
Appeal Decision

Site visit made on 13 July 2021

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2021

Appeal Ref: APP/Q3060/W/21/3272697

191-193 Sneinton Dale, Nottingham NG2 4HU

- 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 Mehrban Umar against the decision of Nottingham City Council.
 - The application Ref 20/02498/PFUL3, dated 17 November 2020, was refused by notice dated 22 January 2021.
 - The development proposed is change of use from Financial & Business Services (class use A2) to fast food takeaway (class use A5) with new shop front and installation of extractor fan with flue.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On 20 July 2021, the Government published a revised National Planning Policy Framework (the Framework). Both main parties have had the opportunity to submit comments on the relevance of the Framework to this case. I have taken any comments received into consideration and I have assessed this appeal in light of the Framework.
3. I have taken the description of the development from the application form as there is no confirmation that the appellant has agreed to an amended description of the development.
4. The Government reformed the Town and Country Planning (Use Classes) Order 1987 (as amended) from 1 September 2020 to, among other things, revoke Class A2 and create a new 'E' use class to provide greater flexibility for high streets. Further, Class A5 has been revoked and development formerly in this class is now Sui Generis. The Council's description reflects the change of Class A5 to Sui Generis. Although Class A2 and Class A5 are referred to in the description above I have had regard to the changes to the use classes order in my consideration of the appeal proposal.

Main Issue

5. The main issue is the effect of the development on the living conditions of nearby residents, with particular regard to noise, disturbance, anti-social behaviour, crime, and odour.

Reasons

6. The appeal site is part of a sizable retail parade located adjacent to Sneinton Dale, a relatively busy road on the east side of Nottingham. The parade has a range of shops, services, and community facilities. The side streets adjacent to Sneinton Dale and the road frontage at either end of the parade are mostly residential properties and many of the first floors of buildings are in residential use.
7. The appeal building is located at the eastern end of the shopping parade. It is the middle unit in a block of ground floor retail units which is partially occupied as a restaurant with part remaining vacant even though planning permission is in place for the whole of the building to be used as a restaurant.
8. I observed during my site visit that due to the mix of uses within the retail parade it is likely that the parade will be busiest during normal retail hours, however, some of the premises in the appeal property terrace are in restaurant, convenience store or take away uses which operate into the evening. Therefore, the area around the appeal site will also experience higher levels of noise and disturbance in the evenings. The Council refers to residents already experiencing anti-social behaviour relating to takeaways in the area. However, the third-party comments before me relate to the operation of the restaurant and there is limited other evidence that the adjacent take away facilities contribute to noise and disturbance, antisocial behaviour, or crime.
9. I accept that the use may result in some cumulative increases in evening traffic and pedestrian movements over and above that which may be associated with the approved restaurant use and adjacent uses. Even so, in the context of the existing terrace of varied ground floor uses and given the characteristics of the road frontage location, I consider that the comings and goings to the proposed takeaway would not add significantly to the noise and disturbance in the area provided the opening hours are restricted to coincide with the opening times of the restaurant use.
10. While I have had regard to the local comments about the effect of the operation of the restaurant at the appeal site, there is limited evidence that the introduction of a takeaway use, in the current environment would exacerbate concerns in respect of noise and disturbance.
11. In relation to odour control it is proposed to install a ventilation flue at the back of the premises attached to the rear of a single storey flat roofed extension. The flue would be immediately adjacent to the rear gardens of two residential properties which face Edale Road and Barnston Road.
12. The land rises from the Sneinton Dale frontage and the flue exhausts would consequently be close to the gardens at the rear even if the exhausts were extracted at the appropriate level above the flat roof at the appeal site. The rear gardens and rear elevations of the nearest residential properties would therefore be susceptible to the impact of cooking odours.
13. I appreciate that a flue has been approved for the restaurant use which was sought by condition attached to the grant of prior approval, nevertheless, an additional flue in this back area close to residential properties could cumulatively, with existing flues, significantly detract from the living conditions of adjacent residential properties.

14. The appeal is supported by a general statement of intent about flue extraction, and I acknowledge that the Council considers that it may be possible to condition an appropriate extraction system to control odour. However, I am also mindful of the comments of the Council's Environmental Health Officer who has reservations about whether it would be possible to design a system that could control odour adequately. Overall, I do not have enough evidence before me to be satisfied that a flue can be designed that would adequately control odours from the building to avoid an adverse impact on the nearby residential properties. Therefore, there is insufficient evidence to conclude that the ventilation flue could adequately control odour.
15. Overall, while I am satisfied that the proposal would not harm the living conditions of nearby residents, with regard to noise, disturbance, anti-social behaviour, and crime, I conclude that the proposal would detract from the living conditions of adjacent residents with regard to odour control. In this respect the proposal would conflict with Policy 10 of the Nottingham City Aligned Core Strategies Part 1 Local Plan adopted September 2014 and Policies LS1 and DE1 of the Land and Planning Policies Development Plan Document - Local Plan Part 2 (January 2020) which seek to ensure that development is designed to create attractive, safe, and healthy environments by among other things assessing development in terms of its impact on the amenity of occupiers of neighbouring properties.

Conclusion

16. Overall, for the reasons given above, the proposal would conflict with the development plan and there are no material considerations that would outweigh that conflict. Therefore, the appeal is dismissed.

Diane Cragg

INSPECTOR