



Appeal Decision

Site visit made on 18 May 2022

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2022

Appeal Ref: APP/W4223/W/22/3291823

166 Trent Road, Shaw, Oldham, OL2 7QR

- 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 Zarina Akhtar against the decision of Oldham Metropolitan Borough Council.
 - The application Ref FUL/347087/21, dated 16 June 2021, was refused by notice dated 13 September 2021.
 - The development proposed is described as 'to allow hot food to be delivered from the premises, delivery only of food, no public admitted.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Notwithstanding the description of development set out above, it is clear from the plans and accompanying details that the proposed development comprises the change of use from a shop (Class E) to a hot food takeaway (sui generis) with the delivery of food only. I have determined the appeal on the basis of this description as it more clearly defines the proposed development and reflects the legislation of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. My use of this description does not fundamentally change the appeal scheme, nor prejudices the cases of the main parties in relation to it.
3. The first reason for refusal on the Council's decision notice, indicates substantive concerns regarding the quality of the area. However, the concerns have been articulated in the officer report by the Council as a living condition issue relating to noise and disturbance. This has therefore formed the first main issue and I have determined the appeal accordingly.

Main Issues

4. The main issues are the effect of the proposed development upon the living conditions of neighbouring residents, with particular regard to noise and disturbance, and highway safety.

Reasons

Living Conditions

5. The appeal site consists of a ground floor retail unit operated as a low-key newsagent with a reduced amount of stock and opening times limited to a few hours each morning, as observed during my visit. It forms part of a small

- parade of shops including a convenience store and off-license, pharmacy and hairdressing salons.
6. Take-aways by their nature involve comings and goings which can generate noise and disturbance for existing noise-sensitive properties including dwellings. Bungalows line this section of Trent Road giving the area a predominantly suburban, residential character, which the Council advises is particularly quiet at night. The scheme would introduce comings and goings until 2200 hours each night and also at weekends and public holidays.
 7. The appellant contends that the retail uses could generate a sizeable amount of activity and with no restrictions on their hours of operation, they could open until 2300 hours. Be that as it may retail uses, particularly those within a residential area, by the nature of their activity and footfall, tend to operate during standard daytime hours, to meet the needs of their customers. In contrast, a take-away would generate a peak demand over a concentrated period of time in the evening. The activity generated by a take-away use would therefore be materially different to that of a shop.
 8. There is limited separation between the site and the principal windows of 168 Trent Road and further residential units above the parade, including at the appeal property. Even if I were to impose a condition restricting third party delivery operators, the increased noise and disturbance would be obvious to occupiers of these properties, at a time when residents could reasonably expect the quiet enjoyment of their homes.
 9. Whilst the number of employees would rise from 2 to 8 part-time members of staff, the evidence is unclear as to how many of the new posts would work simultaneously. I am not convinced of the likely success or reasonableness of limiting the number of vehicles collecting orders at one time. The claims that the take-away would not be busy appears to underplay the impact of the proposed development and would contradict the circumstances necessary for a viable business.
 10. In addition, although the Council suggested conditions with regard to the extraction and ventilation plant, third parties have raised concerns and there is no detailed information of such equipment before me. As such, I cannot be sure that the noise and odour levels from the external plant would be acceptable.
 11. The proposal would result in harm to the living conditions of neighbouring residents, with regard to noise and disturbance. It would therefore conflict with Policy 9 of the Oldham Local Development Framework Development Plan Document; Joint Core Strategy and Development Management Policies 2011 (JCS) which amongst other things, seeks to ensure that new development does not cause significant harm to existing neighbouring occupants through impacts on noise or other nuisances. The scheme would also conflict with the approach in paragraph 130 of the National Planning Policy Framework (the Framework) which seeks to provide a high standard of amenity for existing users.

Highway Safety

12. The appeal site is located on the brow of a hill near to 2 road junctions and with a parking bay to the front of the commercial units. A designated bus waiting area is unusually positioned away from the pavement but next to the

carriageway of the road. At the time of my site visit I saw cars park within the bay perpendicular to the pavement, with vehicles overhanging the bus waiting area which is in regular use. I observed a bus partially obstructing the carriageway, as the bus waiting area was partly blocked by indiscriminate parking. This correlates with the reports made to the Highway Authority regarding the existing conflict between parked vehicles and buses.

13. The proposed take-away use even if limited to deliveries only, would result in increased parking demands from staff. Although it is suggested that the appellant would prevent staff from parking near to the site and they would be required to use public transport, I have no evidence as to how this could be controlled. Delivery drivers may park or idle in an unsafe position near to the bus waiting area, parking bay and nearby junctions. This adds to my concerns that traffic generated by the proposed use would lead to an unacceptable risk to highway safety and that a poor situation would be made worse.
14. No compelling evidence is provided to substantiate the assertion that off-licences can have a higher level of customer traffic into the evening than take-aways. Consequently, I am not persuaded that the proposed use would have less impact on highway safety than an alternative retail use. Nevertheless, I am required to determine the proposal that is before me.
15. It is suggested that a condition could require the provision of electric vehicles. No evidence is before me to demonstrate how the charging of vehicles with electric cables would not interfere with the free passage or safety of pedestrians accessing the bus stop or other commercial units. The use of bicycles for deliveries, whilst plausible in terms of reducing the demand for parking, would still result in comings and goings to the premises, potentially additional ones given the limitations of this mode of transport. Conflict is also likely to occur with pedestrians waiting for the bus if bikes or scooters would be taken onto the pavement.
16. For these reasons I conclude that the proposal would result in harm to highway and pedestrian safety, contrary to Policy 9 of the JCS (2011) which requires that development minimises traffic levels and does not harm the safety of road users. There would also be conflict with Paragraph 112 of the Framework, which seeks to minimise conflicts between pedestrians, cyclists, and vehicles.

Other Matters

17. The proposal would make a modest contribution to local employment opportunities, and it would provide a service to less mobile customers. Environmental improvements from customers not having to travel to the take-away are unlikely to be realised, given that they would be replaced by delivery driver journeys. The benefits of the proposal are therefore limited and do not outweigh the harm identified. These matters do not affect my overall findings.

Conclusion

18. For the above reasons, having regard to the development plan as a whole and all other relevant considerations, the appeal is dismissed.

M Clowes

INSPECTOR