



Appeal Decision

Site visit made on 22 July 2021

by Helen B Hockenhull BA (Hons) B. PI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 August 2021

Appeal Ref: APP/K3415/W/21/3272941 32 Swallow Croft, Lichfield, WS13 7HF

- 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 Jahed Ahmed, Concrete Capital Holdings Ltd against the decision of Lichfield District Council.
 - The application Ref 20/01207/COU, dated 1 September 2020, was refused by notice dated 15 December 2020.
 - The development proposed is the conversion of former retail unit into hot food takeaway (A5).
-

Decision

1. The appeal is allowed, and planning permission is granted for the conversion of former retail unit into hot food takeaway (A5) at 32 Swallow Croft, Lichfield WS13 7HF in accordance with the terms of the application, Ref 20/01207/COU, dated 1 September 2020, subject to the conditions in the attached schedule.

Main Issues

2. The main issues in this case are:
 - the effect of the proposal on highway safety, with particular regard to parking.
 - the effect of the proposal on the living conditions of surrounding residents with particular regard to noise, light, fumes, odours and traffic generation.

Reasons

Highway safety

3. The appeal site is located in a small local shopping centre at the junction of Swallow Croft and Martin Croft. The centre comprises a small convenience store with Post Office, a cycle store, a fish and chip shop, Chinese takeaway, beauty salon and the appeal site, last used as a cake shop. Unrestricted parking is currently available on Martin Croft and on Swallow Croft. I noted on my site visit that both roads were used for short stay car parking by customers of the shopping units. There was a regular turnover of vehicles and the parking appeared to be adequate to serve the local centre.

4. At the proposed opening time of the takeaway in the evening, two of the units in the local centre would be closed and therefore not generating a parking demand. I also note the intention to provide a delivery service. The appellant advises that around 80% of the business would be from deliveries. This would reduce the need for customers to visit the premises, reducing on street car parking. There is parking to the rear of the unit in a service yard which could be used for the parking of staff and delivery drivers. The local highway authority has raised no objection to the proposal.
5. The local centre is sited on a junction. I accept that customers will try to park as close as possible to the proposed takeaway. Vehicles parked near to the junction could obscure visibility. However, this could potentially arise in connection with the existing use of the appeal site and the local centre. There is adequate car parking in the general area around the appeal site providing opportunities to park in locations where highway safety issues would not arise.
6. Given the above, I conclude that sufficient car parking to serve the proposed takeaway use would be available and the proposal would not raise highway safety issues. Accordingly, the scheme, would comply with Core Policy 3 and Policies BE1, ST1 and ST2 of the Lichfield District Local Plan Strategy which amongst other things seek to promote sustainable travel and adequate car parking provision.

Living conditions

7. There is an existing residential flat above the appeal premises, above the adjoining units and close by on Swallow Croft. It is proposed that the takeaway use operate between the hours of 5pm and 11pm each day. The proposed use has the potential to create noise in the evening, through the general activity at the premises, increased vehicles and car doors shutting etc, affecting the amenity of nearby residents.
8. The existing fish and chip shop and Chinese takeaway open to 10pm, so does the convenience store. Therefore, there is already activity into the evening in this location. The proposed opening hours, while being 1 hour later, would therefore not be inappropriate in this location. Subject to an appropriate condition to control the hours of opening, I am satisfied that the proposal would not cause unacceptable harm to the living conditions of nearby residents due to noise impacts.
9. The proposed takeaway has the potential to give rise to odour nuisance. The submitted plans indicate the provision of an extraction system with a flue located on the side elevation of the building. Subject to a condition requiring the details of the installation to be submitted for approval, including noise mitigation measures, the proposal would be acceptable, minimising any adverse effects on residential amenity. The Council's Environmental Health team raise no objection to the proposal.
10. The Council's reason for refusal refers to issues of light and fumes however no evidence is provided in this regard. There is nothing before me to indicate that the proposal would result in unacceptable light pollution or generate fumes adversely affecting residential amenity.

11. I conclude that the appeal scheme would not cause harm to the living conditions of nearby residents. The scheme would comply with Core Policy 3 and Policies BE1, ST1 and ST2 of the Lichfield District Local Plan Strategy which amongst other things seek to ensure that development minimises environmental impacts.

Conditions

12. The Council have suggested several conditions should the appeal be allowed. I have considered these in light of the Framework and Planning Practice Guidance. I have amended the wording where I consider it necessary. In addition to the standard timeframe condition, I impose a condition requiring the development to be carried out in accordance with the submitted plans for the avoidance of doubt.
13. Conditions controlling the hours of operation and the submission of a scheme to control odour and noise from the extraction equipment are necessary in the interests of safeguarding the living conditions of nearby residents. Furthermore, to protect the character and appearance of the area, a condition is necessary requiring the extraction flue to be painted in a dark matte colour.

Conclusion

14. I have found that the proposal would comply with the policies of the development plan. No other material considerations weigh against the scheme.
15. For the reasons given above and having had regard to all other matters raised, I allow this appeal.

Helen Hockenfull

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: Drawing No. A1097-200 A – Site Location Plan, Drawing No. A1097-101 C -Existing and proposed floor plans, Drawing No. A1097-300 A - Existing elevations, Drawing No. 02298-M-001 - Mechanical Ventilation Layout and Drawing No. A1097-301 B - Proposed Elevations.
- 3) The premises shall only be open for customers between the hours of 1700 – 2300 daily.
- 4) Before the use hereby permitted takes place, a scheme for the control of odour and noise from the kitchen extractor shall be submitted to and agreed in writing with the Local Planning Authority. The measures should be implemented and retained thereafter. Further advice and guidance is

provided in the document: Control of Odour and Noise from Commercial Kitchen Exhaust Systems, prepared by NETCEN on behalf of DEFRA.

- 5) The proposed external extraction systems external systems shall be finished in a dark matte colour.