



Appeal Decision

Site visit made on 3 January 2020

by R E Walker BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2020

Appeal Ref: APP/P4605/W/19/3238337

1 Grange Farm Drive, Birmingham B38 8EG

- 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 Mazar Hussain against the decision of Birmingham City Council.
 - The application Ref 2019/05982/PA, dated 16 July 2019, was refused by notice dated 3 September 2019.
 - The development proposed is the change of use to hot food takeaway (Use Class A5).
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the plans and accompanying details that the development comprises the change of use of part of the existing retail unit (Use Class A1) to hot food take-away (Use Class A5) and the installation of an extraction system and flue. The Council dealt with the proposal on this basis and so shall I.

Main Issues

3. The main issues are the effect of the proposal on:
 - the vitality and viability of the frontage of which it forms a part; and
 - the living conditions of the occupants of nearby residential properties with regard to noise, nuisance and disturbance.

Reasons

Vitality and viability

4. The appeal property is a small unit in a row of 3 single storey commercial units on the corner of Rednal Road and Grange Farm Drive. The frontage of the row currently comprises of a Hot Food Takeaway (HFT) and 2 shops. The appeal property is the central unit, is currently closed and previously operated as an off-licence. The existing HFT unit is also currently closed, though I note it is expected to open soon as a new business.
5. Policy 6 of the Council's Shopping and Local Centres Supplementary Planning Document (SPD) (2012) is relevant for all smaller centres and parades outside the Local Centres. The appellant highlights that the Department for

Communities and Local Government (DCLG) defined¹ a parade as a group of 5 to 40 shops in one or more continuous row. Moreover, when a previous application² for the existing HFT unit was refused by the Council, it considered that Policy 6 of the SPD was not relevant to that application.

6. When the previous application was determined there was just a single shop within the frontage. Now there are 3 separate units. The SPD is relevant to all smaller centres and parades and the appellant does not dispute the local definition of a parade as constituting a small group of local shops. Notwithstanding the DCLG definition, given the number of separate units in the frontage, the local definition and as it is located outside of a defined centre, I consider Policy 6 of the SPD to be relevant in the appeal before me.
7. The SPD advises that in order to avoid an over concentration of HFT's, no more than 10% of units within a frontage shall consist of HFT's (A5 use) and in parades or frontages which have fewer than 10 units, one A5 use may be permitted subject to meeting other policy considerations.
8. I recognise that the existing floor space is currently unused and maybe surplus retail space, therefore the appellant is seeking a more commercially viable use. However, I have no cogent evidence before me to demonstrate that a retail use at the appeal premises is not viable. As there is currently an existing HFT in this frontage, the proposal would result in 2 of 3 units being in A5 use in conflict with the requirements of Policy 6 of the SPD. The proposal would, in combination with the existing HFT, significantly erode the amount of retail space within the frontage. As such, I find that the proposal would significantly harm the vitality and viability of the frontage of which it forms a part.
9. I recognise that the proposal would create employment opportunities and utilise unused space allowing the appellant to adapt the business and support economic growth in accordance with the objectives of paragraph 80 of the National Planning Policy Framework (the Framework). However, the introduction of a small HFT would only have a limited impact in the context of the overall local economy and employment. Moreover, there is no substantive evidence before me that such benefits could not be realised through a retail use. As such, I attach limited weight to the benefits in that regard and this does not outweigh the significant harm I have identified to the vitality and viability of the frontage of which it forms a part.
10. Consequently, I find conflict with the requirements of paragraph 8.7 of the Birmingham Unitary Development Plan (UDP) 2005 which seeks, amongst other things, to take account of prosperity in shopping areas. Paragraph 8.7 of the UDP is broadly consistent with the objectives of the Framework and can therefore be given substantial weight. The proposal would also conflict with the requirements of Policy 6 of the SPD.

Living conditions

11. The appeal site is located within a predominantly residential area albeit that Rednal Road appeared to me to be a busy thoroughfare. It is not uncommon for HFT's to be located close to residential accommodation. However, I do recognise that HFT's have the potential for increased noise, nuisance and

¹ Parades of Shops – Towards an Understanding of Performance & Prospects (2012)

² Application Reference: 2013/01755/PA

- disturbance, particularly in the evenings through comings and goings, noise arising in connection with vehicles, litter and anti-social behaviour.
12. I note that it is proposed to operate a pizza HFT from the unit with many customers expected to telephone in and order a delivery service. However, it would be unreasonable to restrict the operation in this manner and the nature of the business could change in the future. I recognise that the proposed opening hours would be the same as the allowed³ HFT adjacent to the appeal site and the Planning Inspector at that time previously considered this issue. However, there would be increased activity associated with the proposed additional HFT. It therefore falls on me to assess the effect on the living conditions of neighbouring residential properties from this additional activity.
 13. In respect of general comings and goings, the site is overlooked from public spaces. Rednal Road appeared a reasonably busy road and has street lighting. West Midlands Police did not object to the proposal and observed that there had been no records of anti-social behaviour at the existing shop or HFT. As such, there is limited evidence before me to suggest that an additional HFT would result in any such harm.
 14. I recognise that there are existing litter bins within the vicinity of the site, and I note the appellant's offer of mitigation regarding this matter. Moreover, the Council's regulatory services did not object to the proposal, subject to conditions including the precise details of the extraction system, odour controls and hours of operation.
 15. In my view, the proposal's central location within the row of units, distance to neighbouring residential properties, position facing Rednal Road with a large grassed frontage and level of vehicular activity along the road, would ensure that any activity associated with the proposal would not result in significant harm to the living conditions of nearby residents with particular reference to noise, nuisance and disturbance.
 16. Consequently, I find no conflict with the requirements of paragraph 8.7 of the UDP which seeks, amongst other things, that proposed hot food shops do not give rise to additional problems of noise and disturbances, such as to cause demonstrable harm, for the occupiers of any nearby dwellings. On this matter, the proposal would also accord with the requirements of paragraph 127 of the Framework which seeks, amongst other things, to ensure good standards of living conditions for existing occupants.
 17. The Council refer to Policy PG3 of the Birmingham Development Plan adopted 2017 in its reasons for refusal. However, this policy appears to relate to place making and seeking, amongst other things, to provide attractive environments rather than matters relating to the living conditions of the occupiers of existing properties. As such, I do not consider this policy to be determinative in the appeal before me.

Other Matters

18. I recognise that the proposal would not harm the appearance of the row of units, however, the lack of harm in this respect does not outweigh the significant harm I have identified to the vitality and viability of the frontage of which it forms a part.

³ Appeal Ref: APP/P4605/A/13/2200797

19. I have had regard to the other matters raised including the effects on highway safety. However, as I am dismissing the appeal on other grounds, I have not pursued this matter further.

Conclusion

20. I therefore conclude that the appeal should be dismissed.

Robert Walker

INSPECTOR