



Appeal Decision

Site visit made on 11 May 2022

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2022

Appeal Ref: APP/C1055/W/21/3286662

139 Chaddesden Park Road, Derby DE21 6HL

- 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 Engin Gulen against the decision of Derby City Council.
 - The application Ref 21/01043/FUL, dated 14 June 2021, was refused by notice dated 13 September 2021.
 - The development proposed is described as: Change of use from A1(Class E) to Sui Generis use as a hot food takeaway shop. A new kitchen, food prepare room and serving counter will be installed. There are no proposed external changes to the shop beside a small obscure window on the hidden left side elevation and the new extractor fan which will run up over the roof at the rear side of the property, as shown on the plans. The extractor will be at least 1 m above the window level. There are existing fences in the front elevation, this will be removed.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted amended plans, Ref EG 01, Revision 01, dated 16/06/2021, and an amended Design and Access Statement dated Oct 2021. These documents did not form part of the planning application and therefore the Council's Decision is not based on them.
3. In summary, the amendments relate to the positioning and size of the proposed extraction unit. On the amended plan the extraction unit would be located nearer to the neighbouring dwelling to the rear of the site on Margrave Road and it would be reduced in height. I consider the proposed changes to be significantly different to the proposal the Council made its Decision on.
4. I have no substantive evidence that the necessary consultation has been carried out on the amendments, and therefore all those who should have been consulted on the proposed changes have not been given the opportunity to comment.
5. Within this context, I am mindful of the Wheatcroft Principles¹, which are further explained in the 'Procedural Guide: Planning Appeals – England'. I consider that, in the interests of fairness, this appeal must be determined based on the plans submitted to the Council, and upon which it based its decision (which have been the subject of consultation), and not the suggested amendments. To do otherwise could prejudice unacceptably the interests of

¹ *Bernard Wheatcroft Ltd v SSE and Another* [JPL 1982 P37]

relevant people and consultees, who may have observations to make regarding the suggested amendments.

6. The evidence submitted refers to the premises having previously been in use as a 'plumbing shop', and that the premises have not been used since February 2021. At the time of my site visit the premises were being used as a Barber Shop. The parties were given the opportunity to comment on whether the situation had any implications for the appeal. No additional comments were submitted.

Main Issues

7. The main issues are the effect of the proposal on the shopping hierarchy, the character and appearance of the area, and the living conditions of occupiers of existing neighbouring properties.

Reasons

The site

8. The site comprises the ground-floor of a detached, two-storey building, located on the corner of Chaddesden Park Road and Margrave Road, in an area that is predominantly residential.
9. Since changes to the Use Classes Order (UCO) were introduced in September 2021, the site premises now fall within the Class E use class, which combines what were Classes A1 (retail), A2 (financial/professional services), A3 (restaurant/café), B1 (office) and parts of D2 (such as gyms and nurseries). Because of these changes, whereas the premises were previously Classed as A1 (retail), now that the premises have a Class E use they can be used for the wide range of commercial uses outlined without requiring planning permission.
10. Although several of the properties located around the corners of the staggered crossroad junction of Chaddesden, Margrave, and Wilsthorpe Roads form a cluster of premises that are in commercial or community use, it is important to note at the outset that the cluster does not constitute a district or neighbourhood centre as defined in the hierarchy of centres for local planning policy purposes.

Effect on shopping hierarchy

11. Policy CP13 of the Derby City Local Plan – Part 1: Core Strategy, 2017, (LPCS), requires, among other things, applicants of proposals for retail, entertainment, recreation and leisure development outside of defined centres, to demonstrate that: a) there are no sequentially preferable sites within a defined catchment area that could accommodate the proposal; b) the proposal would not, individually or cumulatively, have a significant adverse impact on the role, vitality or viability of any centre; c) the proposal would not undermine the strategy and objectives of the Plan, and d) the proposal is located where there is a choice of travel options.
12. The appellant has not demonstrated that there are no sequentially preferable sites within either of the District or Neighbourhood centres in the surrounding catchment area defined by the Council. For this reason, the proposal does not accord with Policy CP13 bullet point (a) of the LPCS.

13. However, as noted, the premises already has a Class E use and therefore could operate, for example, as a shop or restaurant. Hence, the premises can currently be used for several 'town centre' uses in an 'out of centre' location. I therefore consider that the proposal would not have a significant adverse impact on the role, vitality or viability of any centres within the Plan area; and that the proposal would not undermine the strategy and objectives of the Plan. Additionally, I observed during my visit that there are bus stops within proximity of the site; therefore, the proposal would be located where there would be a choice of travel options. As such, the proposal would accord with bullet points (b), (c) and (d) of Policy CP13 of the LPCS.
14. Although the proposal does not fully accord with Policy CP13 of the LPCS, ie bullet point (a), the proposal would accord with bullet points (b), (c) and (d) of the Policy. I therefore conclude that the proposal would not have any detrimental impact on the shopping hierarchy of the Plan.

Effect on character and appearance

15. As noted, the site is located within a predominantly residential area, which is characterised primarily by modest-sized, two-storey dwellings. The street furniture in the area is also modest in size and scale, and the tree-lined nature of Chaddesden Road emphasises the overriding suburban character and appearance of the area.
16. The proposed operational development includes installation of an extraction flu. The flu would be located on the rear of the property towards the north-western corner of the building. It would exit the building at ground floor level and project upwards, past the first-floor level, to a height of around 1 m above the eaves. The flu would comprise of stainless-steel material.
17. The proposed position, size and materials of the flu would be highly visible in the street scene of Margrave Road, and it would also be very visible from the section of Chaddesden Road as it approaches the corner of Margrave Road. I consider the flu would be an alien structure within the primarily residential environment described. As such, I consider it would be harmful to the street scene and the character and appearance of the area.
18. The Council's Decision Notice does not reference a Local Plan policy that deals specifically with matters of design/character and appearance. However, the Decision Notice does refer to the National Planning Policy Framework (the Framework), which is a significant material consideration. The proposal does not accord with design policies in the Framework, which require development to be of high-quality design, to add to the quality of the area, to be visually attractive and sympathetic to local character².

Effect on living conditions – existing occupiers

19. The Council's reasons for refusal contend that the proposal would result in an increase in pedestrian and vehicle movements, which would be harmful to the living conditions of occupiers of existing neighbouring residential properties.
20. Saved Policy GD5 of the City of Derby Local Plan Review, 2006, (LPR), supports new development providing it does not cause unacceptable harm to the living conditions of existing users with regards to, among other things, noise, traffic

² Paragraphs 126 and 130 of the Framework

generation, and parking. Sub paragraph 130 (f) of the Framework requires new development to ensure a high standard of living conditions is provided for existing occupiers.

21. The proposed opening hours are 12:00 to 23:00 hrs, 7 days per week, including Sundays and Bank Holidays. I accept that pedestrian and vehicle movements and vehicle parking associated with the proposed use of the premises, are unlikely to differ significantly during daytime opening hours to the movements and vehicle parking associated with the previous retail use of the premises. I also note that the appellant's statement proposes reducing the opening hours to between 16:00 to 22:00. However, both the originally proposed and the suggested amended hours of opening would alter the primarily daytime use of the existing commercial properties around the junction. Consequently, the proposal would result in pedestrian and vehicle activity at and around the premises late into the evenings, at weekends and on bank holidays. During these times occupants of neighbouring residential properties are entitled to the relative quiet they currently experience.
22. I therefore conclude that the proposal would have a detrimental impact on the living conditions of occupiers of existing surrounding residential properties. As such, the proposal does not accord with saved Policy GD5 of the LPR or sub paragraph 130 (f) of the Framework.

Other Considerations, Planning Balance and Conclusion

23. Planning law requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise³.
24. The appellant suggests that: a) the shopfront would be designed to be in keeping with the character and appearance of the area; b) additional odour control systems could be installed; c) restrictions could be placed on window and door openings to reduce any noise impact, and e) a high-quality service would be provided with healthy options available. Designing the shopfront to be in keeping with the area is a requirement of planning policies anyway. The quality of service cannot be controlled; and I have not been provided with any substantive evidence to demonstrate that noise could be suitably controlled as suggested. I therefore attach limited weight to these matters, individually and collectively.
25. Notwithstanding my conclusion regarding the effect of the proposal on the Local Plan shopping hierarchy, I conclude that there are no other considerations that outweigh the significant harms I have found in respect of character and appearance of the area and living conditions of occupiers of existing neighbouring residential properties. I therefore conclude that the appeal is dismissed.

J Williamson

INSPECTOR

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.