



Appeal Decision

Site visit made on 1st June 2021 by Ben Phillips BSc MSc MRTPI

Decision by L McKay MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 30 June 2021

Appeal Ref: APP/Z0116/W/21/3267875

100 Newquay Road, Knowle, Bristol BS4 1DS

- 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 J Gill against the decision of Bristol City Council.
 - The application Ref 20/04623/F, dated 3 October 2020, was refused by notice dated 7 December 2020.
 - The development proposed is described as a change of use from vacant off-licence (A1) to a Hot Food Takeaway (Sui Generis).
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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.

Main Issues

3. The main issues in this case are: the effect of the proposal on the living conditions of nearby residents with reference to noise, general disturbance and the risk and fear of crime; and whether the appeal site is an appropriate location for a hot food takeaway with particular regard to health.

Reasons for Recommendation

Living Conditions

4. The application site comprises a central unit of a terrace of 4 traditional two storey buildings, with commercial units on the ground floors making up an undesignated parade of shops, and residential use above. The terrace comprises two vacant units, including the appeal site, a convenience store and a hot food takeaway.
5. Policy DM10 of the Bristol Site Allocations and Development Management Policies Local Plan 2014 (DM) sets out that development of food and drink uses will be acceptable provided they would not harm the character of the area, residential amenity and/or public safety, either individually or cumulatively. The impacts of noise and general disturbance, fumes, smells, litter and late-night activity, including those impacts arising from the use of external areas will also be considered.

6. The National Planning Policy Framework (the Framework) also seeks to ensure that crime and disorder, including the fear of crime, do not undermine the quality of life or community cohesion. Following recent changes to the Use Classes Order (UCO), a hot food takeaway is no longer within a specific use class (*sui generis*). The Explanatory Memorandum¹ to the changes to the UCO set out that the changes of use to or from such uses can give rise to important local considerations, for example, 'to prevent the proliferation of hot food takeaways'.
7. The Council has set out that there are acute problems with anti-social behaviour (ASB) and crime in the local area, and statistics from the Police Designing Out Crime Officer (DOCO) show a considerable number of incidents within a 100m radius of the site. While these figures do not relate specifically to this parade of units, evidence from interested parties illustrates particular problems in the vicinity of the site. Given the existing instances of ASB in the locality, it is likely that the existing commercial uses in this parade generate some noise and disturbance. However, in part this may be due to the presence of vacant units, which would do little to discourage ASB. There is however nothing before me to suggest that the existing hot food takeaway causes people to congregate or results in ASB or direct and harmful disturbance to nearby residents in terms of noise, odours or parking.
8. The proposal would result in comings and goings on foot and by vehicle, but these would also have been associated with the former use as an off-license, which had a premises license allowing the sale of alcohol from 8am to 11pm Monday to Saturday and 10am to 10:30pm on Sunday. Whilst the proposal is likely to generate more activity around mealtimes, there is no substantive evidence that such activity would be significantly greater than when operating as an off-license, particularly in the evening when the previous use might also have attracted considerable custom. Nor is there any compelling evidence before me to suggest that this use would lead to a substantially greater level of congregation or for a longer time than the existing unfettered retail use.
9. Conditions could be imposed to limit opening hours to 11pm and require provision of a CCTV system as suggested by the DOCO. This would limit the proposed use to opening times similar to those of the license arrangements and ensure appropriate security measures. Details of a suitable extraction and ventilation system would control noise and odour emissions and provision could also be made for litter bins. There are already parking spaces in front of the unit that would provide suitable access to customers who would choose to drive, without disturbing or taking up residential parking spaces.
10. Therefore, given the circumstances I find that the proposed hot food takeaway would not significantly adversely affect the living conditions of nearby residents with reference to noise, general disturbance and the risk and fear of crime, and would not conflict with DM Policy DM10 or the Framework in these respects.

Location

11. Policy DM10 states that proposals which would result in a harmful concentration of food and drink uses will not be permitted. It also sets out that development of takeaways in close proximity to schools and youth facilities will

¹ Explanatory Memorandum to the Town and Country Planning (Use Classes) (Amendment) (ENGLAND) Regulations 2020 No. 757

not be permitted where they would be likely to influence behaviour harmful to health or the promotion of healthy lifestyles. This is consistent with the Framework which requires policies and decisions to achieve healthy places which enable and support healthy lifestyles. The supporting text of Policy DM10 defines close proximity as a distance of up to 400 metres.

12. There is no dispute that the site is within 400m of Ilminster Primary School and the permitted access to a new secondary school approved at the Newquay Road and Teignmouth Road junction. While the secondary school has not yet been built, there is no compelling evidence before me that it will not be constructed. I therefore consider it likely that the secondary school will be operational in the relatively near future. The site is on walking, cycling and driving routes to these schools and as such is likely to be passed by school children of various ages, albeit that at present these would only be primary school age.
13. Other than the existing hot food takeaway at No 96 I have not been made aware of any other takeaways within 400m of these schools. As such, it has not been demonstrated that the proposal would result in the proliferation of such uses in the area.
14. Nevertheless, an additional takeaway alongside the existing convenience store and fish and chip shop would be likely to attract young people to the parade. While many primary age children may only walk to school with adults accompanying them, the proposal may also attract parents looking for a quick meal or snack option after school or following after-school activities. As such, the appellant's suggested condition restricting opening hours to 4pm to 11pm during the working week is unlikely to be effective in restricting custom from young people. Consequently, the proposal is likely to influence their behaviour and food choices.
15. While the appellant suggests that the food on offer will include healthy options and healthier cooking methods, there is no guarantee that these would be taken up by customers. In any event, any permission for a takeaway would run with the land, not the appellant, and neither the Policy nor the Use Class allows for a distinction between the relative health benefits of different types of hot food or grilled food. Therefore, if allowed, the proposed takeaway could serve any type of cuisine and it would not be reasonable to limit the food options being served, or how the food was cooked.
16. There is no evidence before me of income levels or the take up of free school meals in the area, therefore I cannot be certain that children will be eating at school and therefore choosing not to have a takeaway as the appellant suggests. Furthermore, as the type of cuisine could not reasonably be controlled, there is no certainty that the takeaway would offer better nutrition than school meals.
17. Consequently, I cannot be certain that the proposed takeaway would effectively promote healthy lifestyles and its location would be likely to influence behaviour harmful to health. The proposal would therefore conflict with Policy DM10 which seeks to create a healthy food environment, and the Framework aim to enable and support healthy lifestyles. Accordingly, the appeal site is not an appropriate location for a hot food takeaway with regard to health.

18. The proposal is therefore materially different to the appeal referenced by the appellant² where there was no development plan policy or guidance in relation to the proximity of takeaways to schools.

Other Matters

19. Restricting takeaway uses in locations close to schools are likely to limit potential occupiers of units in this type of local shopping parade. However, Policy DM10 does not create an exclusion zone around schools as the appellant contends, rather it restricts takeaway uses only in certain circumstances, which I have found conflict with in this case. I find no conflict with Framework policies which seek to ensure the vitality of town centres, as this site is not in a town centre location.
20. The proposal would bring a vacant unit back into use and offer improved natural surveillance during opening hours, with consequent economic and social benefits. Similar benefits would however be likely to arise from other uses of the unit, and recent changes to the UCO to create Class E allow greater flexibility for a wide range of uses to occupy retail units without the need for planning permission. There is no marketing or viability information before me, and as such no compelling evidence that the unit is unlikely to be occupied if the appeal is dismissed. As such, it has not been demonstrated that limiting takeaway uses in this location would be detrimental to the vitality and viability of the locality. Consequently, the benefits of the scheme carry limited weight and do not outweigh the harm I have identified.

Conclusion

21. While I have found no conflict with Policy DM10 in respect of living conditions, I have found harm and consequent policy conflict in respect of healthy lifestyles. Therefore, the proposal would conflict with the development plan. While the DM pre-dates the latest version of the Framework the relevant policies are consistent with the Framework and as such, I do not consider that it is out-of-date. The presumption in favour of sustainable development set out in Framework paragraph 11d) is not therefore engaged.
22. 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, I conclude that the appeal should not succeed.

B Phillips

APPEALS PLANNING OFFICER

Inspector's Decision

19. I have considered all the submitted evidence and the Appeal Planning Officer's report and agree with the recommendation. Therefore, on that basis, the appeal is dismissed.

L McKay

INSPECTOR

² APP/D0650/A/10/2121435