



Appeal Decision

Site visit made on 27 October 2020

by P B Jarvis BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th January 2021

Appeal Ref: APP/K2230/W/20/3248139

49 London Road, Northfleet, Gravsend DA11 9JR.

- 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 S Singh against the decision of Gravesham Borough Council.
 - The application Ref 20190831, dated 7 August 2019, was refused by notice dated 27 September 2019.
 - The development proposed is the change of use from A3 to A3 with ancillary A5 use and provision of delivery service.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issues are the effect on (a) the living conditions of the occupiers of nearby residential properties and (b) highway safety.

Reasons

3. The appeal site is located on the corner of London Road and Burnaby Road. London Road is a busy main road and the area in which the appeal site is located is predominantly residential though the appeal premises is one of a small number of commercial properties, which includes a convenience store to the east of the site. A bus layby adjoins to the front of the appeal site with on street parking otherwise restricted to permit holders only albeit with limited parking for up to 2 hours permitted during the hours of 8am and 6.30 pm with no return permitted within 2 hours. Burnaby Road is residential in character comprising turn of the century terraced properties with limited off-street parking. It is subject to the same parking restrictions as above and at the time of my site visit, all these on street parking areas were heavily used.
4. No. 49 London Road comprises a ground floor café / restaurant with separate residential flat above. It was granted permission for A3 use on the ground floor with two bed flat above in 2010. To the rear of the premises is a parking area for two cars with vehicular access off Burnaby Road. The information provided indicates that both these spaces are used in connection with the flat. Nos. 50 and 51 which adjoin the appeal site to the east are both residential properties and together with the appeal site comprise a short terrace.

Living conditions

5. The proposal has the potential to result in increased noise and disturbance arising mainly from additional activity in the evenings associated with the collection and delivery of take-aways. The increased use of the extractor fan at

the rear of the premises would also be likely to have an impact. In this context I note that the appeal proposal seeks an extension of the hours of use of the premises, to allow it to open from 11.00 hrs to 23.00 hrs every day, whereas the existing use operates 12.00hrs to 21.00hrs Monday to Friday and 12.00 to 22.00hrs Saturday, Sundays and Bank Holidays.

6. The appellant has provided a noise assessment which concludes in terms of patron activity that the associated sound emissions are at the low end of the barely perceptible, minor impact range, falling on the boundary between the 'lowest observed adverse effect level' and the 'no observed effect level' as defined in the National Planning Practice Guidance (PPG).
7. The Council has queried the findings of the noise assessment, particularly with regard to the identified nearest 'residential receptor', noted as No. 51, the residential property at the other end of the terrace of three. However, information contained in the report, including the site location plan at figure 1 and patron activity noise map at figure 3, identifies the adjoining mid-terrace property at No. 50, and it seems to me that the reference to No. 51 within the report may be because '51' is the number that appears on the plan.
8. Notwithstanding the above, I have been unable to find any reference to the flat above the premises, and in this respect, the report may not have fully assessed the impacts on it. The patron activity noise map shows that in the evening there will be increased noise levels immediately to the front of the building, which is directly below a window serving the flat above but there does not appear to be any assessment of that potential impact.
9. An assessment of the mechanical ventilation is undertaken in the noise report and this concludes that the operational impacts are likely to have a low impact. However, this relates to the residential noise sensitive receiver which is described as being 4 metres from the grille of the extract system to the rear whereas a first floor window to the flat is closer to the extract ducting. As with the above, it is unclear if the impacts of the increased hours of use of the extractor, particularly the increased late evening use, have been fully assessed.
10. The other matter of note in this respect is that the report was undertaken in 2018 when the extractor was not in place, so various assumptions were made to assess its impact, albeit based on what appears to be detailed information regarding the system that was approved. Therefore, it is unclear if those assumptions are still valid given that the extractor is now installed.
11. Overall, I am not satisfied that the noise impacts of the proposed uses have been adequately assessed in order to demonstrate compliance with Policy CS19 of the Gravesham Local Plan Core Strategy (2014) (CS) and Policy S7 of the Gravesham Local Plan First Review (1994) (LPR) which seek to ensure that such proposals safeguard the amenity of the occupants of neighbouring properties from adverse environmental impacts such as noise.

Highway safety

12. I concur with the Council's concerns in this respect which relate to the potential for unauthorised parking in the nearby roads associated with the take-away use, particularly in the evening when, given the current parking restrictions mean that there would effectively be no available parking spaces near to the premises. This would in turn be likely to result in vehicles parking illegally on

double yellow lines or in spaces that are for permit holders only. Whilst the unauthorised use of 'permit only' parking spaces would be a matter for separate control, the parking of vehicles on double yellow lines in the vicinity of and around the junction of London Road and Burnaby Road could restrict visibility and otherwise would cause highway safety issues. This would be the case for both customers and delivery vehicles.

13. The appellant refers to the possibility of widening the existing crossover onto Burnaby Road to the rear of the site and additional on-site parking provided. Following my site inspection, it seems to me that there is little room to provide any more parking spaces than the two spaces that currently exist and which as I have noted above, are associated with the flat above the appeal premises. In addition, there are buildings located right on the boundary of the pavement edge either side of the existing access. Whilst the existing walls could be removed, these buildings effectively limit the amount by which the access could be widened whilst maintaining adequate visibility splays.
14. I note that this matter was referred to by the Inspector in the previous appeal decision in 2012¹ which relates to a change of use to hot food take-away. However, that appears to be in respect of enabling a better solution to the on-site parking that existed, rather than providing a solution to the problem of customer parking arising from the proposed change of use given that he concluded that there would remain adverse impacts on highway safety.
15. The appellant also suggests that it would be possible to fully assess the parking and highway impacts as part of a temporary permission. However, given my findings above in respect of the noise assessment, I am not convinced that it would be appropriate to allow a temporary permission in this instance.
16. I therefore conclude that the proposal would result in harm to highway safety and would thereby conflict with CS Policy CS11 and LPR S7 which seek to ensure that proposals mitigate their impact on the highway network and that there is sufficient parking to avoid adverse impacts on highway safety.

Other matters

17. The appellant emphasises the benefits to the local area of a take-away and delivery facility and I accept that this could have some beneficial impacts, particularly during the current circumstances. I also acknowledge that the introduction of a delivery service could serve to minimise the number of customers coming to the site, but even if there was a restriction to delivery only, this would not fully address the highway safety concerns raised above.
18. Whilst the National Planning Policy Framework emphasises the significance of economic benefits, these and other factors do not outweigh the harm identified nor lead me to alter my conclusions set out above.

Conclusions

19. I therefore conclude that this appeal should be dismissed.

P Jarvis

INSPECTOR

¹ APP/K2230/A/12/2183180