



Appeal Decision

Site visit made on 28 July 2020

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2020

Appeal Ref: APP/Z2315/W/20/3254208

327, Manchester Road, Burnley, Lancashire BB11 4HD

- 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 Mrs Yasemin Yildiz against the decision of Burnley Borough Council.
 - The application Ref COU/2020/0081, dated 6 February 2020, was refused by notice dated 8 April 2020.
 - The development proposed is change of use from shop/bakery to hot food take-away (as pizza etc).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Although the decision notice cites 'Policy SPF', it is clear from the submitted evidence that this is a typographical error and should read 'Policy SP1'.

Main Issues

3. The main issues are the effect of the appeal proposal on:
 - on-street parking levels and potential implications for access and highway safety; and
 - living conditions of local residents, with particular regard to odour and noise disturbance.

Reasons

Parking, Access and Highway Safety

4. This vacant ground floor baker's shop and premises is located at one end of a parade of commercial properties. Fronting onto the busy Manchester Road, the site is accessible by foot, bicycle, public transport and motor vehicle. The submitted evidence confirms that it attracted employees and customers, deliveries and servicing from early morning to late afternoon.
5. A wedge shaped forecourt area is located between the public footway and the parade. Not all of the residential and commercial properties surrounding the site benefit from on-site car parking and on-street parking was evident during my visit. A layby in Calderbrooke Avenue, large enough to accommodate up to

- 3 average sized vehicles, is within easy reach of the appeal site via the public footway network.
6. In terms of visitor numbers, the appeal proposal would attract custom, servicing and deliveries later in the day, extending late into the evening. Bearing in mind the nature of the existing surrounding commercial and educational uses, the proposed opening hours would serve to even out visitors to the locality and therefore demand for parking, in comparison with the former use. Consequently, the proposed use would not significantly increase vehicular and pedestrian movements throughout the course of the day. Although such numbers would be increased on an evening.
 7. In terms of access and parking, the more limited width and presence of a bus shelter and fixed litter bin would restrict the use of the forecourt for such purposes outside the appeal site. Current road markings restrict on-street car parking in the vicinity of the bus stop, pedestrian crossing and access to the driveway of No 329 Manchester Road.
 8. The appeal proposal could cause vehicles to park or drive along the side and rear lane that bound the site. However, visibility from either of its junctions is adequate. With considerate parking, given its width and construction, I agree with the appellant that there is a low risk of an obstruction to an existing garage or the remaining properties in the parade. Furthermore, there is no evidence to substantiate why the existing layby on Calderbrooke Avenue could not be relied upon by customers visiting the appeal site.
 9. Consequently, there would be adequate opportunity for visitors to the appeal site to park safely and considerately according to current highway restrictions and within reasonable walking distance of the site.
 10. In terms of highway safety, the evidence provided by the Local Highway Authority demonstrates a low level of accidents in the vicinity of the site. Furthermore, as advanced by the appellant, the layout of the local road network and presence of legitimate parking provision would be unlikely to increase the risk of unsafe vehicular manoeuvres.
 11. Therefore, I do not find that the appeal proposal would significantly increase on-street parking levels or be harmful to access or highway safety. In the absence of any harm, I find no conflict with Policy TC7 or SP5 of Burnley's Local Plan July 2018 (the Local Plan).

Living Conditions

12. The appellant has advanced that the immediate upstairs flat would be occupied with the use and a letter of support has been lodged by the owner of adjoining property, No 325. Nonetheless, other local residents have expressed concern about impacts upon their existing living conditions in terms of restricted access, odour and noise. I have already concluded on the former.
13. In terms of noise, although the proposed closing time is more consistent with that of the nearby public houses, it would coincide with a period when background noise is likely to be less than through the day. The proposed use would undoubtedly give rise to further noise disturbance from car doors, engines and voices which would be harmful to existing living conditions of neighbouring residents. Furthermore, the presence of the bus shelter and late

- night service could add to and extend visitor activity and noise disturbance late at night in the street.
14. The appellant has submitted that sound attenuation measures could be employed. However, whilst this could safeguard the living conditions of adjoining occupants, in terms of internal noise, it would not mitigate external noise disturbance arising from the proposed use. Therefore, the imposition of a planning condition would not resolve this conflict between uses. The appellant has also suggested a management plan could be submitted. Although this too could resolve noise disturbance matters internally, I am unconvinced that sufficient controls off the premises could be secured. Neither would a condition restricting opening hours be reasonable given the reliance of the use upon evening trade.
 15. In terms of odour, the Council's specialist environmental team has raised no objections subject to the imposition of a planning condition to secure appropriate mitigation. The appellant has advanced that the previous use produced and sold food on-site and operated odour suppression measures. Furthermore, they have submitted supplementary technical details through this appeal and have argued that further details are unnecessary.
 16. The proposed positioning of the flue would be within very close proximity to habitable room windows and external amenity space of neighbouring residential properties. The type of cooking would differ to that which previously took place and was subject to different odour attenuation. The Council has not commented upon the suitability of the supplementary details. However, they have advanced that should the appeal succeed, then a condition should be imposed requiring the submission of such details for their approval.
 17. I find that the details provided do not adequately demonstrate that all of the relevant site specific considerations to secure an effective scheme have been taken into account. Furthermore, the proposed siting of the equipment would be prominent within the street scene. There is insufficient certainty for me to conclude that overall odour emissions could be satisfactorily mitigated both technically and visually by the scheme proposed or any other scheme. This uncertainty and the close proximity to residential properties means that the imposition of a planning condition would not be an appropriate course of action in this instance.
 18. For these reasons, I find that the appeal proposal would be significantly harmful to the living conditions of local residents, with particular regard to odour and noise disturbance.
 19. Policy SP1 states that the planning applications that accord with the Local Plan will be approved without delay, unless material considerations indicate otherwise. Policy SP5 requires no unacceptable adverse impact upon the amenity of neighbouring occupants. Policy TC7 permits proposals that are not detrimental to residential amenity, provide effective extraction systems with minimal visual impact and acoustic attenuation. Policy NE5 states that proposals will not be permitted where adverse noise cannot be mitigated and controlled through the use of a condition.
 20. Given the identified harm, I find that the proposal conflicts with these policies and the development plan as a whole.

Other Matters

21. The appellant has advanced that the proposal would bring a vacant unit back into use. However, this does not out-weigh the harm that I have identified to living conditions which conflicts with the development plan.

Conclusion

22. For the reasons given, the appeal should be dismissed.

C Dillon

INSPECTOR