



Appeal Decision

Site Visit made on 18 February 2021

by A Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2021

Appeal Ref: APP/W4705/W/20/3263056

7 Duckworth Lane, Bradford BD9 5ER

- 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 M Y Shahzad against the decision of City of Bradford Metropolitan District Council.
 - The undated application Ref 20/01147/FUL, was refused by notice dated 26 May 2020.
 - The development proposed is change of use from A2 office to A5 hot food takeaway and installation of external flue.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Town and Country Planning (Use Classes) (Amendment)(England) Regulations 2020 came into force on the 1 September 2020 and has significantly amended aspects of the previous system of use classes. Under the new system, Class A has been revoked and a new Class E has been created which incorporates several of the previous use classes, including financial and professional services (Class A2). Hot food takeaways (formerly Class A5) no longer fall within any use class and become 'sui generis'. However, as the application was submitted before the new regulations came into force, it must be determined in accordance with reference to the previous Use Classes Order.

Main Issues

3. The main issues are the effect of the proposal on (i) the living conditions of occupiers of nearby residential properties with particular regard to noise and refuse storage; (ii) highway safety on Duckworth Lane; and (iii) the character and appearance of the area.

Reasons

Living conditions

4. The appeal site occupies a mid-terrace position within a parade of shops and offices, with two storeys of residential accommodation above. To the rear is a small yard that backs onto a service road between Durham Road and Upper Woodlands Road.
5. The proposal is for change of use of the ground floor unit to a hot food takeaway. The application form indicates that opening hours would be from 1100 until 2300 every day.

6. Having regard to the Council's Environmental Health Section comments, the development would require mechanical extraction and odour neutralisation equipment. As the extraction ducting shown on the drawings would pass close to windows of the residential accommodation above, and is likely to be physically attached to its walls, there is potential for both breakout and structure-borne noise arising from the operation of extraction equipment over a long period of the day and late at night.
7. The Council has produced a Hot Food Takeaways Supplementary Planning Document 2014 (SPD), which makes it clear that a balance is needed between the provision of hot food takeaways and the need to protect the living conditions of residents living adjacent to or near such establishments. Specifically, Principle 6 advises that the extraction system should avoid close proximity to residential windows, and should be acoustically insulated so that noise from the system does not exceed the existing background noise level as measured at the nearest residential property.
8. The appellant contends that the extraction system would not have any impact because of the use of special filters and the absence of extractor fans. However, no technical information, such as specification of the equipment and noise assessment data, has been provided to support this assertion. In the absence of such information, the proximity of the extraction equipment to the residential accommodation above the unit would result in a significant increase in noise and disturbance for those occupiers, notwithstanding the mixed use character of the area. Furthermore, as I have no substantive evidence to indicate that suitable mitigation could be achieved, it would not be appropriate to leave such matters entirely to conditions.
9. I give little weight to the current ownership of the flat above the unit as both ownership and occupation can change. One of the important objectives in paragraph 127(f) of the National Planning Policy Framework (the Framework) is to secure a high standard of amenity for all existing and future users.
10. The Council has also raised concerns in relation to the waste storage and servicing arrangements. Principle 7 of the SPD requires applications to be accompanied by details of the design and siting of waste storage facilities. Whilst only limited details are provided, there is no indication that there is insufficient space for bin storage within the enclosed rear yard. In addition, the appellant explains that commercial servicing arrangements from the rear lane would be unchanged. The specific details of the type and size of the bins required are relatively minor matters that could be secured by conditions. However, this does not alter or outweigh my concerns regarding the extraction system.
11. Drawing these matters together, I conclude, on this issue, that the proposal would have harmful implications for the living conditions of the occupiers of nearby residential properties, with particular regard to noise associated with the extraction equipment. This is contrary to Policy DS5 of Bradford's Core Strategy Development Plan Document 2017 (CS), which requires, among other things, that development does not harm the amenity of existing or prospective users and residents. It is also contrary to the objectives of the SPD to ensure that hot food takeaways do not have an unacceptable impact on the amenity of neighbouring occupiers.

Highway safety

12. The appeal premises fronts onto the busy 'roundabout' intersection of Duckworth Lane with the B6144. The Council advises that it is a main route to the nearby Hospital and is therefore busy at all times. There are two one-way lanes of traffic at this point. The lane closest to the appeal premises is reserved for traffic turning left onto Duckworth Lane. Parking and waiting restrictions are in place outside the premises and there is no other dedicated parking provision for the unit.
13. Principle 3 of the SPD states that the impact of hot food takeaways on traffic flow and road safety is an important consideration as they tend to attract a high proportion of car borne and short stay customers, often in locations where there is limited parking provision. Among other things, regard will be given to the availability of public parking provision close to the premises for customers and delivery vehicles.
14. The appellant contends that the takeaway would function mainly through delivery by one driver with a small vehicle. However, I am required to be mindful of the proposal over its lifetime and there could be no guarantee that future operators would operate in the same manner. Furthermore, whilst I acknowledge the increased use of takeaway delivery generally, customers do often still have the choice of whether to pick up their order. There is also likely to be some drop-in trade.
15. Not every customer would visit by vehicle. Nevertheless, those who do would be reliant on finding parking in the surrounding area, as would any delivery drivers. When I visited the area on a weekday, on-street parking along Durham Road and Upper Woodlands Road was near to capacity, as were the on-street spaces further along Duckworth Lane. Although it represents a snapshot, I have not been provided with any evidence, such as a parking survey, to demonstrate this situation to be unusual. Some of the parking is likely to have been associated with daytime commercial uses and would not therefore be present outside of normal retail hours. However, there are other commercial uses that operate into the evenings and the high density residential nature of the side streets means that there is still likely to be high demand for on-street parking during the evening and at weekends. As such, it is likely that parking for both customers and delivery drivers would not always be readily available close to the premises.
16. Even if some customers would be content with parking further away, not everyone would be, especially if they are just collecting an order. Similarly, I am not convinced that delivery drivers would in practice always park away from the premises, especially when orders are at their greatest and need a quick turnaround. I concur with the Council and Highway Authority that people tend to park as close as possible to their destination and that Duckworth Lane in front of the premises would be the most likely location for this to take place. This would in turn be likely to result in vehicles either parking illegally on Duckworth Lane during restricted times; on the pavement; or otherwise leading to stationary vehicles causing obstruction to the free flow of traffic at a crucial point where traffic needs to adhere to the correct lane at this busy 'roundabout' location.
17. In reaching my conclusion, I am mindful that any illegal parking would be a matter for separate control. Nonetheless, in my judgement, the typical short

duration of parking associated with a takeaway use would make effective enforcement difficult, such that other controls could not always be relied on to address the potential highway safety issues outside the site. Indeed, during my site visit I witnessed multiple occurrences of vehicles pulling up onto the pavement outside other food outlets on Duckworth Lane, despite the presence of double yellow lines in front of those premises.

18. I therefore conclude, on this issue, that the proposal would lead to unacceptable impacts in terms of highway safety on Duckworth Lane and would thereby conflict with Principle 3 of the SPD, and also Framework paragraph 109 in this regard.

Character and appearance

19. The extraction ducting would be mounted on the rear elevation where nearly all of the properties have metal staircases. However, these terminate at first floor level. The drawings indicate that the ducting would project even higher than the roof. This would be prominent given the upper half of this building is largely free of other mounted equipment. Furthermore, despite facing the rear service lane, the ducting would be clearly visible from Upper Woodlands Road and to a lesser extent from Durham Road. Even if the ducting was painted black, it would not subtly amalgamate with other fittings at the rear of the building due to its height, width, and visual prominence.
20. The appellant has drawn my attention to other flue ducts in the area. I agree that they are large and prominent, and in my view, also detracting features. However, they are not seen in the immediate context of the rear of the appeal site. Nor do they appear to project as high in relation to the host building compared to the proposal. In any event, the presence of other apparently similar development is not a reason, on its own, to allow otherwise unacceptable development. I am required to consider the appeal on its own merits, and have done so.
21. I therefore conclude, on this issue, that the development would be visually incongruous and obtrusive in appearance, and thus, would be harmful to the character and appearance of the area. This would be contrary to CS Policies DS1 and DS3, which, among other things, require that development is well designed and should make a positive contribution to the streetscape and the character of the area in which it is situated.

Other Matters

22. I have no reason to doubt that food outlets are well demanded in the area and I note from the application form that new jobs would be created. While I have had regard to these benefits, they do not outweigh the harm that I have found in respect of the main issues.

Conclusion

23. The proposal would conflict with the development plan as a whole and there are no material considerations that would outweigh that conflict. Therefore, for the reasons given, the appeal should be dismissed.

A Caines

INSPECTOR