



Appeal Decision

Site visit made on 3 September 2020

by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th September 2020

Appeal Ref: APP/N4205/W/20/3246569

123 Tonge Moor Road, Bolton BL2 2DL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
 - The appeal is made by Mr Amar Malik against the decision of Bolton Council.
 - The application Ref 06678/19, dated 6 August 2019, was refused by notice dated 5 December 2019.
 - The development proposed is the change of use of the ground floor from Restaurant (Class A3 Use) to Fast Food Takeaway (Class A5 Use).
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development upon:
 - The vitality and viability of the local shopping centre with regard to the number of hot food takeaways (A5 uses); and
 - The living conditions of local residents with regard to noise and activity.

Vitality and Viability

3. The site of the proposed development is located on the lower section of Tonge Moor Road (A676) which is one of the main thoroughfares into Bolton. The appeal property is a 2-storey double fronted building located at the intersection with Lowerwood Lane. It is currently unoccupied and has recently been subject to internal changes following the grant of a planning permission in March 2018 permitting change of use from A1 retail to A3 restaurant use on the ground floor and the installation of 3 residential flats on the first floor.
4. The proposed development would comprise the change of use of the ground floor from Use Class A3 (Restaurant) to Use Class A5 (Fast Food Takeaway). This would involve minor internal changes to the layout approved in 2018 and the removal of 2 small side windows. The Appellant has stated that he would be content for the proposed use to be subject to the hours of operation restriction advised by the Council in its Supplementary Planning Document 'Location of Restaurants, Cafes, Public Houses, Bars & Hot Food Takeaways in Urban Areas' 2013 (SPD) of 0900-2330 Sunday to Thursday and 0900-2400 Friday to Saturday.
5. The section of Tonge Moor Road between the junction with Lichfield Avenue to just beyond the junction with Stone Street extends about 500-600 metres. It is

characterised by a mixture of traditional terraced houses interspersed between collections of independent retailers serving primarily local needs. This local shopping area is anchored by a medium sized co-operative food store. During my visit I noted that several of the independent retail units were shuttered and so it was not clear if they are still trading. Although there were few vacant units, with the exception of one or two units that appeared to be trading well, the shopping centre did not seem vital and vibrant.

6. The proposed development sits at the end of a row of commercial units between the junction with Lowerwood Lane and the junction with Stone Street. Within about 120 metres of the appeal property along this stretch there are about 7 hot food takeaways. Because of the large number of hot food takeaways that are already in the immediate area the argument that the addition of an extra unit would add to consumer choice is unconvincing.
7. The Council has expressed concern about the problem of dead frontage in some urban areas during normal trading hours (0900-1700) caused by the proliferation of hot food takeaways. Consequently, its advice set out at Paragraph 29 of its SPD is that proposals for hot food takeaways will be resisted where it would result in there being more than 2 within a 50-metre radius.
8. Currently there is a hot food takeaway called Chicago's adjacent to the appeal site. Opposite the appeal site is the Peony hot food takeaway. Thus, the appeal proposal would represent the third unit within 50 metres. On the afternoon of my visit both aforementioned units were shut.
9. The Appellant has stated that he would encourage the occupant to provide a breakfast and lunch service so that the unit would be open during the day. However, whilst there might be encouragement to do this it is unlikely that there would be sufficient demand for this type of service to make it commercially viable. Since any eventual operator cannot be compelled to be open during the daytime it is highly unlikely that this would happen. Consequently, there would be a problem of daytime dead frontage for this large unit.
10. The appeal property does have planning permission for a restaurant (A3) use and this, too, might result in an element of dead frontage during the daytime. However, many restaurants open for lunch. That planning permission has not been implemented due to a lack of demand but could be if a suitable operator were to come forward. As that consent was only granted in March 2018 the period during which a suitable operator could be found is still relatively short. Consequently, there is insufficient evidence to demonstrate that the A3 planning permission is commercially unviable. Furthermore, notwithstanding the problems with vitality already mentioned, insufficient evidence has been presented as regards the possible demand for an A1 use in the unit.
11. The Appellant has referred to 5 appeal decisions for hot food takeaways in the Greater Manchester area. These are not relevant to the matter of vitality and viability.
12. For the above reasons the proposed development would result in dead frontage which would harm the vitality and viability of the local shopping centre. Thus, the proposal would fail to accord with Policy CG4 of the Local Development Framework – Bolton's Core Strategy Development Plan Document ('Shaping

the future of Bolton') 2011 (CS) that new development should be compatible with the surrounding land uses.

13. Furthermore, it would not accord with the advice set out at Paragraph 29 of the SPD which seeks to prevent the unacceptable proliferation of hot food takeaways where a development proposal would result in there being more than 2 within a 50-metre radius. Although this SPD is quite dated the principles and policies within it remain highly relevant and are consistent with the advice handed down in Paragraph 85b) of the National Planning Policy Framework (the Framework) that planning policies should identify the range of uses to be allowed within local retail centres. Thus, I accord the SPD considerable weight.

Living Conditions

14. There are to be 3 residential flats above the proposed development. The neighbouring retail units have first floor properties which could also be used now, or in the future, for residential purposes. There are also some quite new residential dwellings located along Horsa Street behind the proposed development. However, these turn their back on the appeal property and would be unlikely to be affected by any late noise associated with the comings and goings of customers.
15. Not far beyond the neighbouring Chicago's on Tonge Moor Road is another hot food takeaway known as Grillicious. Peony's is just opposite. I have no doubt that hot food takeaways will sometimes attract customers during the evenings whom might be boisterous and noisy, which some people might consider to be a form of anti-social behaviour. The grouping of 4 such hot food takeaways close to one another might exacerbate that effect. One unidentified objector expressed concern that the proposed development would give rise to noise and anti-social behaviour, stating that there had been such occurrences outside Chicago's.
16. However, I consider that there will be a general level of background noise caused by quite heavy traffic along Tonge Moor Road. To a large extent, for people living above any of the retail units or in any of the dwellings along Tonge Moor Road, this traffic noise is likely to largely drown-out any noisy or boisterous behaviour of customers visiting the hot food takeaways. Furthermore, if there are serious instances of anti-social behaviour then these are matters which should be dealt with by the police.
17. For this reason, the development proposal would accord with Policy CG4 of the CS which requires that new development protects the living conditions of neighbouring occupants and does not lead to unacceptable problems of nuisance or noise.
18. Furthermore, subject to the proposal being operated on the restricted hours of opening basis stated in paragraph 4 above then it would comply with the advice set out in the SPD that dwellings within a 50 metre radius of the hot food takeaway be subject to protection against late night noise and disturbance.

Other Matters

19. The development proposal would provide employment in an area that has significant economic challenges. Whether this would result in a net-increase in jobs within the area and not simply displace other jobs, however, is more difficult to say. It would be accessible by foot and by bus and would not cause any traffic problems. These are benefits that, to one extent or other, accord with aspects of the Framework.

Planning Balance and Conclusion

20. The development proposal would not harm the living conditions of nearby residential occupants. It would also lead to slightly more consumer choice, possible employment benefits and would be accessible by foot and bus. However, due to the creation of dead frontage it would harm the vitality and viability of the local shopping centre. Therefore, I consider that the conflicts with the Development Plan are so fundamental that they outweigh any benefits.

21. For these reasons, the appeal should be dismissed.

William Walton

INSPECTOR