
Appeal Decision

Site visit made on 7 January 2020

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2020

Appeal Ref: APP/N4205/W/19/3229672
192-194 Crescent Road, Bolton BL3 2JU

- 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 Ali against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 05259/19, dated 8 January 2019, was refused by notice dated 4 March 2019.
 - The development proposed is the change of use to Use Class A1 including front and rear extension and front ramp.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading has been taken from the planning application form. Part E of the appeal form states that the description of development has not changed, even though a different description has been entered. This matches the description of development on the decision notice. As the appellant is in agreement with the text used by the Council on the decision notice, and given the Council's approach in their determination of the planning application, I have considered the appeal on the basis of the following description of development: "the change of use from dwellings (C3) to 2no. commercial units (A1 and A5) at ground floor, with ancillary first floor office/storage along with erection of single storey extension to front with ramp access, together with single storey rear extension."

Main Issues

3. The main issues are:
 - a) the effect of the proposed development on the living conditions, with particular regards noise, odours and disturbance, of the occupiers of neighbouring properties, with particular regards to the residents of the first floor flat of 190 Crescent Road.
 - b) the effect of an additional A5 use on the character and appearance of the area.

Reasons

4. The appeal properties consist of two terraced properties that are typical of this area. The wider area around the appeal site is predominantly residential but

the immediate area around the appeal properties includes a number of commercial units including a barber, a mixture of retail shops and a number of hot food takeaways but is otherwise predominantly residential. The appeal proposal would result in the conversion of the properties to a shop Use Class A1 and a hot food takeaway Use Class A5, with extensions to the front and to the rear.

5. The site is not within a designated local, district or town centre, however the proposed A1 use is not at dispute between the parties. Based on the evidence before me and in particular with regards to the limited size of the proposed shop and the existing uses in the area, I do not come to a different conclusion. The dispute between the parties therefore primarily relates to the proposed A5 use.
6. Policy CG4 of the Bolton Core Strategy (2011) (CS) is relevant to the appeal proposal and seeks to ensure that new development is compatible with the surrounding uses, and should not generate unacceptable nuisance, noise or odours amongst other matters.
7. Furthermore, the Council's Supplementary Planning Document 'Location of Restaurants, Cafés, Public Houses, Bars and Hot Food Takeaways in Urban Areas' (the SPD) seeks to prevent the unacceptable proliferation of hot food takeaway uses, defined by the SPD as being where there would be more than two A5 uses within a 50metre radius of the application site. The SPD also seeks to prevent the development of A5 uses within predominantly residential areas and where a residential property is adjacent to the site.

Living Conditions

8. The appeal property is in close proximity to a number of residential properties, including the immediately adjacent properties. This is not disputed by the appellant. The Council details that residents in close proximity to the hot food takeaway could be affected by cooking odours, noise and disturbance.
9. At the time of my site visit, which took place in the morning of a typical weekday, the area was generally quiet with some road traffic, I noted that there was some evidence of litter on the street relating to one of the hot food takeaway units.
10. No technical evidence has been provided with regards the proposed ventilation system, the appellant has suggested that this could be controlled by condition. This is disputed by the Council who state that in the absence of specific details it cannot "be determined whether or not the proposed flue would adequately control the extraction of odour generated by the proposed use". In the context of the close proximity of residential properties to the proposed A5 use and on the basis of the evidence before me, I find that it has not been demonstrated that the appeal scheme would not result in significant odour impacts resulting in an unacceptable impact on the living conditions of the occupiers of the neighbouring properties.
11. The application form does not detail the opening hours of the proposed A5 use, the appellants Statement of Case suggests that they "would not exceed those stated within the Council's SPD" being between 0900 and 2330 Sunday to Thursday and between 0900 and 2400 Friday to Saturday.

12. I note that these opening hours detailed in the SPD relate to none residential areas. I find that an A5 use open these hours in close proximity to residential properties would result in unacceptable noise and disturbance impacts on the living conditions of the occupiers of those properties contrary to Policy CG4 of the CS and the provisions of the SPD.

Character and Appearance

13. The appellant asserts that the site is within a mixed commercial/residential setting. I acknowledge that the immediate area around the appeal site does include a number of commercial units, including hot food takeaways, but these uses are interspersed with residential dwellings on the street frontage and I observed at my site visit that the area was predominantly residential in character, appearance and use.
14. The Council Officer's report details that there are already two hot food takeaway units within 50m of the appeal property, I also note that there is a third takeaway use approximately 60m from the appeal site.
15. The appeal scheme would therefore introduce an additional A5 use into an area where there are already two A5 uses within 50m of the appeal site and as such would result in a proliferation of hot food takeaway uses within the area contrary to the provisions of the SPD, harming the character and appearance of the area contrary to Policy CG4 of the CS and the provisions of the SPD.

Other matters

16. That the appeal scheme would deliver some employment and economic benefits is not disputed by the Council and on the basis of the evidence before me I do not find otherwise. However, these benefits do not outweigh the harm I have identified previously.
17. The appellant has pointed out that an extant planning permission exists allowing the conversion of the appeal property to two shop units which would generate some noise and disturbance. However, I note that the Council's Statement refers to a condition being placed on this planning permission restricting the hours of operation to "0800 – 2000 7 days a week". Therefore, in my view such a use would not generate a comparable level of noise and disturbance to the appeal scheme before me.
18. The appellant has referred to two recent appeal decisions¹, I have not been provided with full details of these cases and the circumstances that led to the appeals being allowed. Therefore, I cannot be sure certain that the circumstances are the same in this instance. In any case I have considered the appeal proposal on its own merits.

Conclusion

19. For the reasons given above I conclude that the appeal should be dismissed.

Mark Brooker

INSPECTOR

¹ APP/W4223/W/16/3152715; APP/N4205/W/17/3169584