



Appeal Decision

Site Visit made on 2 November 2021

By Samuel Watson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2021

Appeal Ref: APP/M3455/W/21/3279090

653-657 High Street, Tunstall, Stoke-on-Trent ST6 5PL

- 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 F Miah against the decision of Stoke-on-Trent City Council.
- The application Ref 66071, dated 27 November 2020, was refused by notice dated 24 June 2021.
- The development proposed is the change of use to mixed use comprising of restaurant and hot food to takeaway with extraction flue.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on:
 - The living conditions of neighbouring occupiers, with particular regard to noise and disturbance; and,
 - the viability of the town centre, with regard to the location of the appeal site.

Reasons

Living Conditions

3. the appeal site is in a predominantly residential area and the scheme includes the provision of a parking area to the forecourt. Given the proposed use there is a potential for noise from customers both within the building and those outside as they arrive, wait for takeaways, and leave. Further noise would result from motor vehicles manoeuvring in a low gear to enter the site and park, the slamming of car doors and other associated noises such as car radios.
4. Whilst it is suggested that customers may walk to the site this cannot be ensured and I find it more than likely that many customers would use a motor vehicle. As a result of the use and the close proximity of neighbouring dwellings, the site would cause a significant level of noise and disturbance for neighbouring occupiers. While it is proposed that the use would close at 22:00, this would already be late at night when background noise levels are likely to be lower and neighbouring residents would be more susceptible to noise and disturbance. As such I find that closing at this time would not be sufficient to protect the living conditions of neighbouring occupiers.
5. I understand that the existing retail use has the potential to result in noise, and I have not been provided with any opening times previously associated with the site. Nevertheless, I find it unlikely that a shop would attract a similar level

of custom during the evening to the proposal before me. Moreover, I find that activity on site, especially during the evening, would be significantly different to the social atmosphere of a restaurant and takeaway.

6. Although it is likely that smells from food, cooking and waste will result from the proposed use, and that these could be offensive to neighbouring occupiers, I find that such a matter could be dealt with via a condition requiring adequate ventilation and extraction should the appeal be allowed.
7. Nevertheless, and given the above, I find that the proposal would unacceptably affect the living conditions of neighbouring occupiers as a result of noise and disturbance continuing late into the evening. This would therefore conflict with the aims of the National Planning Policy Framework (the Framework) with regard to the protection of living conditions, including Paragraph 130 which requires that development promotes well-being and provides high standards of amenity. While the Council have also referred to the Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance Supplementary Planning Document, I have not been directed to any specific conflict with the document.

Effect on Viability

8. The site is outside of an existing centre where the Framework, under Paragraph 87, requires a sequential test to be carried out should a main town centre use be proposed. Whilst the appeal site is currently vacant, I have no reason to believe that it does not have the potential to be brought back in to use as a retail unit.
9. There would be some difference between the existing and proposed uses in the way they operate and are used by customers. However, both are main town centre uses for the purposes of the Framework, and I find that in this way there is no difference between them. As such, as the proposal would replace an existing main town centre use for another, it is unnecessary for a sequential test to be carried out as it is clear that any effect on the viability of nearby centres is existing.
10. From the evidence before me I understand that the Council have not set a local threshold for retail or leisure uses outside of town centres and as such the Framework's threshold of 2,500m² applies. Therefore, given the scale of this development, which is significantly below this threshold, it is not necessary for me to consider the impact assessment set out under Paragraph 90.
11. Given the scale of the proposal and that it would only result in the replacement of an existing main town centre with another, the proposal would not adversely affect the viability of any existing centres and would therefore comply with Section 7, including Paragraphs 87 – 91, of the Framework, which set out the above mentioned tests.

Other Matters

12. Whilst the Council did not include highway safety as a reason for refusal, it clearly has objections to the proposal's impact thereon. These revolve around whether motor vehicles would conflict with pedestrians while on site and the safety of the proposed vehicular site access. However, the submitted evidence is insufficient to demonstrate what effect the proposal would have on highway safety. Given that I am dismissing the appeal I find that this matter would not

materially affect the outcome of the appeal, and so I find it is not necessary in this instance for me to consider it further.

Conclusion

13. Whilst the proposal would not harm the viability of any existing centre as a result of its location, this would be a lack of harm and thus would not reduce that which would result to the living conditions of neighbouring occupiers. This would lead to conflict with the relevant sections of the Framework. The appeal should therefore be dismissed.

Samuel Watson

INSPECTOR