



Appeal Decision

Site Visit made on 25 May 2021

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2021

Appeal Ref: APP/C4615/W/21/3268447

87 Tennyson Street, Pensnett DY5 4HY

- 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 Miss Kelly Pooler against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P20/0927, dated 9 June 2020, was refused by notice dated 4 September 2020.
 - The development is new building erected for proposed use of an Indian takeaway.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application
3. At the time of the site visit I noted that the building has been constructed and is operating as a hot food takeaway. The application has been submitted retrospectively and I have dealt with the appeal on this basis.

Main Issues

4. The main issues are:
 - The effect of the development upon the living conditions of existing occupiers with regard to odour, noise and disturbance; and
 - The effect of the development upon highway safety.

Reasons

Living conditions of existing occupiers

5. The appeal site comprises an outbuilding positioned within the rear garden of semi-detached dwelling 87 Tennyson Street which sits on a bend in the road. The surrounding area is wholly residential and despite most properties benefiting from driveways there is demand for on street parking.
6. The hot food takeaway operates from late afternoon until the evening six days a week with no collection service. However, the development still generates additional vehicle movements in the form of delivery vehicles. In particular,

- during the evening and weekends there are additional comings and goings, the sound of car doors slamming, vehicle engines and conversations when existing occupiers would reasonably expect to enjoy the comfort of their surroundings.
7. These activities are intermittent and the uncertain and arbitrary nature of them is likely to be more noticeable resulting in an unacceptable impact on the living conditions of existing occupants in terms of noise and disturbance.
 8. Whilst ventilation and extraction systems can be an efficient means to control odour, based on the limited evidence before me, I am not satisfied that the extractor fan and canopy installed minimise odour to an acceptable level when taking into account the surrounding residential environment. Moreover, the noise emanating from the extraction system for long periods of time and into the evening is likely to create an unacceptable nuisance to nearby residents especially during the summer when occupants have their windows open and are outside more.
 9. The appellant has indicated that they are in the process of adjusting the position of the extraction flue. That said, I have not been furnished with any details and therefore I have not taken this into account in coming to my decision.
 10. I conclude that the development adversely affects the living conditions of existing occupants in relation to odour, noise and disturbance contrary to Policies D2, D5 and D9 of the Dudley Borough Development Strategy (2017) (DBDS) which, amongst other things, seek to resist incompatible development in terms of its environmental impact with surrounding uses; noise generating proposals where a juxtaposition of uses arise and hot food takeaways where there may be a significant adverse impact on residential amenity.

Highway safety

11. The development generates additional vehicle movements and short term parking demand associated with the delivery drivers waiting or collecting orders particularly in the evenings and at weekends. These movements and parking demand differ significantly compared to those associated with a dwelling. At these times levels of on street parking are likely to be higher due to resident parking, despite the presence of driveways.
12. Given the short nature of stays as delivery drivers wait to collect orders it is more likely that, for convenience and to minimise delivery times, they will park on the road rather than use the driveway. This is likely to result in instances of inconsiderate and indiscriminate parking hindering the use of the pavement and road. In my judgement, the adverse impact of the development upon highway safety is likely to be severe.
13. The appellant contends that the takeaway functions through deliveries undertaken by a small number of family members. However, I am required to be mindful of the proposal over its lifetime and there is no guarantee that it would operate in the same manner going forward.
14. As such, I conclude that the development adversely affects highway safety contrary to Policies TRAN2, S17 and D9 of the DBDS which, amongst other things, seek to prevent development proposals that are likely to have significant transport implications; which would have an adverse impact on public or highway safety and require adequate and safe provision for access

and egress by vehicle users, cyclists, pedestrians and other road users. It also conflicts with the National Planning Policy Framework.

Other Matters

15. I note the support of neighbours, but the appeal must be determined on its own planning merits. The absence of litter and the use of pest control and waste services counts neither for nor against the proposal. These matters do not justify a scheme that I have found to be harmful.

Conclusion

16. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR