



Appeal Decision

Site Visit made on 10 August 2021

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2021

Appeal Ref: APP/U4610/W/21/3275576

114 Proffitt Avenue, Coventry CV6 7ET

- 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 Mrs Rasimala Ajanth against the decision of Coventry City Council.
 - The application Ref FUL/2020/1400, dated 16 June 2020, was refused by notice dated 24 December 2020.
 - The development proposed is change of use from use class 'A1' into use class 'A5' and installation of extraction flue duct at the rear external wall.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the development refers to use classes A1 and A5. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020. These amend the Town and Country Planning (Use Classes) Order 1987 so as to revoke Class A uses. However, the Regulations provide that where a planning application was submitted prior to the commencement of the material period, the application must be determined by reference to those use classes which were in effect when the application was submitted. The planning application was submitted before 1 September 2020 and so I have determined the appeal accordingly.
3. I have invited comments from the main parties on the revised National Planning Policy Framework, issued in July 2021. Also, I have taken into account the responses.

Main Issues

4. The main issues are (i) whether the proposal would be in a suitable location having regard to the policies of the Coventry City Local Plan 2017 (LP), and (ii) its effect on the living conditions at nearby residences in terms of noise.

Reasons

Suitability of location

5. The justification to LP Policy R6 explains the Council's pledge to improve the population's health. One of the challenges to promoting healthy eating is the availability of foods high in fat, salt and sugar in local neighbourhoods with the prevalence of hot food takeaways cited as a factor. The proposal would introduce a hot food takeaway on the ground floor of the appeal property.

6. The site lies at the end of a small parade that mainly consists of commercial units. A similar row lies on the opposite side of Proffitt Avenue. While together these represent a small group of commercial units, I am advised the appeal property is not in a defined centre. LP policy R6 states that hot food takeaway outlets should be located within defined centres and are discouraged elsewhere. In this respect, the development would be contrary to LP policy R6.
7. Where proposals are in defined centres, policy R6 states they will be permitted when, amongst other criteria, they would not result in harmful cumulative impacts due to the presence of existing takeaways. Of the 4 occupied commercial units on the same side of the road to the appeal property, 2 are hot food takeaway outlets while the others are barbers or hairdressers. The development would result in 3 out of 5 units in the parade being takeaway outlets. To my mind, this would represent a small concentration of takeaways, even when taking into account that none of the 4 commercial properties on the opposite side of the road are in such a use.
8. Moreover, LP policy R6 refers to the Council's Hot Food Takeaway Supplementary Planning Document 2019 (SPD). This states that in areas over concentrated with hot food takeaways further proposals for such uses will not be granted. Such an approach applies when a proposal would be in a Lower Super Output Area in which the number of takeaways per one thousand population exceeds the average for England. The appellant does not dispute the Council's contention that the appeal proposal would lie in an over concentrated takeaway area as defined under the terms of the SPD. Therefore, in these regards, the development would go against the provisions of the SPD.
9. The SPD also states that hot food takeaways will not be approved if they fall within a 5 minute walk of a school. This stance is based on concerns over the link between levels of obesity in children and the proximity of schools to hot food takeaways. The proposal would be located within 5 minutes walking distance from Little Heath Primary School and so it would be contrary to the SPD in this respect. However, a planning condition is suggested that would prevent the takeaway opening before 1730 from Mondays to Fridays. As such, food from the proposed takeaway would not be available to school children at lunch times or when they are travelling home at the end of the school day. Therefore, I am satisfied the development's proximity to the school would not undermine the aim to promote healthy eating.
10. Nonetheless, the proposal would not be in a defined centre and would lead to a concentration of hot food takeaways. As such, I conclude it would not be in a suitable location having regard to LP policy R6 and the SPD.

Noise

11. The appeal property is 2 storeys high. The appellant's noise impact assessment indicates the first floor is a residential flat which would be occupied by the owner of the property. The attached 112 Proffitt Avenue (No 112) also has a residential flat at first floor level. Furthermore, 116 Proffitt Avenue (No 116) is a house on the other side of the appeal property. The noise impact assessment describes the existing evening and night time sound levels in the area as quiet to reasonably quiet with traffic and pedestrians passing the site as the most notable source of noise.

12. The Council does not dispute the noise assessment's finding that kitchen ducting equipment would have a low impact on the living conditions of occupiers of No 112. There is no reason for me to arrive at a different view on this matter.
13. Be that as it may, the assessment does not address the specific concern regarding noise associated with late night customers and pick-ups for home deliveries. It is suggested that the takeaway would be subject to a condition that would require it to be shut no later than 2300 at night. However, even at that time, it is likely that noise from people coming to and leaving the takeaway by foot and by motor vehicle would disturb occupiers of No 112 and No 116 given their proximity to the proposal. There are no pubs or bars near to the site but the existing takeaways in the parade would be complementary late night uses. The proposal would include an inside customer area although this would be limited in size and unavailable after 2300. Given these circumstances, it is probable that the proposal would lead to customers being outside and near to the appeal property late into the evening. Associated talking and traffic movements would be a potential source of noise nuisance to occupiers of No 112 and No 116.
14. While the property could lawfully be used as a shop without restrictions on opening hours, there is no firm evidence to show it is likely that a late night retail use would operate from the site. As such, I attach limited weight to this suggested fallback position in my assessment of this main issue.
15. For the above reasons, I conclude the proposal would harm the living conditions at nearby residences in terms of noise. In these regards, it would not accord with LP policy R6. Amongst other things, this seeks to ensure new hot food takeaway outlets do not significantly harm the amenity of nearby dwellings. The refusal reasons also refer to LP policies H5 and DE1 although these contain no provisions relevant to this issue.

Other Considerations

16. A petition has been provided which illustrates a demand for the proposal. The development would re-use a vacant property, add to the vibrancy of the parade of units and generate employment. I attach positive weight to these benefits in my assessment.
17. However, for the reasons set out in respect of the main issues, the proposal would not accord with the development plan policies when read as a whole. The benefits of the scheme and other factors attract insufficient weight to justify granting planning permission contrary to the development plan.

Conclusion

18. For the above reasons, I conclude that the appeal should be dismissed.

Jonathan Edwards

INSPECTOR