



Appeal Decision

Site visit made on 9 February 2021

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2021

Appeal Ref: APP/X1355/W/20/3262996

3 Ash Terrace, Durham Road, Bowburn DH6 5AS

- 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 Burak Tosun of Mold Consultancy LTD against the decision of Durham County Council.
 - The application Ref DM/20/02302/FPA, dated 18 August 2020, was refused by notice dated 27 October 2020.
 - The development proposed is change of use of property to hot food takeaway.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. There is some variation in the description of the proposed development. I have taken the description in the banner heading above from the Council's decision notice as I consider that this accurately reflects the proposal.
3. On the appeal form, the appellant indicates that I would not be able to see the appeal site sufficiently to judge the proposal from public land. However, I was able to view the appeal site from the public realm sufficiently to enable me to consider this appeal.

Main Issue

4. The main issue in this appeal is the effect on the living conditions of nearby residents with regards to odour, noise and disturbance.

Reasons

5. The appeal site is part of a terrace, and is directly adjacent to a pharmacy and a dwelling within the terrace. There are also residential properties located across a lane to the rear. The evidence suggests that the property has previously been used as a café/sandwich shop and a tanning salon, although the Council states that no consent is in place for these previous uses. Whilst there are some commercial and other uses in the vicinity, the area of the appeal site is predominantly residential in character.
6. Due to the close-knit relationship with nearby residential properties, there is a significant possibility that nearby residents would be affected by cooking odours from the appeal proposal. The appellant has provided details of an odour extraction system including a flue discharging above the eaves of the

roof. However, despite the technical nature of the evidence provided, it is not clearly set out whether this would sufficiently address cooking odours in respect of the close proximity of residential uses. The comments from the Council's Nuisance Action Team with regard to potential odours associated with bin storage are also well founded, and the appellant has not provided substantive evidence to address these concerns.

7. The extraction system may also generate noise which would be detrimental to the living conditions of nearby residents. Whilst some evidence has been provided in respect of an acoustic silencer, this does not address the noise environment of the area and whether noise issues would be suitably mitigated. In any event, details in respect of the silencer do not address the potential for noise from activities within the appeal premises to pass through the wall with the immediately adjoining dwelling. As I have no substantive evidence to indicate that suitable noise mitigation could be achieved, it would not be appropriate to address such matters by condition.
8. The proposal would also lead to customers visiting the premises to collect food, with a resultant increase in comings and goings to the premises, particularly in the evening. This would lead to unacceptable levels of noise and disturbance from customers and traffic movements in this predominantly residential area, where activity in the evening will generally be reduced. Although collection times may be managed by the staff at the premises, this would not address the inherent problems of noise and disturbance arising from customers accessing the takeaway in the evening.
9. The appellant refers to his intention to serve healthy Mediterranean food. However, it would not be possible to enforce this by planning condition and the nature of food served from the premises may therefore change over time. The proposal would add to the facilities in this area, but this benefit would not outweigh the significant harm I have identified.
10. I therefore conclude that the proposal would lead to significant harm to the living conditions of nearby residents due to odour, noise and disturbance. The proposal would therefore be contrary to policy 30 of the County Durham Local Plan 2020 in respect of amenity. The proposal would also be contrary to the National Planning Policy Framework in respect of providing a high standard of amenity for existing and future users of properties.
11. For the reasons given above, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR