



Appeal Decision

Site visit made on 2 June 2021

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2021

Appeal Ref: APP/M1005/W/21/3268285

Smalley Convenience Store, 34 Main Road, Smalley DE7 6EE

- 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 Steve Dosanjh against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2020/0122, dated 5 February 2020, was refused by notice dated 30 September 2020.
 - The development proposed is described on the application form as 'change of use from retail (Class A1) to Hot Food Takeaway (Class A5), regularise external alterations to dwelling'.
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Decision

1. The appeal is allowed and planning permission is granted for subdivision of ground floor to form two retail units including change of use of one unit from retail (Class A1) to Hot Food Takeaway (Class A5), regularise external alterations to dwelling and erection of external flues at Smalley Convenience Store, 34 Main Road, Smalley DE7 6EE in accordance with the terms of the application Ref AVA/2020/0122, dated 5 February 2020, and the plans submitted with it, subject to the conditions set out in the schedule to this decision.

Procedural Matters

2. The Council have described the development as 'subdivision of ground floor to form two retail units including change of use of one unit from retail (Class A1) to Hot Food Takeaway (Class A5), regularise external alterations to dwelling and erection of external flues'. I note that the appellant has also utilised this description on their appeal form. I consider that this revision provides an accurate description of the proposal and I have therefore determined the appeal on this basis.
3. When on my site visit, I observed that the appeal property appeared to be empty and also that the convenience store was not open. Notwithstanding this, I have considered the appeal based on the plans originally submitted to and considered by the Council, which form the basis of the scheme that is before me.

Main Issue

4. The main issue is whether the appeal site is a suitable location for a hot food takeaway having regard to the living conditions of neighbouring occupiers.

Reasons

5. The appeal property is a two-storey detached building with two single storey extensions to its front. The property is currently used as a convenience store on

the ground floor and a residence on the first floor. The existing extensions form the retail frontage for the premises which occupies the ground floor.

6. The Council have raised concerns relating to the proposal in that it would lead to an intensification of use and additional passing traffic (vehicular and pedestrian) car doors opening and closing which would harm the living conditions of neighbouring occupiers by creating noise, odour and disturbance due to headlights shining into the property to the west and the potential for people to gather outside the appeal property when queuing or collecting food and a potential increase in associated littering.
7. However, while on my visit, I observed that a portion of the original convenience store building has been demolished to allow the creation of a vehicular access to the relatively new residential development that has been built on the land behind the appeal site. This is also clearly shown on the submitted Existing and Proposed Site Block Plans (Drawing no. GD/SD/19/029/01 Rev B). As a result, the proposal would have a reduced footprint in relation to its former use meaning that while it would represent an intensification in terms of the sub-division of the unit and the type of activity performed, it would not necessarily be an intensification on a significant scale.
8. Therefore, even if people have to queue outside the premises before they can make and then collect their order it would not be likely that this would generate an unacceptable level of noise sufficient to disturb neighbouring residents particularly during the day or early evening. In any event given my findings above, I am satisfied that any potential noise disturbance could be adequately mitigated via the imposition of a suitably worded condition controlling the opening hours of the premises. For similar reasons, I am also not convinced that the proposal would lead to a significant increase in the amount of local littering. In any event, a suitably worded condition could also be imposed to ensure that adequate arrangements for the collection of customers' refuse would be put in place, as suggested by the Highway Authority.
9. Furthermore, the appellant has been in discussion with the Council's Environmental Health department regarding hours of operation, control of noise emissions, control of cooking odours, the installation of a grease trap/filtration system (or suitable alternative), and the provision of external plant. Following these discussions, the Council's Principal Pollution Officer has raised no objection to the proposal subject to the imposition of suitably worded conditions dealing with these matters and from the evidence before me I see no reason to disagree. Consequently, I am satisfied that these matters can be sufficiently mitigated via the imposition of such conditions.
10. Moreover, given its location on the main street of the village, which is relatively compact, and the presence of bus-stops nearby, it would be likely that most of its trade would be passing with most of its customers arriving and leaving on foot. In any event, even if some of them used a car, a suitably worded condition has been suggested by the Highway Authority which would make it more difficult them to park directly in front of the premises. In addition, this would also make it less likely that vehicles would use the parking area directly in front of no. 34A. I am therefore satisfied that this matter can also be sufficiently mitigated via the imposition of such conditions.
11. Accordingly, I am not convinced that the proposal would have an unacceptably harmful effect on the living conditions of neighbouring occupiers. I therefore conclude that the appeal site is a suitable location for a hot food takeaway having regard to the living conditions of neighbouring occupiers. As a result, it would meet

the requirements of policies TC8, ER11 and EN16 of the adopted Amber Valley Borough Local Plan. It would also therefore accord with the sustainability objectives of paragraph 8 of the Framework.

Other Matters

12. Interested parties have raised concerns in relation to highway safety. However, the Highway Authority have suggested the imposition of suitably worded conditions and have raised no objection in relation to the proposal. In addition, no substantive evidence has been submitted to show that highway safety has been an issue at these premises in the past. Therefore, as highlighted above, given the scale of the proposal, its location, and the imposition of suitable conditions it would be unlikely that the proposal would result in unacceptable levels of on-street parking in front of the premises. I am therefore satisfied that the proposal would not harm highway safety.
13. Interested parties have raised concerns relating to alleged unauthorised residential development to the rear of the appeal site. However, this is not a matter for me to consider as part of this section 78 appeal as enforcement issues are something that should be dealt with by the local planning authority in the first instance.
14. Interested parties have also raised concerns relating to the proposal's alleged lack of building regulations approval. However, this too is not a matter for me to consider as part of this appeal case.
15. It has also been highlighted that the proposal would lead to an increase in anti-social behaviour and a fear of crime in the area. However, I have no convincing or substantive evidence before me to show that this would be the case.

Conditions

16. I have imposed conditions as set out in the attached schedule in light of the use of planning conditions set out in the National Planning Policy Framework and Planning Practice Guidance. Consequently, in the interests of precision and clarity I have undertaken some minor editing and rationalisation of the conditions as suggested by the Council. In addition to the standard implementation condition, I have imposed a necessary condition to define the plans with which the scheme should accord in the interest of precision.
17. In the interests of the living conditions of neighbouring occupiers and the environment I have also imposed necessary conditions to: limit the hours of operation of the premises; require the submission and approval of a scheme for the installation of equipment to control the emission of fumes and smell from the premises, as well as the associated level and character of noise emissions; require the installation of a grease trap/filtration system (or a suitable alternative) to remove fats, oils, grease and solid matter from the wastewater before it leaves the premises; and the submission of detailed information regarding acoustic performance, operating hours and location for any external plant installed on the premises.
18. In the interests of highway safety and the living conditions of neighbouring occupiers I have also imposed necessary conditions requiring the closure of the vehicular access located on the frontage of the premises and the reinstatement of the dropped kerb, and a condition requiring the submission and approval of a scheme detailing arrangements for the collection of customers' refuse from the premises.

Conclusion

19. For the reasons set out above I conclude that the appeal should be allowed.

C Coyne

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; Existing and Proposed Site Block Plans Drawing no. GD/SD/19/029/01 Revision B; Proposed Flue Options Drawing no. GD/SD/19/029/05 Revision A; Proposed Duct Elevations Revised 2107; Proposed Duct Layout Low Level Revised 2107.
- 3) The premises shall only be open for customers between the following hours:
1100 - 2130 Sundays – Thursdays and on Bank Holidays
1100 – 2200 Fridays and Saturdays
- 4) Before the use hereby permitted takes place, equipment to control the emission of fumes and smell from the premises, as well as the associated level and character of noise emissions, shall be installed in accordance with a scheme to be first 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 that approval and retained for so long as the use continues.

Following installation, if an assessment of noise emissions from the kitchen extraction system by the local planning authority determines that further noise mitigation is required, appropriate measures shall be taken to minimise the emission or transmission of noise/vibration in accordance with a scheme to be first submitted to and approved in writing by the local planning authority within an agreed period.

- 5) A grease trap/filtration system (or a suitable alternative) shall be installed in the drainage system to remove fats, oils, grease and solid matter from the wastewater before it leaves the premises. The equipment shall be installed, operated and maintained in accordance with the manufacturer's instructions and retained for so long as the use continues.
- 6) Before any externally mounted plant, machinery or equipment is installed on the premises, detailed information regarding acoustic performance, operating hours and location shall be first submitted to and approved in writing by the local planning authority.
- 7) The use hereby permitted shall not commence until the existing redundant vehicular access has been fully closed and the highway margin and kerbs have been fully reinstated.
- 8) The use hereby permitted shall not commence until a detailed scheme detailing arrangements for the collection of customers' refuse has been submitted to and approved in writing by the local planning authority. Once approved the scheme shall be fully implemented throughout the lifetime of the development.