



Appeal Decision

Site visit made on 6 August 2019

by S D Castle BSC(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2019

Appeal Ref: APP/P4605/W/19/3229247

The Vale (Former Skylark Public House), Farnborough Road, Birmingham B35 7JG

- 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 Z Ahmed against the decision of Birmingham City Council.
 - The application Ref 2018/06114/PA, dated 24 July 2018, was refused by notice dated 30 November 2018.
 - The development is change of use of ground floor from retail (Use Class A1) to hot food takeaway (Use Class A5).
-

Decision

1. The appeal is allowed and planning permission is granted for change of use of ground floor from retail (Use Class A1) to hot food takeaway (Use Class A5) at The Vale (Former Skylark Public House), Farnborough Road, Birmingham B35 7JG in accordance with the terms of the application, Ref 2018/06114/PA, dated 24 July 2018, subject to the following conditions in the attached Schedule.

Procedural Matter

2. The change of use proposed has already occurred and therefore I am considering that element of the proposal retrospectively.

Main Issues

3. The main issues are the effect of the proposal on:
 - The living conditions of nearby residents with particular regard to noise, disturbance, odour and cooking fumes;
 - The vitality and viability of existing local centres;

Reasons

Living Conditions

4. The appeal site is located on the site of a former public house on the northern side of Farnborough Road. The Vale hot food takeaway occupies one of 4 ground floor units on the former public house site. The other ground floor units, at the time of my site visit, included a convenience store, hairdressers and tattoo studio. Residential apartments are located at first floor level at the rear of the building. An area of car parking associated with the converted public house is located immediately to the east of the takeaway. A further

convenience store is located on the northern side of Farnborough Road, adjacent to a small pedestrianised area immediately to the west of the converted public house. The surrounding area is, however, predominantly residential, with dwellings set behind the wide landscaped verges either side of Farnborough Road.

5. The dwellings at first floor level of the converted public house are significantly closer to the appeal site than any other dwellings. They are set back from the commercial frontage, with windows that overlook the single storey element of the converted public house that projects towards Farnborough Road. It is not uncommon for hot food takeaways to be located close to residential accommodation and for fumes and odours to be dealt with by means of extraction equipment. The proposal includes the repositioning of the extraction flue onto the eastern flank wall with a vertical discharge a minimum of 1 metre above the first floor eaves height. Whilst there is considerable local opposition to the proposal, the Council's Environmental Health Officer has not objected to the proposal. I have no substantive evidence before me to indicate that the cooking fumes and odours would not be limited to an acceptable level or that the extraction system would cause any unacceptable noise disturbance.
6. In terms of noise and disturbance from customer movements, I am mindful that this is a predominantly residential area. However, the appeal premises are located on a busy road and the site is located within a run of commercial premises. The convenience store adjacent to the takeaway is significantly larger and has opening hours from 0600h to 2200h Monday to Saturday, and 0800h to 2200h on Sundays. Whilst the opening hours for the takeaway are later still (to 2330h), given the adjacent late-night convenience store and the adjacent busy thoroughfare, I am not convinced the comings and goings associated with the takeaway result in harmful additional noise or disturbance.
7. I note the numerous concerns raised in respect of anti-social behaviour and litter. Paragraph 91 of the National Planning Policy Framework (the Framework) states that planning policies and decisions should aim to achieve places which promote safe and accessible environments so that crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion. Fear of crime is therefore a material consideration in planning decisions, although the weight that can be attributed to it is often limited unless there is significant evidence to show that the increased fear of crime would actually occur. I note the numerous concerns raised in respect of anti-social behaviour and litter. The site is, however, well overlooked from public spaces and is on a busy road with street lighting. West Midlands Police has no objection to the proposal. As such, there is limited evidence before me to suggest that the use of the site as a takeaway is the cause of any such harm.
8. To conclude on this issue, subject to conditions, I am not convinced that the use of the premises as a hot food takeaway in place of the lawful A1 use, results in a significant adverse effect, cumulative or otherwise, on the living conditions of local residents or surrounding occupiers in relation to noise, disturbance and cooking fumes/odours. I therefore find no conflict with Policy PG3 of the Birmingham Development Plan or saved paragraph 8.7 of the Birmingham Unitary Development Plan 2005 (BUDP) which seek to create safe environments and safeguard the living conditions of neighbours from the impacts of hot food takeaways.

Vitality and viability of existing local centres

9. The Council indicates that the Castle Vale Neighbourhood Centre, the nearest 'centre' as defined by the Shopping and Local Centres – Supplementary Planning Document, 2012 (SLCSPD) is located approximately 0.6 miles from the site. Policy 6 of the SLCSPD states, in order to avoid an over concentration of Hot Food Takeaways (A5), no more than 10% of units within a frontage shall consist of hot food takeaways. Footnote 4 to this policy goes on to state, in parades or frontages which have fewer than 10 units, one A5 use may be permitted subject to meeting other policy considerations. The appeal site is the only A5 use within a parade of 5 commercial units and therefore, subject to meeting other policy considerations, is not in conflict with Policy 6 of the SLCSPD.
10. The Framework seeks to ensure the vitality of town centres and advocates a sequential, town centre first approach to applications for main town centre uses. The appellant's evidence states that the Castle Vale Neighbourhood Centre supports three takeaways and that, in May 2019, there were no vacant units to let. The Council are of the view that, given the proximity of the appeal site, the appeal proposal would have a detrimental impact on the viability and vitality of this centre and the 3 hot food takeaways that operate there.
11. There is no substantive evidence before me to indicate that there are significant rates of vacancy at the nearest neighbourhood centres or that the use of the appeal site as a takeaway has harmed the vitality or viability of nearby local centres. The Council has not provided any substantive evidence regarding any sequentially preferable reasonable alternative locations for the development proposed
12. Furthermore, the proposal would not result in the introduction of a town centre use on a site where no such use exists at present. Rather, it would result in the substitution of one main town centre use for another, within an existing building and with no increase in floorspace. Given the small scale of the appeal site and the substitution of one main town centre use for another, I am not persuaded the proposal undermines either the vitality, or viability, of existing local centres. There is no conflict, therefore, with policy 6 of the SLCSPD or with the underlying aim of paragraphs 8.6 and 8.7 of the BUDP which states hot food shops should generally be confined to a shopping area of mixed commercial development, or with relevant national policy with regard to the vitality of town centres.

Other Matters

13. I note the concerns with regards to the impact of hot food takeaways on promoting healthy communities, particularly with reference to the proximity of the nearest schools. The SLCSPD considers that increased exposure to hot food takeaways may increase the consumption of fast food. As noted above, however, the proposal does not exceed the guidance within the SLCSPD aimed at preventing an overconcentration of fast food outlets. Whilst healthy eating and lifestyle policies are important for public health and are given significant weight in my assessment, I am not persuaded that healthy eating by school pupils, or indeed anyone resident in the locality, is likely to be affected to such a degree in this instance that the appeal should fail in this regard.

14. There is associated off-street car parking for users of the takeaway and the Local Highway Authority has not objected to the scheme. As the premises are in an existing commercial frontage, it is expected that any use would generate some car trips. I have no substantive evidence to suggest the takeaway generates unusual refuse, waste or rodent problems and there is other legislation to deal with such issues if refuse is disposed of in an irresponsible manner. Such issues are not an inevitable consequence of a hot food takeaway use, but are rather a question of individual behaviour and appropriate management.

Conclusion

15. For the above reasons, I allow the appeal subject to the conditions in the attached Schedule.

Conditions

16. I have considered the Council's suggested conditions in accordance with the Planning Practice Guidance. Given the change of use has already occurred, it is not necessary to include the standard implementation condition. It is necessary to define the plans in the interest of clarity. In the interest of the living conditions of the occupiers of nearby dwellings, conditions have been imposed in respect of opening hours and to secure the construction of appropriate extraction equipment.

S D Castle

INSPECTOR

**Schedule of conditions attached to Appeal Decision
APP/P4605/W/19/3229247 The Vale (Former Skylark Public House),
Farnborough Road, Birmingham B35 7JG**

1. The development hereby permitted shall be implemented in full accordance with the following approved plans: Drwg No SL01 Location Plan, Drwg No SL02 Rev A Block Plan, Drwg No SL03 Floor Plan, Drwg No SL04 Rev B Elevations.
2. Within 6 months of the date of this decision, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the approved use continues.
3. Customers shall only be permitted on the premises between 1200h and 2330hrs each day.