
Appeal Decision

Site visit made on 8 November 2021

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th November 2021

Appeal Ref: APP/W4705/W/21/3282820

Unit E1, Enterprise Way, Bradford BD10 8EG

- 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 Ahmed against the decision of City of Bradford Metropolitan District Council.
 - The application Ref 21/03713/FUL, dated 12 July 2021, was refused by notice dated 3 September 2021.
 - The development proposed is change of use from a commercial unit to takeaway food restaurant for delivery only.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from a commercial unit to takeaway food restaurant for delivery only at Unit E1, Enterprise Way, Bradford BD10 8EG, in accordance with the terms of the application Ref 21/03713/FUL, dated 12 July 2021, subject to the following conditions.

(1) The development hereby permitted shall begin not later than three years from the date of this decision.

(2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1:500 red edged site location plan and drawing No 9430/02a 'Proposed Plans/Elevations/Section'.

(3) The development hereby permitted shall be used only for the taking of orders by means of the telephone or internet and the preparation of food for delivery from the premises and shall not operate at any time so as to attract visiting customers or the collection of orders by customers. No facilities shall be provided that would allow customers to enter the premises or use the premises as a waiting room.

(4) The development hereby permitted shall not be brought into use until a fume extraction and odour control system has been installed at the premises in accordance with details that have been first submitted to and approved in writing by the local planning authority. The approved fume extraction and odour control system shall thereafter be retained and remain in operation.

Procedural Matter

2. I have taken the appeal site address from the Council's refusal notice and not from the planning application form as it correctly refers to 'Enterprise Way'.

Main Issue

3. The main issue is whether the proposal accords with the health requirements of the development plan for the area including Principle 2 of the Bradford 'Hot Food Take-Aways' Supplementary Planning Document 2014 (SPD) which states that hot food take-aways will be resisted in specified areas that fall within 400 metres of the boundary of an existing primary or secondary school or youth centred facility (e.g. YMCA, after school clubs) or fall within 400 metres of a recreation ground or park boundary.

Reasons

4. There is no dispute between the parties that in respect of Principle 2 of the SPD the appeal building lies within 400 metres of a relevant use/facility. In this respect, a hot food take-away proposal that was open to visiting members of the public, including school children, would conflict with Principle 2 of the SPD. In considering Principle 2 of the SPD, I have taken into account the reasoned justification at paragraph 4.12 which states that the issue of childhood weight is a considerable one in the Bradford District with 21.6% of children in reception class (aged 4-5) being overweight or obese which is similar to the national average but rising to 35.4% in year 6 (aged 10-11) which exceeds the national average. The purpose of Principle 2 of the SPD is therefore to improve the quality of the food environment around schools and other recreational spaces as a means of potentially influencing children's food purchasing habits and future diets.
5. In this case, the application is made on the basis of the take-away operating as solely a delivery service. In addition, it is of note that the appellant states that '*no signs are going to be put up to advertise that it is a take-away food premises*'. The appellant has made it clear that there would be no visiting customers to the premises. This is acknowledged by the local planning authority (LPA), but concerns are nonetheless expressed that a condition limiting the use to deliveries only would not be enforceable or reasonable. As part of the appeal, the LPA has suggested such a condition (i.e. No 3 above). I have considered this suggested condition and am satisfied that it would be enforceable. Indeed, it would be possible to detect whether customers were visiting the premises for take-away purposes.
6. The appellant has not objected to the imposition of the suggested condition. Indeed, such a condition would reflect what has been applied for and to this extent it would be reasonably imposed. Furthermore, such a condition would meet the tests of necessity and reasonableness in so far as ensuring that the proposed use did not conflict with Principle 2 of the SPD. Subject to this condition, I am satisfied that the proposal would not have the effect of unacceptably influencing children's food habits and consequently would not seek to exacerbate weight and health issues relating to children that use and occupy relevant buildings and spaces within 400 metres of the appeal site. In other words, and on this basis, the proposal would not conflict with Principle 2 of the SPD.
7. There is no suggestion from the LPA that the proposal would conflict with any other part of the SPD, including highway safety or living condition matters. I have no reason to disagree with this noting that two car parking spaces are proposed for the delivery only take-away proposal and that the local planning

authority has reasonably suggested a condition relating to the approval of a fume extraction and odour control system.

Conditions

8. The conditions set out in the decision are based on those suggested by the Council. Where necessary, I have slightly amended the wording of the suggested conditions, in the interests of precision and clarity, and in order to comply with advice in the Planning Practice Guidance.
9. Planning permission is granted subject to the standard three year time limit condition. It is necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty.
10. In order that the proposal accords with the requirements of Principle 2 of the SPD, it is necessary to impose a condition which prohibits visits to the building by customers and in turn therefore permits solely a delivery only take-away service. In order to minimise odours in the air and to protect the living conditions on the occupiers of nearby residents, it is necessary to impose a planning condition relating to the submission and approval of a fume extraction and odour control system. The latter would ensure that the proposal accords with the odour and amenity requirements of policies DS1, DS5 and EN8 of the Bradford Core Strategy Development Plan Document 2017.

Conclusion

11. Subject to planning conditions, the proposal would not conflict with the development plan for the area or the SPD. Therefore, the appeal should be allowed.

D Hartley

INSPECTOR