



Appeal Decision

Site Visit made on 9 February 2021

by L Nurser BA(Hons) Dip UP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2021

Appeal Ref: APP/W4325/W/20/3263638

106 Church Road, Tranmere, BIRKENHEAD, CH42 0LJ

- 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 Gous Ahmed against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/20/00978, dated 19 July 2020, was refused by notice dated 9 November 2020.
 - The development proposed is proposed change of use from retail to hot food takeaway and external flue.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposed development would result in a change of use to a hot food takeaway. I note that there is some dispute as to the extant use of the appeal site. However, this is of no relevance to my determination of the appeal as following the recent changes to the Use Classes Order, a hot food takeaway as set out in the description of the development, is to be considered sui generis. Therefore, irrespective of the previous use, planning permission would be required.
3. The appellant has offered to reduce the proposed opening hours from 16:00 to 23:59 to 16:00 to 22:50 every day. Following the Wednesbury principles, no one would be prejudiced by my determining the appeal before me on this basis.

Main Issue

4. The appeal site lies within a small shopping parade within a primarily residential area. The main issue is the effect of the proposed development on the living conditions of nearby residents in relation to noise and disturbance.

Reasons

Living conditions

5. I have been referred to both Saved Policies HS15 Non-Residential Uses in Primarily Residential Areas, and SH4: Small Shopping Centres and Parades, within the Wirral Unitary Development Plan, adopted 2000. Since the plan was adopted there have been a number of changes to the Town and Country Planning (Use Classes) Order 1987, in relation to the use of premises as hot food takeaways. Nonetheless, both saved policies have a clear objective which remains relevant and consistent with the policies of the Framework, that

changes of use within primarily residential areas, such as to a hot food takeaway, should not lead to an adverse impact on the living conditions of nearby residents, as a result of noise and disturbance.

6. There are a number of other established hot food businesses within the parade of shops, as well as Milano's which I understand to have planning permission as a café¹, albeit with late opening hours. Of these, it appears that only the unit from which Milano's operates, has been granted planning permission after the Council adopted the Supplementary Planning Document 3 (SPD3) Hot Food Takeaways, Restaurants, Cafes and Drinking Establishments, in October 2006, which sets out guidance to interpret the relevant development plan policies, with particular reference to what could be considered to be a reasonable distance to the nearest dwelling or block of flats.
7. I have been provided with detailed background evidence relating to the genesis of the SPD. The SPD has been consulted upon, and adopted, and there is nothing before me to suggest that I should not treat it as a useful tool in interpreting the relevant policies of the development plan. However, I accept that the SPD should not be determinative, and the 40 m distance should be considered no more than a guide to what is likely to be an acceptable gap between residential properties and proposed uses, such as the hot food takeaway, the subject of the appeal.
8. It is not the function of the planning system to prevent competition. However, within a primarily residential area, such as this, which not only has dense concentrations of housing in the side streets, but includes living accommodation above shops. The cumulative impact of a cluster of late night uses can exacerbate noise and disturbance. This can include from people spilling out into the streets, collecting food by foot, and people opening and shutting car doors as they collect their orders late into the night, with a subsequent adverse impact on living conditions of those living nearby.
9. I am aware that the Highway Authority raised no issue to the proposed change of use. However, it is no part of the Council's case that there is a highway safety issue. Nonetheless, whilst I noted that there was on street parking to serve the parade of shops, I expect that those picking up food from the proposed take away would be likely to park as close as possible to the proposed takeaway. This would include outside houses, on the nearby residential side streets such as Tower Hill which would provide a convenient place to briefly park. The subsequent additional noise and disturbance as set out above, would have an adverse impact on the living conditions of residents in the housing closest to Church Road.
10. The appellant has referred me to a lack of objections from those living in the nearby properties referred to by the Council within its Statement of Case. However, there are many reasons why people may or may not make representations to planning applications, or complain about an existing use, and an absence of objection does not of necessity mean that I should discount whether adverse harm would ensue. Moreover, as the appellant has stated, and I agree, the 40 m guideline is not an arbitrary zone within which I should consider that living conditions could be affected by noise and disturbance and outside of which that it could not.

¹ APP/2007/6578

11. The fact that there are a number of existing night time economy businesses operating within the parade of shops, and that there are a couple of public houses nearby, does not, in itself, mean that additional late night uses are appropriate within a primarily residential area. The adopted saved policies require that the living conditions of nearby residents should not be adversely affected by noise and disturbance. Whilst I am aware that the appellant has offered to reduce his opening hours, I consider that the proposed opening hours closing at 22:50, would not be sufficiently early, given that at this time of night many people living nearby would be going to, or already in bed, and would reasonably expect that they should not be disturbed by unavoidable and intermittent noise.
12. Therefore, based on the evidence before me, I conclude that the proposed development would be inconsistent with the detailed guidance set out within SPD 3. It would also be contrary to saved Policies H15 and SH4 of the UDP. These remain broadly consistent with the policies of the Framework that planning decisions should create a high standard of amenity for both existing and future residents. As such, I conclude that the appeal should be dismissed.

Other Matters

13. The appellant sets out that under Class E of the Use Classes Order that it would be possible to operate as a café or sandwich shop, and then take advantage of the temporary Coronavirus Regulations to operate as a takeaway. That may be the case, however, I have determined the appeal on the basis of what has been applied for as the permanent use of the property.
14. In coming to this conclusion, I have been aware of the apparent inconsistencies in the Council's decision making². However, I do not have the details of the case before me to enable me to draw any substantive conclusion.
15. I have taken into account the letters in support of the proposed change of use. Nonetheless, irrespective of the personal qualities of the appellant, the positive contribution which the proposed take away service may make to the range of food available locally, and the limited economic benefits to the area, through the creation of jobs for those working at the takeaway, these do not outweigh the harm which I have identified above.
16. I accept that matters of competition are not relevant to the planning merits of the appeal before me. I note the appellant questions whether Milano's, which lies on the other side of Church Road within the same parade of shop units as the appeal property, benefits from planning permission as a takeaway. However, this is something which is not before me, and even if it is the case that it does not, it does not undermine my conclusion set out above.

Conclusion

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

L Nurser BA (Hons) Dip UP MRTPI

INSPECTOR

² APP/10/0945

