
Appeal Decision

Site visit made on 19 November 2019

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2019

Appeal Ref: APP/U4610/W/19/3236741

34 Prior Deram Walk, Coventry CV4 8FT

- 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 Tantias Properties Limited against the decision of Coventry City Council.
 - The application Ref FUL/2019/1578, dated 14 June 2019, was refused by notice dated 12 August 2019.
 - The development proposed is the change of use from A1 retail to A5 hot food takeaway with 32sq m single storey rear kitchen extension.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Tantias Properties Limited against Coventry City Council. This application is the subject of a separate Decision.

Procedural Matter

3. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.

Main Issues

4. The main issues are:
 - Whether or not the development would result in an overconcentration of hot food takeaways; and
 - The effect of the development on the living conditions of nearby residents.

Reasons

Hot Food Takeaways

5. The appeal site is located within a small parade of shops on Prior Deram Walk. The property is currently vacant at the ground floor. At the first floor is a

- residential flat. The commercial premises along the parade include convenience stores, a pharmacy, an estate agent and other food premises. The wider area hosts a number of residential properties and a large area of grassed public open space is located opposite.
6. The proposal would involve the change of use of the vacant premises from A1 retail to an A5 hot food takeaway use. It would also include a single storey extension to the rear to provide an enlarged area for the kitchen. No external alterations are proposed to the front elevation of the property. The Council have not raised concerns in relation to the proposed rear extension and I have little before me which would lead me to a different view on this part of the proposal.
 7. Policy R6 of the Coventry City Council Local Plan (2017) (Local Plan) identifies that restaurants, bars and hot food takeaways should be located within defined centres and will normally be discouraged outside of these areas. The Policy then goes on to identify relevant criteria against which to assess these uses within the defined centres which include avoiding significant harm to the amenity of nearby residents and avoiding harmful cumulative impacts, amongst other things. The Appeal site does not fall within a designated or defined centre, nevertheless as the proposal would be for an A5 use the Council have considered the proposal against the criteria within this Policy, which is reinforced by the Hot Food Takeaway Supplementary Planning Document (2019) (SPD).
 8. The appeal site falls within a small parade of shops which are not in a designated or defined centre and therefore are considered to be an out of centre location. Although the Appellant does not consider a hot food takeaway to be a main town centre use, an Updated Sequential Test has been undertaken in any event. This assessed three Local Centres in proximity to the appeal site. The findings of the initial Sequential Test identified only one potential property however concluded that this would not be suitable as it was larger than required. Nevertheless, this property was no longer available at the time the Updated Sequential Test was carried out and accordingly it has been demonstrated that there would be no sequentially preferable sites within the defined centres.
 9. The SPD identifies that, where a site falls within a Lower Super Output Area (LSOA) where the number of takeaways per 1000 population exceeds the average for England as per the most up to date figures on the FEAT tool, the area is considered to be overconcentrated. In this location the LSOA has been demonstrated to exceed this threshold and as such is considered to have an overconcentration of hot food takeaways. Indeed, within the same parade of units as the appeal site there were a number of other takeaways, including adjacent to the appeal property which would result in a consecutive run of takeaways. This would serve to break up the retail frontage and would have the likelihood to result in increased customers and issues such as noise and disturbance, odour and littering as identified within the SPD.
 10. The Appellant considers that whilst the thresholds for this area are exceeded, there are 6 other LSOA's which adjoin the area and 5 of these fall under the threshold. Therefore, when looked at in the wider context of the Ward, the area falls significantly under the threshold. However, within the SPD there is no indication that it would be acceptable to use a wider calculation base in relation

to the LSOA figure, nor have I been presented with evidence that would lead me to conclude that a wider area should be considered, departing from the approach of the SPD.

11. Whilst I accept that hot food takeaways do not necessarily have to provide unhealthy food choices, I have limited information before me to suggest the type of takeaway that would occupy the premises. Furthermore, the exact food that would be sold from the premises is not something that could be controlled under planning law and therefore once the change of use was permitted any type of takeaway falling within that use could occupy the premises. I therefore give this limited weight in my consideration of the proposal.
12. Accordingly, I find that for the above reasons, the proposal would be in an area with an overconcentration of hot food takeaways which would conflict with the requirements of Policy R6 and the SPD.

Living Conditions

13. The appeal site is set within a row of buildings which predominantly host residential accommodation to the first floors above the commercial units, including the appeal property. In addition, there are a number of residential properties in proximity to the appeal site along the adjoining streets.
14. The proposed use would involve the installation of a flue to the rear of the property which would be in proximity to the bathroom of the first floor flat. The Appellant has submitted details of the type, function and maintenance of the proposed canopy system and a sound impact assessment. This assessment identified required upgrades to the floor of the first floor flat and concluded that subject to the implementation of these upgrades the internal sound level is predicted to comply with the most stringent applicable guidance.
15. However, despite having regard to the Appellants submitted documents, within the Sound Impact Assessment, it is identified that detailed calculations will be required on the proposed extract system when the design has been completed to ensure compliance with the LPA requirement for the Rating Level to not exceed the typical background. Under these circumstances, the conclusion of a BS 4142 assessment would be that the proposed operation at 34 Prior Deram Walk should have Low impact at the nearest noise sensitive receptors. Taken with the Appellant's suggested wording for a condition to secure these details prior to the application being determined, I am concerned that a suitable level of detail has not yet been provided to sufficiently indicate that the proposed use would not be harmful to the living conditions of the occupiers of the above flat. Taking a precautionary approach, I consider that further specific details would need to be provided to demonstrate that a suitable method of odour and noise extraction could be achieved prior to permission being granted.
16. Consequently, on the basis of the information before me I am unable to conclude that the proposed development would not result in harm to the living conditions of adjoining residents. It would therefore fail to comply with Policy R6 of the Local Plan and the SPD. These seek to ensure that hot food takeaways do not result in significant harm to the amenity of nearby residents. It would also fail to comply with paragraph 127 of the National Planning Policy Framework (2019) which seeks to achieve the creation of places that promote health and well-being with a high standard of amenity for existing and future users, amongst other things.

Other Matters

17. I acknowledge that the proposed development would result in the re-use and visual improvement of a vacant property within an accessible area, the employment of a small number of staff and would serve the local area, providing choice. I have also had regard to the economic contributions made by takeaways. However, these considerations, taken collectively, would not be sufficient to outweigh the policy conflict in this instance as a result of the limited scale of the development.

Conclusion

18. For the reasons given above, and having had regard to all matters raised, I conclude that the appeal should be dismissed.

R Norman

INSPECTOR