



Appeal Decision

Site visit made on 14 January 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2020

Appeal Ref: APP/U4610/W/19/3236995

148-150 Clay Lane, Stoke, Coventry CV2 4LT

- 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 Hafiz Soltani against the decision of Coventry City Council.
 - The application Ref FUL/2019/0538, dated 28 February 2019, was refused by notice dated 16 July 2019.
 - The development proposed is described as 'I would like to make restaurant where I can provide hot food a5 license.'
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council's first reason for refusal describes the appeal site as being located in an out of centre location. However, in its second reason for refusal it is identified as being in an edge of centre location. The Council's planning application report states that the appeal site is set approximately 250m from the defined centre, measured to the car park. Further, Policy R4 of the Coventry Local Plan 2016 (LP) defines edge of centre locations (within 300m of a centre boundary). On this basis, the appeal site is in an edge of centre location but outside a defined centre.

Main Issues

3. The main issues are: i) whether the development would be in an appropriate location for such a use, with particular regard to the development plan; ii) the effect of the development on the living conditions of nearby occupants, with particular regard to noise and disturbance; and iii) the effect of the proposal on the health and well-being of the local population.

Reasons

Location

4. The appeal site comprises two properties at the end of a terrace which have been combined to provide a sizeable double-fronted retail unit at ground floor. The premises currently operate as a furniture shop with first floor accommodation. The terrace to the north incorporates dwellings, including the neighbouring house at 152 Clay Lane which is separated by a narrow alleyway. The remainder of the terrace to the south comprises retail/commercial units.

Notwithstanding this, and as already stated, the site lies outside a defined centre.

5. Policy R4 of the LP requires a sequential assessment for main town centre uses outside a defined centre. This policy is broadly consistent with the National Planning Policy Framework ('the Framework') and is intended to locate main town centre uses in defined centres to strengthen them. Further, this policy states that where in-centre options are exhausted, edge of centre locations (within 300m of a centre boundary) that are well connected and accessible to the centres themselves should also be considered in advance of out of centre sites. In this case the appellant has not provided a sequential assessment towards site selection. Consequently, the development would be in an inappropriate location for this type of use and therefore is in direct conflict with Policy R4 of the LP.

Living conditions

6. Although there are a number of existing commercial outlets in the area, as already stated the appeal site is located adjacent to residential properties. Policy R6 of the LP recognises that outside defined centres there is likely to be a greater risk to the living conditions of nearby residents arising from hot food takeaways. Although the appellant argues that the proposed takeaway would result in little noise and disturbance over the existing situation, I have not been provided any clear reasons to support this. Further, the appellant asserts that there have not been any major objections or reports of disturbance. However, this is insufficient justification for a new proposal.
7. Moreover, in my experience, takeaways can generate significant levels of activity which can negatively affect the living conditions of nearby residents, both individually and cumulatively with other uses. This can include noises and disturbance associated with customers inside the unit, people congregating outside in a small area, the coming and going of vehicles and associated opening, closing and occasional slamming of car doors. In particular, due to the generous size of the proposed unit, its proximity to dwellings, and based on the proposed opening hours, the development would be likely to create regular disturbance at a time when nearby residents are more likely to be at home or resting.
8. Based on my observations there are already a number of similar uses nearby. While the appellant suggests that some of these have been recently granted planning permission, I have no evidence to support this. In any event each application is determined on its merits. Furthermore, the existence of these other uses adds to my concern over the cumulative impact of these in a relatively small area in proximity of dwellings. Although the appellant suggests negotiating a restriction on the proposed opening hours, the appeal is not the process for this.
9. In light of the above, the proposal would harm the living conditions of neighbouring residents with regard to noise and disturbance, therefore it would be contrary to Policy R6 of the LP, which amongst other things seeks to safeguard against significant harm to the amenity of neighbours from such uses including harmful cumulative impacts due to the existence of other similar uses. Consequently, I also find conflict with Policy DS3 of the LP which amongst other things supports proposals which improve environmental conditions in the area.

Health

10. The Council raises concern about allowing further hot food takeaways with regard to health implications in respect of levels of obesity in the local community. This is based on the objection from the Council's Public Health Officer to the proposal as the appeal site is outside of a defined centre and contrary to Policy R6. However, although the supporting text to this policy refers to the health and well-being of the local population and the prevalence of hot food takeaways, the policy itself makes no reference to any specific controls or limitations to the number or location of hot food takeaways in any particular area to address health concerns. As such, the restrictions outside defined centres do not appear to be linked to health matters.
11. Public Health's objection also refers to the appeal site failing to meet two of the requirements in the Council's Draft Hot Food Takeaway – Supplementary Planning Document ('draft SPD'). Requirement 4.1 does not permit hot food takeaways in areas with a high concentration of such uses and requirement 4.2 does not permit hot food takeaways within a 5-minute walk of the gate(s) of any primary or secondary school. Whilst I do not dispute these observations in relation to the appeal site, on the information before me it is unclear if the draft SPD has been adopted. I am also uncertain as to whether this is likely to change from its draft form.
12. For the above reasons, I cannot conclude with any certainty that the development would be contrary to the Council's SPD, and therefore would negatively affect eating habits of children in the area or materially harm public health. There is also no conflict with requirements of LP Policy R6 in relation to health issues. Consequently, I find no conflict with the Framework, which seeks to ensure local authorities take account of health issues in planning decisions.

Other matters

13. I note that there is some local support for the proposal. Nevertheless, this does not outweigh the harm I have already identified.

Conclusion

14. Although I cannot be certain about the effects of the proposal on the health and well-being of the local population, this does not outweigh the harm I have identified with regards to the location of the appeal site outside a defined centre, its adverse effect on the living conditions of neighbours and overall conflict with the development plan. For the above reasons, I conclude that the appeal should be dismissed.

M Aqbal
INSPECTOR