



Appeal Decision

Site visit made on 20 January 2021

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

an Inspector appointed by the Secretary of State

Decision date: 10 February 2021

Appeal Ref: APP/M4320/W/20/3261975
119 Brownmoor Lane, Crosby L23 9SE

- 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 Ibrahim Bilir against the decision of Sefton Council.
 - The application Ref DC/2020/01537, dated 11 August 2020, was refused by notice dated 7 October 2020.
 - The development proposed is described as the change of use to a takeaway restaurant.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed development would harm the character, vitality and viability of the shopping parade and the health of the residents of the local area.

Reasons

3. The site subject to this appeal is the end property in a short parade of 10 units located on the corner of Brownmoor Lane and Forefield Lane in Crosby. The property is currently trading as an off-licence.
4. The proposed development comprises the change of use of the premises from an off-licence (Use Class E(a)) to a hot food takeaway (sui generis).
5. The Council's policy on the development of hot food takeaways is set out in a Supplementary Planning Document 'The Control of Hot Food Takeaways and Betting Shops' 2017 ('the SPD'). The purpose of the SPD is to give effect to the Policies EQ1 and EQ10 of A Local Plan for Sefton: Sefton 2030 2017 ('the LP') which address matters including hot food takeaways. Since the SPD has been subject to public consultation and has been adopted relatively recently significant weight is attached to its contents.
6. Hot food takeaways generally sell food that is energy dense, relatively low cost and has little nutritional value. Excessive consumption of this type of food can contribute towards child and adult obesity. Levels of child and adult obesity in the Borough are high. The SPD states that nearly 69% of adults within the Borough are overweight.
7. The Council is seeking to improve the overall level of health and well-being of the resident population and to reduce the gap between the healthy and the

- unhealthy. The number of hot food takeaways in a ward is quite closely correlated to indicators of social and economic deprivation.
8. Clusters of hot food takeaways can also be associated with gatherings of youths and possible anti-social behaviour. This can be harmful to the character, vitality and the viability of the neighbouring retail units if it results in consumers feeling unsafe.
 9. To reduce the potential problems arising from clustering the Council seeks to limit the number of hot food takeaways in a parade of 10 shops or fewer to one ('the 10% policy').
 10. The proposed development would sell Italian food including pasta-based meals and high-quality pizzas. It would be adjacent to a Chinese Takeaway. Whilst takeaway Italian food and takeaway Chinese food are obviously very different in type, for the purposes of the Use Classes Regulations the respective units selling these items would both be defined as a hot food takeaway since consumption of the food is undertaken mainly off the premises¹. As such they would be 'sui generis' or of a unique category.
 11. The Appellant already operates a large Italian restaurant in Waterloo known as Nicholas Restaurant which has 150 covers and employs 15 people. The Appellant has built up a good reputation in the local area.
 12. The proposed development would result in there being 2 hot food takeaways within the Parade. It is understood that Rachel's Deli further along the parade also sells hot food until late at night to consume off the premises although this appears to be ancillary to the principal business operation.
 13. None of the premises within the parade are vacant. Most of the traders would appear to serve local needs. There is no indication that the parade is not vital and vibrant.
 14. It is understood that the site lies within the Manor ward in Sefton. Much of the ward has a high level of deprivation. Nonetheless, the level of hot food takeaway provision within the ward at 2017 was 0.2 units per 1000 people compared to an average across Sefton of 0.8 units per 1000 people. However, the Brownmoor Lane area is quite close to a concentration of such uses in the adjacent Victoria ward. The SPD does not provide obesity data at a ward level.
 15. The 10% policy is intended to protect the character of the area by limiting the number of hot food takeaways and helping to maintain the vitality and viability of the shopping centre. At present the policy seems to be effective as regards the vitality and viability of the Brownmoor Lane parade. The addition of an extra hot food takeaway could prejudice this situation by encouraging greater gatherings of youths and so undermine the vitality and viability of the parade.
 16. The 10% policy is also intended to protect human health. Levels of hot food takeaway provision in the ward were not as high in 2017 as many other areas within Sefton. Nevertheless, the overall level of provision across Sefton is significant and thus the Borough-wide average level of 0.8 units per 1000 people should not be regarded as an acceptable benchmark level.

¹ SI No 2020:757 Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

17. For these reasons the proposed development would harm the character, vitality and viability of the shopping parade and the health of the local residents.
18. Consequently, the proposal would fail to accord with Policies EQ1 and EQ10 of the LP which seek to ensure, respectively, that hot food takeaways are appropriately located and that proposals for such uses do not harm local character and do not lead to unacceptable groupings of similar uses that would undermine the vitality and viability of the shopping parade.
19. Furthermore, it would also be contrary to the advice set out in the SPD that no more than 10% of the units in a parade of 10 units or less should be used as hot food takeaways. Finally, it would fail to conform with the advice in Paragraph 91c of the National Planning Policy Framework ('the Framework') which seeks to help people achieve healthier lifestyles and access healthier food.

Other Matters

20. The proposed development would create 5-6 new jobs. Although this must be set against the loss of jobs from the existing shop it is likely that the overall effect would be a net-gain.

Planning Balance and Conclusion

21. The development proposal would help create new jobs which is a planning benefit. However, it would conflict with fundamental objectives of the LP, the SPD and the Framework. These considerations clearly outweigh those attaching to the possible employment benefits of the proposal.
22. For the reasons set out above the appeal should be dismissed.

William Walton

INSPECTOR