



Appeal Decision

Site Visit made on 12 October 2021

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 6th December 2021

Appeal Ref: APP/W4325/W/21/3273142

26 Balls Road, Oxton, Wirral CH43 5RE

- 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 S Ahmed against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/21/00121, dated 18 January 2021, was refused by notice dated 16 March 2021.
 - The development proposed is change of use from a Launderette (Sui Generis) to use as a Hot Food Shop (Sui Generis) with internal café seating.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have adopted the description of the development from the application form in the banner heading above. However, it is described in the decision notice as change of use from a Launderette (Sui Generis) to a Hot Food Takeaway/ Café (Sui Generis/E(c)). I have determined the appeal on this basis.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of nearby residential occupiers, with particular regard to noise and disturbance.

Reasons

4. The appeal relates to a commercial premises on the corner of Ball's Road and Euston Grove. It is at the end of a short terrace of properties that comprise a local shopping parade with ground floor uses including a takeaway, pharmacy and convenience store, and with residential uses above. There is a scout centre and shop on the opposite side of Ball's Road and a medical centre and a church within 200m. It is in a primarily residential area.
5. Non-residential uses in residential areas can result in nuisance to residential occupiers. In the case of food and drink establishments, including hot food takeaways, this can include odours and noise. Consequently, the Council's Supplementary Planning Document SPD3 – Hot Food Takeaways, Restaurants, Cafes and Drinking Establishments Adopted October 2006 (the SPD) seeks to direct food and drink establishments to town or suburban centres and primarily commercial areas. However, small scale changes of use of shops in residential areas may be acceptable if they avoid adverse impacts on residential occupiers.

6. Ball's Road is a main route between Oxton and Birkenhead and bus services operate along it until after 9pm. The shopping parade convenience store and takeaway premises operate long opening hours. There is also likely to be some evening use of the scout centre. As such, there will be more activity in the area than would be expected on a residential street. However, the late night uses are limited and the evening activity is likely to be localised around the existing mid-terrace takeaway. Therefore, while I am not aware that the existing takeaway results in nuisance to residential occupiers, it cannot be assumed that the proposal could be assimilated without cumulative adverse impacts.
7. The proposal would be a small café with 3 tables, a casual seating area and a hot food takeaway. It would be within 40m of the closest dwellings, which is the minimum separation required by the SPD from food establishments to the main elevation of dwellings. The evidence suggests it would largely be a daytime use, but the proposed opening hours are 0800-2300 Monday to Saturday and 0900-2200 on Sundays.
8. Customers would travel on foot and by vehicle, and they may congregate outside the premises. There would also be delivery drivers and their vehicles, and employees who might also travel by vehicle. The increased activity including revving of engines, slamming of car doors, parking and manoeuvring, and congregating, would be likely to disturb nearby residential occupiers particularly in the evenings.
9. I acknowledge that the Council's traffic and transportation division considers the proposal would be unlikely to generate more traffic than the former launderette use. This appears to be partly based on an assumption that there would be a delivery service via mobile phone app and the internet, which would reduce the number of customer vehicles. However, there would be no guarantee that the proposal or a subsequent takeaway would offer a delivery service. Neither the traffic generated by the launderette nor the proposal has been quantified. Irrespective, on the basis that the launderette closed at 1900 hours, the longer opening hours of the proposal would result in materially different patterns of activity at least in the evenings if not during the day.
10. At the time of my visit, around lunchtime on a week day, there were numerous pedestrians and frequent vehicle movements on Ball's Road and the adjoining streets. The existing takeaway was busy, and customers were parking and manoeuvring vehicles on both sides of Ball's Road and around the junction, and on the pavement, of Euston Grove. On the basis of its similar opening hours, the proposal would contribute to a cumulative increase in activity in the same area. Particularly in the evenings and late at night, when the area would be otherwise quieter, the cumulative noise and disturbance would be detrimental to the residential occupiers of the shopping parade units and the dwellings on the opposite side of Ball's Road and the immediately adjacent Euston Grove.
11. I note the suggestion that the takeaway would be ancillary to the café, which would reduce the associated activity. However, it is not clear what level of takeaway activity would be ancillary to a café with just 3 tables. In any case, the proposal is described as a hot food shop with internal café seating. It is not proposed as a café with ancillary takeaway nor has any mechanism been proposed whereby the takeaway element could reasonably be controlled.
12. The Council's Environmental Health officer considers that adverse cooking odours could be avoided by the imposition of a planning condition requiring a

scheme of fume extraction. I see no reason to disagree. In the event the appeal was allowed, the Council suggests that the opening hours be restricted to 0800-1900 Mondays to Sundays. While this would avoid nuisance in the late evenings, this would not address effects at other times. Moreover, these are not the hours sought by the appellant. Taking into account the small size of the café, I cannot be certain that a condition restricting the hours to this extent would meet the tests for conditions, including that it would be reasonable. Consequently, I am not satisfied the harm could be mitigated by conditions.

13. Therefore, the proposal would harm the living conditions of nearby residential occupiers, with particular regard to noise and disturbance. It would conflict with the residential amenity aims of Policy HS15 of the Wirral Unitary Development Plan Adopted February 2000. It would conflict with the aims and guidance of the SPD. It would conflict with the residential amenity aims of the National Planning Policy Framework (the Framework).

Other Matters

14. I note the appeal decisions for changes of use to hot food takeaways¹ where Inspectors found no adverse effects. Full details have not been provided. There is insufficient information to draw comparisons with the Morris Street case. Burnley Lane is an ongoing use that would not be materially different from other lawful alternatives permitted by its authorised A1 use. Audley Range relates to an existing A1 use in an area with a busy commercial character. Deane Road relates to an ongoing use with no evidence of adverse impacts. The Oxton Road café is in a larger shopping area, opposite a supermarket and close to a busy junction, and it closes at 1730. None appears directly comparable, and they do not provide a justification for the proposal.
15. There would be economic benefits from the re-use of the vacant commercial premises and the employment of the equivalent of 3 full-time staff members. This carries limited positive weight. The proposal might diversify the food offer in the area, but there would be no control over the type of food offered for sale and this does not weigh in favour of the proposal.
16. The Framework promotes sustainable economic growth. However, it also supports strong, vibrant and healthy communities. It requires development to add to the overall quality of the area and to create places that promote health and well-being, with a high standard of amenity for existing and future users.

Conclusion

17. For the reasons above, the proposal would conflict with the development plan and there are no other considerations that would outweigh that conflict.
18. Therefore, the appeal should be dismissed.

Sarah Manchester

INSPECTOR

¹ Refs APP/W4223/A/13/2195936, APP/W4223/W/16/3152715, APP/M2372/A/14/2217424, APP/N4205/W/18/3212581