



Appeal Decision

Site visit made on 17 February 2020

by E Symmons BSc (Hons) MSc

an Inspector appointed by the Secretary of State

Decision date: 09 March 2020

Appeal Ref: APP/M0933/W/19/3241963 52 Sandylands Road, Kendal LA9 6EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant [outline] planning permission.
 - The appeal is made by Mrs Alexandra Diancu against the decision of South Lakeland District Council.
 - The application Ref SL/2019/0643, dated 5 August 2019, was refused by notice dated 3 October 2019.
 - The development proposed is for a change of use from dwelling to pizza business and dwelling
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have used the description of the proposal shown in the appeal rather than the application form as it more succinctly describes the development. The appeal is determined on this basis.
3. The Council has cited Policy CS1.2 of the South Lakeland Local Development Framework Core Strategy 2010 (Core Strategy) within the reasons for refusal. However, no justification of this is made within the Officer Report. As the development is situated within Kendal, which is shown as a Principal Service Centre, it would not conflict with this policy. I have therefore had no regard to this policy in this appeal.
4. During my site visit it was evident that a pizza oven had already been installed within the property.

Main Issues

5. The main issues are the effect of the proposal on:
 - the living conditions of neighbouring occupiers, and
 - highway safety.

Reasons

Living conditions

6. This two-storey property sits at the end of a short terrace of three dwellings in a mainly residential area. Due to its position at the corner of Sandylands Road and Broad Ing, it has a wide frontage which spans the corner however, it

narrows considerably towards the rear. The pizza oven is in the ground floor rear room which overlooks the rear garden. The rear elevations with opening windows, and outdoor areas of the neighbouring properties at 2 Broad Ing and 50 Sandylands, are therefore in close proximity.

7. The proposed business would involve pizzas being prepared, cooked and delivered from the property by the proprietors. The Council's Environmental Health Officer (EHO) has recommended that an extractor is fitted within the room to remove cooking odours and that a condition be applied to any consent limiting the cooking to pizzas only. This was suggested to ensure that odours from other methods of cooking such as use of a fat fryer or the grilling of meat would not cause nuisance to neighbours. Such a condition however, would not be practically enforceable and there is no certainty that other products would not be introduced.
8. The extractor would in all likelihood extract towards the rear of the property in close proximity to the windows and outdoor areas of neighbouring properties. This could lead to cooking odours affecting neighbouring occupiers. Although the oven may not produce any more odour than for example, cooking dinner, the volume and duration of the cooking activity would exceed that which would be expected in a domestic situation. Additionally, I have no certainty that the extraction system would not result in undue noise in addition to odour.
9. The application form states that the business would operate between 1700 and 2000 hours daily however, the Appellant's statement of case refers to business hours as 1630 to 2030 hours Friday to Sunday only. The Appellant states that a maximum of 40-50 pizzas would be delivered during each evening the business was operating and that they would accept a condition limiting production levels to this number. Even if such a condition was enforceable, on any one evening during the three or four hour period when the business was open, there would be the potential for 80-100 vehicle movements to be generated.
10. This level of use, even if only on three evenings a week, is likely to cause disturbance to neighbours due to engine noise and car doors closing. This disturbance, although not very late into the night, would still be at a time of day when vehicle and pedestrian movements tend to decrease within residential areas and disturbance becomes more noticeable.
11. The proposal, due to the presence of cooking odours and disturbance caused by vehicle movements would therefore harm the living conditions of neighbouring occupiers. These matters conflict with Policy CS10 of the Core Strategy and Policy DM22 of South Lakeland Local Plan Development Management Policies 2017 (Local Plan). Together and amongst other matters these policies require that development does not have a detrimental effect upon the amenity of neighbours and the character of the surrounding area or have an adverse impact with regard to noise and unacceptable odours.

Highway safety

12. The pizza business would only involve delivery with no pickup and the Appellant has suggested a condition to prevent any pickup from the property. However, this would not be reasonably enforceable, and should customers visit the property it would be likely that they would generate additional vehicle movements and car parking. This, combined with the corner position of the property on a junction, could harm highway safety. This view is supported by

the comments of the Highway Authority who objected to the proposal on highway safety grounds. Additionally, even if a condition limiting the business to delivery only was enforceable, the business could still generate 80-100 delivery vehicle movements over a three to four hour period. This volume of vehicle movements could similarly harm highway safety.

13. The development therefore conflicts with Policy CS10.2 of the Core Strategy and Policy DM22 of the Local Plan which together and amongst other matters require that the expected volume of traffic generated can be accommodated without harming highway safety or place an undue burden on parking.

Other Matters

14. The storage and collection of waste from the business could be satisfactorily dealt with by a condition requiring an appropriate pest proof bin.
15. The Appellant draws my attention to a development, 'The Far Cross Chippy' which is stated as having a similar position at the end of a terrace. I have no details regarding this development, nor am I aware of its planning history and whether the current use is lawful. In any case, each application must be determined on its own merits and I therefore can give no weight to this argument.
16. The Council has drawn my attention to the fact that no sequential test, in accordance with paragraph 86 of the National Planning Policy Framework 2019 (The Framework), has been carried out. This is required where a town centre use is proposed outwith the town centre. Although this may be the case, as I consider that the development's conflict with the Local Plan and Core Strategy is determinative, I have not considered this issue in detail.
17. The Appellant is dissatisfied with the manner in which the Council publicised this application. They contend that the title of the proposal was misleading as it included reference to a 'takeaway' in addition to a delivery business. It is contended that this has led to objections which might otherwise not have been made. However, objections received would apply to either description of the proposal and therefore, while I note this concern, this matter is beyond the planning considerations that I have included.

Conclusion

18. The development would harm the living conditions of neighbouring occupiers and potentially harm highway safety. The number of conditions which would be required to make this development acceptable would be impractical to enforce and this would conflict with advice within the Framework and the Planning Guidance on the use of planning conditions¹.
19. For the reasons stated above, the appeal is dismissed

E Symmons

INSPECTOR

¹ Use of Planning Conditions. Ministry of Housing, Communities & Local Government. Published 6 March 2014. Last updated 23 July 2019.