential odours could be mitigated using extraction equipment which could be conditioned. Regarding parking problems, while there are no restrictions to prevent parking in front of the terrace, the proposal would likely result in additional vehicles during evening hours. I have no evidence to suggest there would be harm to highway safety, but there would be additional noise and disturbance and potential inconvenience to residents returning from work or trying to park near their homes, albeit I accept that the on-street provision is not designated specifically for their use.
8. A Noise Survey has been submitted³ to support the proposal. This considered potential noise from mechanical plant, customer and delivery vehicle movements and customers' conversation. Monitoring for a 24 hour period took place with a sensor placed at the rear of the premises. The report refers to Guidelines for Community Noise and BS8233 and concludes that external noise should not exceed 50dB. As this is based upon external noise, the report calculated an acceptable internal noise level of up to 30dB. The report concludes that up to 15 customer movements each hour would be possible before this level was exceeded. It would not be feasible or desirable to restrict the number of customers each hour and in any case, excessive noise which would be difficult for the management to prevent, could be caused by just one customer or by customers congregating.
9. Comments have been received from the Environmental Health Technical Officer (EHO) however, this assessment makes no mention of noise levels within adjacent residential dwellings and extends only to the mechanical plant and

³ Cole Jarman. 26 March 2018.

potential control of odours with two conditions suggested relating to these issues. I have no certainty that potential customer generated noise was assessed by the EHO and in any case, the overall planning judgement of the Council, as reflected within the reason for refusal, concluded that on balance harm to the living conditions of neighbouring occupiers could still occur. I concur with this view.

10. The Wirral Metropolitan Borough Council Supplementary Planning Document 2006⁴ (SPD 3) contains guidance on hot food takeaways. It recommends that these should be at least 40 metres away from the main elevation of a dwelling house to limit the potential impact on living conditions. The appellant suggests that this distance is arbitrary, and the policy is outdated. Whether or not this is the case, there is a detached two-storey dwelling adjacent to the proposed takeaway which would be directly affected.
11. It is reasonable for residents to expect peace and quiet at the times of day when it is proposed to open the premises. Moreover, any disturbance linked to the existing takeaway or the other commercial premises nearby, would be added to and magnified. I therefore consider that a condition to restrict the opening hours, unless unduly restrictive and therefore unreasonable, would not make this proposal acceptable.
12. The proposed change of use of the ground floor would result in a substantive increase in activity within and around the appeal premises. This would harm the living conditions of the occupiers of neighbouring dwellings by way of noise and disturbance. It would conflict with guidance contained within the SPD and conflict with Policies HS15 and PO3 of the Wirral UDP which together, amongst other matters, seek that non-residential uses are permitted only when they do not cause noise and disturbance to neighbouring uses. The proposal would also conflict with the Framework when taken as a whole.

Other Matters

13. The appellant has highlighted viability problems affecting Britain's retail industry and the benefit gained if the unit was let or sold. It is contended that it has not been possible to market the property with the existing planning use. Marketing materials from November 2016 have been submitted. However, since that time there is a lack of detail about the period the property was marketed, the numbers of viewings and feedback from viewings by those seeking either an A1 or A5 use. I therefore have no certainty that it would not be possible to successfully lease or sell the property without an A5 use.
14. The appellant raises several issues regarding the Council's handling of this application. While I note this concern, this matter is beyond the planning considerations within this appeal.

Planning balance and conclusion

15. Statutory consultees have raised no objections and there would be no harm to highway safety and noise from mechanical plant and odour could be controlled. These issues are a neutral factor in my determination of this case. The change of use of the upper two floors to flats would add suitable housing to the current supply and the Council have raised no conflict with Policies HS4, HS13 and

⁴ Wirral Metropolitan Borough Council. Local Development Framework for Wirral. Supplementary Planning Document Hot Food Takeaways, restaurants, cafes and drinking establishments. SPD 3.

SH7 of the UDP and with the Designing for Self-Contained Flat Development and Conversions SPD 2 which the appellant has brought to my attention. However, the modest increase in housing supply in addition to the other matters raised would not outweigh the harm I have identified to the living conditions of neighbouring occupiers from the proposed change of use of the ground floor.

16. For the reasons given above, the appeal is dismissed.

E Symmons

INSPECTOR