



Appeal Decision

Site visit made on 7 July 2020

by Andre Pinto BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2020

Appeal Ref: APP/K2230/W/20/3245460
108 Mackenzie Way, Gravesend DA12 5UB

- 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 Miss Tania Cook against the decision of the Gravesham Borough Council.
 - The application Ref 20191224, dated 13 November 2019, was refused by notice dated 14 January 2020.
 - The development proposed is change of use of existing dwelling from C3 Residential to a mixed use dwelling comprising C3 Residential and A5 Hot Food Takeaway for the consumption of food off the premises.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Changes to the Country Planning (Use Classes) Order 1987 have come into force on the 1 September 2020 which have introduced significant changes to the use class system. Consequently, a A5 Take-Away use, from the 1 September 2020, is classified as Sui Generis use. Therefore, under the present system, the appeal seeks a change of use from C3 Residential to mixed use dwelling comprising C3 Residential and Sui Generis use, which requires planning permission. I have made my decision on this basis.
3. The Grounds of Appeal Statement refers to the planning application being retrospective. I have not gained access to the inside of 108 Mackenzie Way to confirm if the development has already taken place as the planning application was made under section 78 and the reasons for refusal related exclusively to issues which could be observed from the public domain. I have therefore determined the appeal on this basis.

Main Issues

4. The main issues are the effect of the proposed development on:
 - The character of the area; and
 - The living conditions of nearby residents, with particular reference to noise, disturbance, cooking smells and the availability of on-street parking.

Reasons

Character

5. The appeal site is located in a residential area and forms part of a development of terraced houses organised around a central courtyard. 108 Mackenzie Way, due to its mid terrace position, shares party walls with both 106 and 110 Mackenzie Way.
6. The proposed development is for a change of use from C3 Residential to a mixed-use dwelling comprising C3 Residential and a Sui Generis use.
7. As the area appears to be wholly residential, the proposed change of use and the creation of a Sui Generis (Take-Away) use, although it would not cause substantive changes to the appearance of the area, could lead to changes in its character.
8. The character of the area is predominantly defined by it being wholly residential and its relative seclusion. Although there are two main entrance points from Mackenzie Way that lead to the central courtyard where the appeal site is located, these entrances provide access only to the properties located along the small paths leading to it or around the courtyard itself. Therefore, pedestrian movement and associated activity in and out of the area, is limited.
9. The proposed development would be likely to create an increase in the comings and goings from the appeal site which would change the secluded character of the area and further stress the impact of the proposed change of use in the character of the area. This change would then be further exacerbated by the appeal site's mid terrace position and the particular configuration of the terrace.
10. The appellant states that she delivers the cooked meals and consequently the proposed change would not alter the character of the area as it would not result in additional users to the terrace.
11. The issues before me are how the proposed change would effect the number of comings and goings from the terrace as a consequence of the proposed development, regardless of who generates these trips, and how these would effect the character of the area. Judging from the evidence before, the proposed development would likely lead to a significant increase in the number of comings and goings from the appeal site and such an increase would have a detrimental impact on the character of the area, even if the appellant generates those trips herself.
12. In conclusion, and for the reasons stated above, the proposed development would be harmful to the character of the area and therefore be contrary to Policy CS19 of the Gravesham Local Plan Core Strategy (2014) which aims to ensure that new development conserves and enhances the character of the local built environment and paragraph 127 of the National Planning Policy Framework (The Framework).

Living conditions

13. Although I accept the appellant's claim that the takeaway business is in its embryonic stages and has not yet generated a high number of orders, the proposed development would still lead to a significant increase in the number

of meals being prepared within the host property, and consequently, an increase in odours coming from the kitchen of 108 Mackenzie Way associated with the preparation of most cooked food. Furthermore, there is no clear mechanism to control the size or growth of the business in order to limit its effects on neighbouring occupiers.

14. Although the kitchen has been fitted out to a professional standard, I do not have any evidence before me that leads me to believe that the existing extraction system would adequately reduce the impact of the additional meals being prepared on the occupiers of nearby properties. Therefore, and particularly considering the mid terrace position of the appeal site, I find that the proposal would likely create a significant amount of additional odour which would effect nearby occupiers of residential properties.
15. In addition to odour, the Council has also raised concerns regarding noise and the impact of the proposal on the availability of on-street parking to the detriment of the living conditions of occupiers of nearby properties.
16. I note that the appeal property shares a common front access with 104 and 106 Mackenzie Way. The proposal, as outlined above, would likely lead to an increase in the number of comings and goings from the property. Such an increase in activity would likely generate an increase in the level of noise which, considering the operating times of the proposed use, would likely cause an increase in disturbance to occupiers of nearby properties.
17. Mackenzie Way has a significant amount of street parking available and I have no evidence to show there are specific restrictions in relation to parking along that street. Therefore, and taking into consideration the nature of the business and its size, it appears unlikely that the proposed use would have a significant effect on highway safety as a consequence of parking, even if customers were to visit the premises.
18. I therefore conclude that the proposed development would likely have a harmful impact on the living conditions of nearby residents, in relation to noise, disturbance, and cooking smells, although it is unlikely to have a significant effect as a consequence of parking. Accordingly, in that regard, it would be contrary to Policies CS19 Gravesham Local Plan Core Strategy (2014) which seeks to ensure that new development safeguards the amenity of its occupants and the National Planning Policy Framework.

Other Matters

19. The appellant claims that advice from the Council was not all that could have been and that no discussion regarding its concerns occurred prior to the issue of the refusal notice. Although this is not disputed by the Council, I must nevertheless make my decision based on the planning merits of the appeal, and my decision stands as set out above.

Conclusion

20. For the reasons given above, I conclude that the appeal should be dismissed.

Andre Pinto

INSPECTOR