
Appeal Decision

Site visit made on 25 February 2020

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Tuesday, 31 March 2020

Appeal Ref: APP/X4725/W/19/3242649

2 Silcoates Street, Wakefield WF2 0DU

- 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 Jimmy Chan against the decision of City of Wakefield Metropolitan District Council.
 - The application Ref 19/01232/FUL, dated 28 May 2019, was refused by notice dated 16 September 2019.
 - The development proposed is change of use from a sandwich shop to a hot food take away, to include a new extractor flue to the rear of the property.
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Decision

1. The appeal is dismissed.

Procedural Issue

2. The appellant's appeal statement sets out that additional evidence has been provided in regard to the design specification for the kitchen ventilation system. The Council confirm this is the same information they received on 12/8/2019, dated 8/8/19 and produced by EASI - solutions services. I shall therefore proceed with the appeal on this basis.

Main Issue

3. The main issue is the effect of the proposed hot food takeaway on the living conditions of nearby residents, with regards to noise and disturbance, and odour.

Reasons

4. The appeal site consists of a ground floor to an end terraced property located on the corner of Silcoates Street and Balne Lane. The area is characterised predominantly by residential properties with the exception of a convenience store and a Chinese takeaway located on Balne Lane. The ground floor is in use as a sandwich shop, whilst the upper floors of the property and neighbouring properties in the terrace are in residential use. Planning permission was granted at the premises for a change of use in 2004¹ from a retail use (A1) to a mixed use of (A1) retail and (A3) food and drink.
5. Policy CS1 and CS8 of the Wakefield Local Development Framework, Core Strategy, 2009 (CS) supports new development in urban areas and the local

¹ 04/99/30125/A

economy including business start-ups and new enterprise. The appeal site is located within the Wakefield Sub Regional City Urban Area. The Council also identify it would be outside any takeaway exclusion zone.

6. Policy D9 of the Wakefield Local Development Framework, Development Policies Document, 2009 (DPD) sets out the design of new development and amongst other things, requires that proposals shall have no significant detrimental impact on the amenity of neighbouring users or residents and existing or prospective users. Policy D20, requires that development proposals which are likely to cause pollution or are likely to be exposed to potential sources of pollution will only be permitted if can be demonstrated that measures can be implemented to minimise emissions to satisfactory levels that protects health, environmental quality and amenity.
7. There is no substantive evidence of any existing noise and disturbance issues associated with the existing use of the premises as a sandwich shop. Nevertheless, this closes at 14:00 hours and is not open during the evening times. The proposed takeaway would be open between the hours of 17:00 and 00:00 Monday to Friday, weekends, and on bank holidays. Thus, the proposed opening hours would be different, and the takeaway would be open in the evening when the existing premises would typically be closed.
8. The existing use of the premises already results in comings and goings on foot and by vehicles. However, the potential effects of a takeaway would be very different, particularly that the hours of opening are limited for the sandwich shop and it is in operation when noise and disturbance from comings and goings is generally accepted, and background noise levels are usually higher. There is also a greater likelihood that there would be an increase in people visiting the takeaway during the evenings, at weekends, and on bank holidays due to the limited availability of premises in the immediate area and the duration of opening hours. Neighbouring residents would notice these effects whether they be on foot or through the use of a vehicle. Furthermore, customers of the proposal may also linger outside the premises on the footway, which directly abuts the residential properties along Silcoates Street.
9. Therefore, the proposed opening and closing times are of concern as the period before, during and after is a more sensitive time of the day when noise levels are lower. I acknowledge that the Council have suggested a condition, and that the appellant has not disputed the condition, restricting the open hours to a lesser degree of between 17:00 to 22:30 hours Sunday to Thursday and 17:00 to 23:00 hours Friday and Saturday.
10. However, it is reasonable for residents to expect peace and quiet at the times of the day when it is proposed to open and close the premises. Whilst, there is a takeaway at No.88 Balne Lane and there is no evidence of any existing noise and disturbance issues associated with this use, the proposal would have a significant effect on nearby residents living conditions due to the proposed evening hours across the week of the hot food takeaway. Particular, harm would be caused to those residents living next door to the premises. Moreover, if there are existing issues linked to No.88, the proposal could potentially magnify these given the proposed opening hours.
11. Despite the Council's concerns about the proposal's potential effect on odour, the appellant proposes to install a well-designed commercial extraction system with flue to the rear of the property. There is no substantive evidence to

suggest that such a system would not keep odours to a minimum or operate quietly. The proposed use does have the potential to cause odour issues given the proximity to residential properties, but a planning condition could ensure that a satisfactory system is installed. I also acknowledge that the Council has no concerns over the visual impact of the flue. As such, a suitably worded planning condition would overcome the Council's concern insofar as odour and some of the noise concerns raised. However, this does not outweigh the other harm I have identified above.

12. I conclude that the proposed hot food takeaway would cause significant harm to the living conditions of nearby residents, with regards to noise and disturbance. Having regard to the Planning Practice Guidance², I do not consider that this otherwise unacceptable development could be made acceptable through the use of planning conditions. Thus, it would be in conflict with Policy D9 and Policy D20 of the DPD, in so far, they require proposals to have no significant detrimental impact on the amenity of neighbouring users or residents.
13. It would also be in conflict with the National Planning Policy Framework, Paragraph 180, where planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment. In doing so, mitigate and reduce potential adverse impacts from noise and avoid noise giving rise to significant adverse impacts on health and the quality of life.

Other Matters

14. The appellant suggests that the Council did not determine the application within the statutory determination date and have ignored/acknowledge evidence, but these do not affect the precise circumstances of the appeal scheme. I also acknowledge the appellant's comments on the lack of objections from neighbours or third parties, these considerations do not outweigh the harm caused by the development. In any event, the appeal needs to be determined on its individual merits on the basis of the evidence before me.
15. The appeal scheme would provide additional employment for one full time member of staff. There would be benefits associated with the proposal including widening the choice of food outlets in an urban area, supporting the local and evening economy and the continued use of the ground floor unit. These matters do not outweigh the unacceptable harm I have found to nearby residents living conditions. In any event, I have determined the appeal in accordance with the development plan, unless material considerations have indicated otherwise.

Conclusion

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

K A Taylor

INSPECTOR

² PPG Paragraph: 001 Reference ID: 21a-001-20140306 Revision date: 06 03 2014