



Appeal Decision

Site Visit made on 7 April 2021 by Hannah Ellison BSc (Hons) MSc MRTPI

Decision by R C Kirby BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2021

Appeal Ref: APP/N4205/W/20/3263236

Rear of 1 Canning Street, Bolton BL1 8EZ

- 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 S Valley against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 08678/20, dated 24 June 2020, was refused by notice dated 9 September 2020.
 - The development proposed is described as 'A5 and base for cooking food for outdoor catering events'.
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Decision

1. The appeal is dismissed.

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.

Preliminary Matters

3. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020 and has significantly amended aspects of the previous system of use classes. The amendments include revoking Class A and a new Class E has been created which incorporates several of the previous use classes. 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 that existed on 31st August 2020.
4. The description of development above is taken from the planning application form. However, a more precise description is that provided in the Council's decision notice as 'Proposed takeaway use and retrospective continued use as base for cooking food for outdoor catering events together with alterations to front elevation and installation of flue'. Although not open at the time of my site visit, it appeared that the premises had been converted to the proposed use. The proposed flue had not been installed. I have determined the appeal accordingly.

Main Issue

5. The effect of the development on the living conditions of nearby residents, with particular regard to odour, noise and disturbance.

Reasons for the Recommendation

6. This appeal concerns a single storey building that is set behind a small forecourt and located adjacent to a nursery and a place of worship (currently under construction). Despite these adjacent uses, the immediate street scene and locality is predominantly residential in character, with dwellings directly opposite the appeal site.
7. The appellant advises that the main activity of the business would be the preparation of hot food for distribution to external events, with an ancillary takeaway service. Both elements of the business would nevertheless involve the preparation and cooking of food which has the potential to cause odours and would therefore require mechanical ventilation.
8. I note the Council's Pollution Control Officer raises no objection to the development. However, no technical details of the ventilation equipment have been provided and I cannot therefore be certain that suitable odour mitigation could be achieved. Nevertheless, even if appropriate odour mitigation could be achieved, an extraction system has the potential to create noise. Therefore, in the absence of technical information and given the close proximity of the appeal site to residential properties, including garden areas where occupiers would not expect invasive noise and smells, there is a high probability that the development has resulted in a significant increase in odours and noise which is likely to have resulted in the enjoyment of the nearby outdoor space being reduced.
9. It is suggested that technical details of any extraction unit could be appropriately covered by a condition. However, no substantive evidence has been provided to indicate that suitable mitigation could be achieved, in terms of both odour and noise. In my experience, it is difficult to eliminate odours completely and it is not unusual for smells to linger in the vicinity of takeaway premises. Thus, such a condition may impose an unrealistic and therefore unreasonable requirement upon the development such that it would nullify the benefit of any permission it was attached to. This would be contrary to the tests set out in paragraph 55 of the National Planning Policy Framework. It would not therefore be appropriate to leave such matters entirely to a condition.
10. Furthermore, the takeaway element of the business would generate activity through vehicular movements and closing of car doors and the comings and goings and general congregating of delivery drivers and in the vicinity of the premises. Moreover, whilst noting the appellant's intentions as to how the business is operated, there is no mechanism before me to prevent customers from collecting their orders themselves, along with the associated activity.
11. This increase in activity in what appears to be a quiet residential street and within close proximity to residential dwellings would likely be above that which would be reasonably expected, particularly in the evening when nearby occupiers would be at home enjoying their properties and gardens. Indeed, it is apparent from several third-party representations that, when the takeaway was operating, neighbours experienced noise and disturbance, amongst other concerns.
12. It is acknowledged that the takeaway service is intended to be ancillary, with customers having to pre-order food. There is no convincing evidence before me

to indicate that this arrangement would address the inherent problems with takeaways in terms of comings and goings of customers, or result in lower customer numbers. I also note that the appellant proposes restricted opening hours. I do not consider this an adequate safeguard given the very close relationship between the appeal site and residential properties, including garden areas opposite which residents would use to sit out and relax and would reasonably expect a degree of peace and quiet throughout the day.

13. I acknowledge that at certain times of the day there may be some background noise and activity associated with the adjacent nursery, and in the future with the place of worship. However, unlike a takeaway, these uses are typically located within residential areas and the associated activity associated would be expected and not unreasonable.
14. Taking all the above into consideration, the development significantly harms the living conditions of nearby residents, contrary to Policy CG4 of Bolton's Core Strategy, Development Plan Document (March 2011) and the Location of Restaurants, Cafes, Public Houses, Bars and Hot Food Takeaways in Urban Areas, Supplementary Planning Document (September 2013) which collectively seek to ensure, amongst other things, that new developments are compatible with surrounding land uses and occupiers and, they should not generate unacceptable nuisance, odours, fumes or noise or adversely affect the living conditions of the occupiers of residential properties.

Other Matters

15. I acknowledge that the development would generate employment however, due to its scale, this economic benefit would be limited and would not therefore outweigh the harm to the living conditions of nearby residents as identified above.

Conclusion and Recommendation

16. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given above, I recommend that the appeal should be dismissed.

H Ellison

APPEAL PLANNING OFFICER

Inspector's Decision

17. 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 dismissed.

RC Kirby

INSPECTOR