



Appeal Decision

Site visit made on 16 June 2020

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 July 2020

Appeal Ref: APP/N1160/W/20/3247157

34 The Broadway, Plymouth PL9 7AS

- 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 Praxis Real Estate Ltd against the decision of Plymouth City Council.
 - The application Ref 19/01186/FUL, dated 19 July 2019, was refused by notice dated 17 October 2019.
 - The development proposed is change of Use from Use Class A1 (Retail) to Use Class A5 (Hot Food Takeaway), including installation of ventilation and extraction.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effects of the proposal on the living conditions of neighbouring occupiers in respect of noise and odour; and
 - the effect of the proposal on the health of the community.

Reasons

Noise and odour

3. The appeal proposal comprises a ground floor unit forming part of a terrace of shops within Broadway Shopping Centre. Residential apartments are located above the shops and there are other dwellings in close proximity, including at Horn Lane. The dwellings above the unit have a terrace which, amongst other things, serves as access and an area for clothes drying.
4. From the evidence, a range of options for the siting of the filtration system were explored. Whilst it may usually be preferable to have a high level vertical outlet (flue), in this case, for a number of reasons, a direct horizontal discharge at ground level is proposed. This would discharge via extract louvre to a point just beyond the rear terrace at the ground floor level.
5. The specialist filtration system would accord with 'BESA DW172 - Specification for Kitchen Ventilation Systems'¹ and has been designed to remove the majority of particles and grease before the point of discharge to ensure emissions are almost odourless. There would need to be a rigorous maintenance regime in place to ensure that the system maintained full

¹ BESA DW172 - Specification for Kitchen Ventilation Systems (published April 2020)

functionality, including the replacement of filters every two weeks and the replacement of carbon filters every four to six months.

6. I note the Council's concerns that on calm days there would be potential for discharge to be trapped by down draughts and stagnate, creating an odour problem for users of the dwellings above. The horizontal and low level system is designed to a higher specification than may typically be proposed for this reason. In addition, conditions could be imposed to ensure the rigorous maintenance of the system.
7. In terms of noise, the appellant's submissions indicate that the fan system that would be installed would be isolated from its casing and decoupled from the ductwork. This would avoid vibration noise issues as far as practicable. The fan system itself has been assessed based on the manufacturer's details in relation to the observed busiest background noise levels, without an allowance for 5dB that would typically be applied. Overall, the details suggest that the noise that would emanate from the equipment would not exceed the background noise level by more than 5dB at any time, as measured at the facade of the nearest residential property. This would achieve compliance with a condition typically imposed by the Council for such proposals.
8. In addition to the control over the fan system noise emissions, a mass barrier system would be installed to ensure that the noise from activity within the building would be limited. There would still be a potential that some noise would emanate from weak spots, such as drainage and pipework, and the small numbers of windows and doors that exist within the building. However, these effects would be unlikely to result in material harm given the background noise levels in a mixed commercial/residential area and subject to the imposition of a condition restricting opening hours.
9. In view of this main issue, and subject to conditions, the proposal would not harm the living conditions of neighbouring occupiers, with particular regard to noise or odour. The proposal would therefore comply with, in particular, Policies DEV1, DEV2 and DEV18, of the Plymouth and South West Devon Joint Local Plan 2014 – 2034 (adopted 2019) (JLP). These policies, amongst other things, collectively seek to safeguard the health and the amenity of local communities, and prevent unacceptable levels of noise, smell, litter, disturbance, or otherwise detrimental impacts.

Health of the community

10. The proposal is for a Class A5 hot food takeaway (HFT) use in a vacant ground floor unit within Broadway Shopping Centre. As set out in the JLP, the site falls within the defined Primary Shopping Area of Plymstock Broadway District Centre.
11. JLP Policy DEV6 relates to HFTs in Plymouth and states that proposals to provide HFTs within a 400 metre radius of a secondary school will be resisted in order to protect the school's food environment.
12. The radius of 400 metres is explained in the draft Plymouth and South West Devon Joint Local Plan Supplementary Planning Document (SPD) as the maximum distance a school pupil would walk within a one hour lunch break to purchase food outside of school grounds, i.e. 10 minute walking time. Whilst it is not disputed that the appeal site is within a 400 metre radius of Plymstock

School, the appellant suggests that the shortest walking distances are 427 or 444 metres, both of which exceed the 400 metre radius, albeit modestly. As part of the site visit, I walked the two shortest routes from the site to the school gates and neither took more than five to six minutes each way. Furthermore, as both main routes have conveniently located pedestrian crossings, there were no 'barriers' or particular impediments to making such a journey on foot.

13. The appellant has provided an appeal decision in which the application of a 400 metre exclusion zone was argued as being more appropriate to measure based on walking route distances. In that case, the relevant policy appeared capable of being interpreted as such. JLP Policy DEV6 is clearer in relation to the application of a 'radius', which can only refer to part of a wider circular exclusion buffer around the school. Whilst the background report to the JLP may have considered alternative approaches², it is not for me to favour those over the clear requirements of Policy DEV6 of the recently examined and adopted JLP.
14. I also note that the evidence suggests that 'Plymstock and Radford' is the 4th lowest ward with regard to obesity levels in reception year pupils, though there is a lack of data in relation to secondary school age pupils. Irrespective of the lack of a particular problem in obesity levels at reception year age, there is a policy which seeks to prevent the likelihood of increases in childhood obesity through limiting the creation of HFTs within a specific radius of schools. That there is an isolated example where a HFT was permitted within the City Centre (as distinct from a District Centre), close to a school which is less likely to allow pupils to leave the school grounds independently during lunchtime hours is not sufficiently compelling to suggest that the current proposal should be allowed.
15. In terms of whether Policy DEV6 should apply in the context of a District Centre, I note that there is a small range of existing HFTs on Dean Cross Road and Radford Park Road which appear to fall within the limits of the District Centre. Though the proposed HFT would not result in a proliferation within Broadway Shopping Centre itself, there appears to be a sufficient range of HFTs within the wider District Centre at the present time. Whilst I accept that there are a small number of vacant units within Broadway Shopping Centre, which itself is not a unique phenomenon, the evidence does not suggest that its viability and vitality is compromised specifically by the current lack of HFTs, with shops, cafes and bakeries offering opportunities to access a range of food and refreshments.
16. In view of this main issue, the proposal would be contrary to Policy DEV6 of the JLP. For similar reasons, the proposal would also conflict with the National Planning Policy Framework (the Framework) (para, 91) which seeks to enable and support healthy lifestyles through the access to healthier food.

Other Matters

17. I note that no issues were raised in respect of the loss of the retail use, highway or visual impacts. The absence of objections from neighbouring occupiers has also been raised. However, the absence of harm in these regards is a neutral factor in the overall balance.

² The Plymouth Report – Office of the Director of Public Health, Plymouth City Council (December 2014)

18. I note that the proposal would bring a unit which has been vacant for a considerable period back into use and would create a number of employment opportunities at the same time. I am also mindful of the economic impacts of the COVID-19 pandemic. Whilst the need to stimulate the economy is a factor that weighs in favour of the scheme, particularly at this time, I do not consider that it outweighs the need to protect the health objectives promoted in the Development Plan in this particular case. This does not however preclude the Council from considering its response to representations made on the draft SPD or recent events at a more strategic level.

Conclusion

19. Whilst I have found that the proposal would safeguard the living conditions of neighbouring occupiers, it would adversely affect the health of the wider community. It therefore conflicts with the Development Plan and neither the stated benefits or other considerations are of sufficient materiality to outweigh the identified harm and associated conflict.
20. For the reasons set out above, the appeal is dismissed.

Hollie Nicholls

INSPECTOR