
Appeal Decision

Site visit made on 22 June 2020

by David Carter BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th October 2020

Appeal Ref: APP/D4635/W/20/3244408

Unit 3, 1 Willenhall Road, Wolverhampton, WV1 2HG

- 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 Nicholas Pionides against the decision of Wolverhampton City Council.
 - The application Ref 19/01001/FUL, dated 16 August 2019, was refused by notice dated 17 October 2019.
 - The development proposed is change of use from A1 use (Shop) to A5 use (Hot food takeaway).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from A1 use (Shop) to A5 use (Hot food takeaway) at Unit 3, 1 Willenhall Road, Wolverhampton, WV1 2HG in accordance with the terms of the application, Ref 19/01001/FUL, dated 16 August 2019, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force, amending the Town and Country Planning (Use Classes) Order 1987. These Regulations amend and simplify the system of use classes. The amendments to the Use Classes Order includes the removal of the A5 Hot Food Takeaway use class as well as a new broad 'Commercial, business and service' use class (Class E) which incorporates the previous shops (A1), financial and professional services (A2), restaurants and cafes (A3) and offices and other business uses (B1) use classes.
3. Notwithstanding this change, since the appeal proposal was submitted, or was deemed to be submitted, to the local planning authority which referred to uses or use classes which applied in relation to England and were specified in the Schedule to the Use Classes Order on 31st August 2020, that proposal must be determined by reference to those uses or use classes.
4. The appeal proposal concerns Unit 3 at 1 Willenhall Road. Although this is not specified on the planning application form, I have included this above in the interests of clarity and certainty.
5. Revised plans were submitted after the planning application was determined. Since these plans would neither alter the substance of the proposal nor have a

material effect on the matters of concern raised by objectors, I have used these plans in the determination of the appeal.

Main Issue

6. The effect of the proposed development on the living conditions of the occupiers of the nearby flats, regarding noise, disturbance and odours.

Reasons

7. The appeal site is currently a vacant unit in a small parade of retail units located on Willenhall Road, which is a major thoroughfare (A454) leading to Wolverhampton town centre, about one mile away. The other units are occupied by My Tan, a professional tanning house and a Tesco Express convenience store respectively. A car park to the rear provides parking for the Tesco store and a pull-in to the front of the block provides a small number of additional off-road parking spaces which serve the units. The appeal proposal would bring back into use a vacant property.
8. The potential for disturbance to occupants of the residential apartments arising from the comings and goings of potential customers and groups of young people that might congregate outside are legitimate concerns. However, it appears to me that the extent they are likely to be problematic would be significantly reduced not only by the location of the proposed takeaway adjacent to a main road, where there is already significant background noise, but also because the proposed takeaway lies directly adjacent to the Tesco store which already trades from early morning until late in the evening (0600-2300). In addition, other buildings in the immediate locality are in non-residential uses. As the proposal could be busiest in the evenings and at weekends, when the occupiers of the flats are likely to be at home, the potential adverse effects identified could be mitigated through a planning condition restricting the hours of operation of the proposed takeaway. This is a matter I return to later.
9. In relation to potential nuisance arising from cooking odours, the revised plans show a flue dealing with extracted odours to the rear of the single storey part of the premises. It appears to me that the imposition of appropriate conditions to ensure that the location and specification of the extraction equipment that would ensure that odours would be dealt with effectively, in a way that does not lead to nuisance, would be an appropriate way forward. Again, this is a matter I return to later.
10. I conclude that the potential harm to the living conditions of the occupiers of the flats above and adjacent arising from the proposal with reference to noise, cooking smells and other disturbance could be satisfactorily mitigated through the imposition of appropriate planning conditions restricting opening hours, particularly late in the evening and, through control over the location and specification of appropriate plant and equipment. Accordingly, subject to imposition of appropriate conditions, the proposal would be consistent with the Saved Wolverhampton Unitary Development Plan 2001-2011 (adopted 2006) Policy EP5 which seeks to ensure noise pollution are at acceptable levels and Policy SH14 which seeks to ensure the satisfactory provision of catering units and, the Black Country Core Strategy (adopted 2011) ENV3 and CSP4 which are strategic policies encouraging high design quality and place-making respectively. Together, these policies require the living conditions of the

occupants of nearby dwellings to be protected from the effects arising from development.

Other Matters

11. A small number of letters of objection have been made to the planning application. The issue common to them all is that there are already existing takeaway food outlets nearby. However, it is not unusual for several takeaway food outlets to be situated near one another in major urban areas, so competition between them attracts little weight.
12. The other matter raised in one objection concerned highway safety and parking implications including nearby nursery and primary schools. However, the Transportation Department have not objected to the proposal on these grounds. Given the units and parking already exist, I can see no reason why the arrangements are not acceptable. While there may be pedestrian activity associated with nearby schools these will be at times of the day when the appeal proposal would be less busy.
13. The appeal proposal is a resubmission of an earlier scheme (Ref 18/01476/FUL) that was refused planning permission. From the evidence before me, the appellant has sought to address the reasons for rejection of the earlier scheme including liaison with the Council's Environmental Health Officer. That evidence has not been challenged by the Council.

Conditions

14. Both the appellant and the Council have suggested conditions in the event I allow this appeal. I have reviewed all of the suggestions and have made some changes and deletions in order to ensure that the development is carried out satisfactorily, meeting the six tests set out in-paragraph 55 of the Framework.
15. Conditions 1) and 2) relate to time period and approved plans and are required as this provides certainty. Condition 3) establishes the opening times during which the proposed use can operate. In particular, they restrict trading after 2200 on Monday to Saturday evenings. This is an earlier closing time than requested by the appellant but would be appropriate given the proximity and need to protect the amenity of the occupants of the residential apartments at night-time, as well as to allow clear-up time prior to closure of the adjacent Tesco store. All of the other opening times and Sunday/Bank Holiday closing times would be as requested by the appellant.
16. Condition 4) requires details to deal with waste and is in the interests of the amenity of residents, other occupiers and the wider area. Condition 5) requires a scheme detailing of all necessary plant, equipment and works to be subject to approval in order to protect the amenity of the occupiers of the residential apartments in respect of noise, vibration and odours. I have not included all of the detail suggested by the Council since the condition, as worded, gives control over this through the approval process. Condition 6) requires details of the external extraction equipment to ensure that the visual amenity of the area is protected.
17. Condition 7) prevents the playing of amplified music within the premises and is necessary in the interests of protecting residential amenity. Condition 8) prevents the provision of any customer seating within the premises and is necessary in the interests of protecting residential amenity. Condition 9)

requires the provision of cycle parking facilities in order to encourage potential customers to use sustainable transport when using the premises.

18. The appellant suggested 3 further conditions. The first related to the provision of sound insulation within the ceiling. This does not need to be a separate condition as any necessary work can be integrated into the scheme included in Condition 5). The second concerned the appearance of the shop front during opening hours which is not necessary. The other suggested condition related to a litter management plan. However, the Council have not requested such a plan and, this is a matter that can be dealt with outside of the planning process.

Conclusion

19. For the reasons stated above I allow this appeal subject to conditions.

David Carter

INSPECTOR

SCHEDULE OF CONDITIONS [9 in total]

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans:
 - i. Existing Survey Plans and Elevations Ref: 2309.01B
 - ii. Proposals – Ref: 2309.02C
- 3) Hours of opening for the development hereby permitted shall be limited to Mondays to Saturdays from 1200 to 2200 hours and 1630 to 2130 hours on Sundays and Bank Holidays.
- 4) Before the use hereby permitted takes place, details of the provision for the safe storage of refuse awaiting disposal shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and permanently retained thereafter. Refuse shall be stored in accordance with the approved details which should be paved with adequate drainage and must be managed in such a way as to enable them to be kept clean, and to protect against access by pests, against contamination of food, drinking water and equipment.
- 5) Before the use hereby permitted takes place, details of a scheme of works for ventilation, fixed plant, flue location and extraction systems including control of noise, vibration and odour shall be submitted to and approved in writing by the local planning authority. Fixed plant includes fans, compressors, condensers, pumps and motors and wall openings and louvers serving remote mechanical plant. Works should include those recommended in the Sanctuary Acoustics Ltd report (November 2019). All works carried out and equipment installed in accordance with the approved scheme shall thereafter be operated and maintained in accordance with that approval and permanently retained thereafter.
- 6) Before the use hereby permitted takes place, details of the external appearance of the extraction system shall be submitted to and approved in writing by the local planning authority. The approved extraction system shall be installed as per the approved details and permanently retained thereafter.
- 7) There shall be no amplified or percussive music of any form played within the development hereby approved.
- 8) There shall be no customer seating areas within the development hereby approved.
- 9) Prior to the commencement of the development hereby permitted, details of cycle parking facilities to be provided at the site shall be submitted to and approved in writing by the local planning authority. The cycle parking facilities so approved shall be provided by the developer prior to the use or occupation of any part of the development hereby permitted and permanently maintained thereafter.

END OF SCHEDULE