



Appeal Decision

Site visit made on 9 February 2021 by Ifeanyi Chukwujekwu BSc MSc MIEMA CEnv AssocRTPI

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2021

Appeal Ref: APP/W0734/W/20/3262962

283 Linthorpe Road, Middlesbrough TS1 4AS

- 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 Dr Mubashar Ahmad against the decision of Middlesbrough Council.
 - The application Ref 20/0257/COU, dated 12 May 2020, was refused by notice dated 16 September 2020.
 - The development proposed is change of use of ground floor from A1 to A3/A5.
-

Decision

1. The appeal is allowed, and planning permission is granted for change of use of ground floor from A1 to A3/A5 at 283 Linthorpe Road, Middlesbrough TS1 4AS in accordance with the terms of the application, 20/0257/COU, dated 12 May 2020, subject to the conditions in the attached schedule.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issues

3. The effect of the proposal upon 1) safe and efficient operation of the highway; and 2) living conditions of residents of the upper floors of nos. 281 and 285 Linthorpe Road with regards to odour, noise and disturbance.

Reasons for the Recommendation

Highway safety and parking

4. No. 283 is a mid-terraced two-storey property located on Linthorpe Road, which is a busy commercial road within the Middlesbrough town centre. At ground floor level, the road contains a mix of retail, restaurants, bars and other services and it is clearly a popular area for retail, nightlife, eating and socialising. Thus, the mix of uses already generates a considerable volume of traffic throughout the day and into the evening period.
5. The Council contends that the proposed use as restaurant/hot food takeaway would potentially result in generation of more traffic and demand for parking than the existing use as a retail store. Whilst I recognise that a take-away may result in journeys at different times of day than a retail outlet, there is no

evidence to show that a change of use would result in an increase in the overall level traffic generated when compared to the existing use.

6. Furthermore, Linthorpe Road is a main bus route and the appeal property is within walking distance of the bus and train station, which increases the likelihood that people visiting the site will use public transport, as part of a wider shopping trip or evening out. Where the need arises, it is also within walking distance of several public car parks, and there are metered parking bays along the front of the property. No evidence has been submitted to demonstrate that there is a shortage of parking in the area or that there are any highway safety issues as a result.
7. I find that the proposed change of use of ground floor from A1 to A3/A5 would not have a negative effect upon safe access to the site and neighbouring properties on Linthorpe Road. Having regard to the existing and proposed use, and the nature of Linthorpe Road, I am satisfied that a restaurant/hot food takeaway can operate without causing undue harm to highway safety. Accordingly, the proposal complies with the National Planning Policy Framework (NPPF) and Policy DC1 of Middlesbrough's Local Development Framework Core Strategy (2008) (the 'CS').
8. These seek amongst other things to ensure that proposals for development have a limited impact upon the capacity of existing and proposed transportation infrastructure both during and after completion, with no impact on highway safety.

Living conditions of neighbouring properties

9. The Council's objection is a generalised concern as to the increased noise and disturbance from the use as a restaurant/hot food takeaway; there is no specific evidence of either noise matters or antisocial behaviour before me. Furthermore, opening hours could be restricted by condition to 1000-2300 hours and the appellant is happy to comply with such a condition. These hours of operation would reduce the potential for noise or antisocial behaviour and mean the area will not be used for late night dining or result in people congregating outside in the early hours of the morning.
10. There is also no compelling evidence that any potential increase in the noise levels generated through additional customers utilising the appeal premises and traffic movements would unacceptably interfere with the occupants of upper floors of nos. 281 and 285 peaceful enjoyment of their home overall. With the level of ambient noise in the area, arising from the range of existing uses, I am not persuaded that there would be an unacceptably adverse effect on their living conditions with regards to noise and disturbance. The information provided indicates that planning permission was granted in 2020 to convert the upper floors of the unit into residential use. That permission was subject to a noise assessment condition to ensure that the conversion took account of the impact of surrounding uses.
11. Additionally, a condition has been suggested by the Council's Environmental Protection officer which requires that a noise assessment be submitted prior to commencement of the proposed development. This would include noise mitigation measures to ensure that the impact in terms of noise to the neighbouring properties is considered and adequately mitigated. I recognise that such a condition could not limit noise from customers visiting the

premises, but it would ensure that noise from fixed plant and activities within the building takes account of the residential use above. In combination with the limitation on the hours of opening and conditions limiting the times at which deliveries and refuse collection can take place, I am satisfied that any impact in terms of noise can be adequately mitigated.

12. Similarly, a condition which requires that specific details of the fume extraction equipment and the odour control measures to be submitted to and approved by the Local Planning Authority prior to commencement of the proposal can be applied. I note that some technical details in that regard appear to have been submitted at the application stage and the response from the Environmental Health Officer (EHO) appeared to indicate that the details were acceptable. However, both parties have agreed a condition to secure further details in that respect and, subject to such a condition and having regard to the comments of the EHO, I am satisfied any impact on the neighbouring premises with regards to odour can be adequately mitigated.
13. Thus, subject to conditions, I find that proposal would not have a negative effect on the living conditions of occupants of nos.281 and 285 Linthorpe Road with regard to odour, noise and disturbance and find no conflict with the National Planning Policy Framework (NPPF) and policy DC1 of the CS which seek amongst other things that new development have a minimal effect upon the environment and amenities of nearby properties both during and after completion.

Conditions

14. The appellant has stated that they are happy to accept the conditions put forward by the Council and I have attached those which meet the relevant tests, as set out at paragraph 55 of the National Planning Policy Framework, making changes to the wording, where necessary, in the interests of precision and clarity.
15. The standard time limit condition has been imposed along with a condition specifying the relevant drawings as this provides certainty.
16. In the interests of the amenity of the neighbouring premises and to accord with Core Strategy Policy DC1, a condition which require a noise assessment which includes noise mitigation measures; as well as a condition which requires that specific details of the fume extraction equipment and the odour control measures be submitted prior to commencement of the proposed development.
17. In order to mitigate against noise and disturbance, a condition restricting hours of opening, as well as another restricting hour of delivery and waste collection at the rear of the premises have been applied. A condition which would ensure that refuse/recycling store is provided in accordance with submitted drawing prior to occupation of the premises has also been applied in the interests of amenity and to safeguard the character and appearance of the area.

Conclusion and Recommendation

18. For the reasons given above and having had regard to evidence before me, I recommend that the appeal should be allowed.

Ifeanyi Chukwujekwu

APPEALS PLANNING OFFICER

Inspector's Decision

19. I have considered all the submitted evidence and the Appeal Planning Officer's report, and on that basis, I agree that the appeal should be allowed, subject to the conditions set out in the attached schedule.

Chris Preston

INSPECTOR

Schedule 1 - Conditions

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.
2. The development hereby approved shall be carried out in complete accordance with the following plans : Location plan (Drawing No. 1896-20-100), Existing plans and elevation (Drawing No. 1896-20-101) and Proposed plans and elevation (Drawing No. 1896-20-102 REV C).
3. Prior to occupation and commencement of the use hereby permitted, a BS: 4142 noise assessment shall be submitted to and approved in writing by the Local Planning Authority. The assessment shall identify noise levels at the site along with the noise which will be generated at the development and its impact upon neighbouring premises. The assessment should identify noise from sources such as deliveries being made and noise from fixed plant and machinery at the development. The assessment should include details of any measures identified to protect neighbouring premises from noise.
4. Any measures identified in the assessment to protect residents from noise generated due to the use of the site should be implemented before the use of the development commences.
5. Before the use hereby permitted takes place, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme that shall first be submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with the approved scheme and retained for so long as the use continues.
6. Before the use hereby permitted takes place, an odour and particulate impact assessment which has been undertaken by a competent and suitably experienced, specialist air quality or odour consultant shall be submitted to and approved in writing by the Local Planning Authority. The assessment shall identify the impact of cooking odours and grease released to the air from the premises and detail methods to control them to prevent harm to the amenity. The report shall be carried out in accordance with the EMAQ guidance 'Control of Odour and Noise from Commercial Kitchen Exhaust Systems' 2018 or an alternative appropriate assessment tool agreed in advance with the Local planning Authority. The report should include details of the position of internal ventilation extraction canopies, the position and height of the flue outlet and the type of filtration and or odour control units or another fume treatment to be installed. Thereafter, the systems and filtration and odour control units shall be installed and maintained in accordance with the manufacturer's recommendations including the frequency of replacement filters.
7. The take-away shall only be open for business between the following hours: 1000 to 2300 Monday to Sunday.

8. Deliveries and collections to the rear of the premises including waste collection shall only take place between the following hours 0800 to 1900 Monday to Saturday and 0930 to 1830 Sunday and Bank Holidays.
9. The development hereby approved shall not be occupied/brought into use until the refuse/recycling store has been provided in accordance with submitted drawing 1896-20-102 REV C dated 13 July 2020. Prior to the erection of the refuse/ recycling store, details of the external materials shall first be submitted to and approved in writing by the Local Planning Authority. Thereafter the refuse/recycling store shall be retained in perpetuity for the sole purpose of refuse/recycling storage, with the retained bin storage resulting in the A3/A5 use being considered appropriate.