



Appeal Decision

Site visit made on 4 November 2019

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th November 2019

Appeal Ref: APP/D5120/W/19/3234709
196 Bexley Road, Erith DA8 3HF

- 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 Kugathasan against the decision of the Council of the London Borough of Bexley.
 - The application Ref 19/00851/FUL, dated 8 January 2019, was refused by notice dated 5 June 2019.
 - The development proposed is described as 'The proposals are to change of use of the ground floor shop from a general store shop (class A1) to a Hot food takeaway (class A5) with a low noise level, self coloured and filtered air extractor system. The system will be located on the side of the rear first floor rear addition in a similar way to that approved and installed on the adjacent property'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - i. the effect of the proposal on the overall vitality and viability of the Northumberland Heath District Shopping Centre;
 - ii. the effect of the proposal on the living conditions of occupiers of the first floor flat with particular regard to odour, noise and outlook; and
 - iii. whether the proposal would affect the living conditions of residents in the area with particular regard to anti-social behaviour.

Reasons

Vitality and viability of district centre

3. The evidence indicates that the appeal site has recently been in retail use as a General Store. As detailed within Policy SHO(NOR)1 of the Bexley Council Unitary Development Plan (BCUDP) (2004) it sits within the Northumberland Heath District Centre within the non-core shopping frontage.
4. I have no reason to disagree with the Council who suggest that the district centre as a whole has a relatively low vacancy rate. This tallies with my observations and at the time of my visit in the late afternoon the area was busy.

5. Policy SHO5 of the BCUDP relates to the non-core shopping frontage and is concerned with protecting the viability and vitality of the retail function of the district centre.
6. The Policy does allow for some flexibility towards changes of use from shops, but places a number of stipulations in relation to changes of use which would result in their loss.
7. Part 3 of the Policy requires that other uses should not be located next to three or more average units in non-retail use. The appeal proposal would contravene this policy, as to the north, No. 194 is in use as a hot food takeaway, while to the south the ground floor units of No. 198 and 200 are in use as a nail spa, meaning that the appeal site is located next to three units of average width in non-retail use.
8. Given the apparent vibrancy of the retail offering within the district centre I do not consider there to be any material reason to warrant departing from the development plan. It is accepted that competition from larger retail stores, including the nearby Tesco Express, could have a detrimental impact on the business of a general store as it would be likely to offer similar products. However, no evidence has been put before me to suggest that the unit is no longer viable in retail use. The change of use would therefore be detrimental to the retail function of the district shopping centre and would therefore be harmful to its vitality and viability.
9. I conclude, on this issue therefore that the proposal would be contrary to Policies SHO(NOR)1 and SHO5 (3) of the BCUDP which seek to protect the retail function of the district centre.

Effect on the living conditions of the occupiers of the first floor flat

10. The extraction system would terminate only marginally above the top of the rear bedroom window serving the first floor flat. The Council suggest that the flue should terminate at a higher level above the bedroom window. I have no reason to disagree and I consider that at the height proposed the flue would expose occupiers of the first floor flat to unacceptable levels of odour which would be detrimental to their living conditions and which would have an adverse impact on the enjoyment of their home.
11. The flue would be positioned on the side of the two-storey rear outrigger approximately 3 metres from the main rear elevation containing the bedroom window. Given this separation distance, the outlook from the window would not be significantly reduced. In other respects, the Council indicate that the extraction system is broadly acceptable. Details such as vibration mounts, fan noise rating and silencer details could be agreed via condition, were I minded to allow the appeal.
12. Despite a lack of harm in relation to some elements above, I conclude, on this issue therefore, that the proposal as a result of the height of the flue would be contrary to Policy ENV39 and SHO9 (1) of the BCUDP which require that any proposed use should not have an adverse effect on the amenity of occupiers of adjacent property. Although Policy SHO9 relates to use class A3 only, it appears to pre-date use class A5 Hot Food Takeaways. However, the supporting text makes reference to takeaways and I therefore consider this policy remains relevant to the determination of this appeal.

Effect on living conditions of wider area and anti-social behaviour

13. The Council are concerned that as a result of late-night opening, the proposal would have a detrimental impact on the living conditions of those in the wider area as a result of anti-social behaviour including noise and litter. I have seen Police evidence which suggests that anti-social behaviour is one of the most common offences recorded in the area.
14. However, given the concerns would relate to impact late in the evening, particularly in relation to noise, were I minded to allow the appeal, there would be opportunity to restrict the opening hours. Policy SH08 of the BCUDP provides backing for such restrictions where the Council is aware of existing impacts on the amenity of nearby residents and where it wishes to reduce any further impact. Public waste and recycling bins are available on the pavement close to the front of the site and I have seen no evidence to indicate that such a change of use would generate litter on a level that would render the proposal unacceptable.
15. I conclude, on this issue therefore, that the proposal need not conflict with Policy SH05 (5) of the BCUDP which requires that any proposed use should not have an adverse effect on the amenity of occupiers in the vicinity.

Other Matters

16. I am aware that there are other hot food takeaways in the immediate area. No. 194 has a flue as part of its extraction system that vents at a similar height to that proposed within the appeal scheme. However, I am unaware of the circumstances in which this may have been found acceptable. Its presence therefore has a neutral impact on my decision.

Conclusion

17. Notwithstanding the absence of harm in relation to some of the main issues set out above, due to the detrimental impact on the primary retail function of the Northumberland Heath District Centre which would harm its vitality and viability and the detrimental effect on living conditions of occupiers of the first floor flat as a result of the height of the flue, the appeal should be dismissed.

T J Burnham

INSPECTOR