



Appeal Decision

Site visit made on 13 September 2022

by John Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th October 2022

Appeal Ref: APP/J0405/W/22/3291750

19 Bridge Street, Buckingham MK18 1AF

- 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 & Mrs Godhanian against the decision of Buckinghamshire Council.
 - The application Ref 21/00583/APP, dated 11 February 2021, was refused by notice dated 10 January 2022.
 - The development proposed is described on the application form as 'Change of use of a dwellinghouse (ground floor only) (Class C3) to hot food takeaway unit (Class A5/sui generis) and drycleaners unit (Class A1/E) including the installation of one (1) oven air extract, terminating via a chimney flue at the side northern elevation of the building and a number of other external alterations'.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr and Mrs Godhanian, against Buckinghamshire Council. This application is the subject of a separate decision.

Preliminary Matter

3. The Council's second reason for refusal concerned the appellant's failure to demonstrate that appropriate visibility splays for vehicles attending the site could be achieved without relying on third party land. The Appellant's appeal documentation includes an additional plan¹ which indicates that the visibility required can be achieved and the Council has confirmed, in writing, that it no longer objects to the proposal on highways and transportation grounds. In this regard the Highway Authority raised no objection to the proposal provided the 2.4m x 43m visibility splays could be provided. From what I have seen and read I agree with the course of action that the Council have adopted and see no reason to pursue this matter further.

Main Issue

4. The main issue in this appeal is the effect of the proposal on the living conditions of the occupiers of 1, 3, 5a and 5b Bourton Road and 20 Bridge Street with particular regard to noise, odour and disturbance.

¹ Drawing number 1733-06

Reasons

5. The appeal premise comprises a detached dwelling in a semi commercial edge of town location. Immediately to the north of the site is a commercial garage which incorporates a vehicle workshop, petrol filling station and a retail use with residential use at first floor level. Residential properties lie immediately to the south of the appeal site, and on the opposite side of Bridge Street. Other commercial premises including The New Inn, Buckingham Ford Car sales and a Sainsbury's Local are located within the vicinity of the site and contribute towards the areas varied character. The site fronts onto Bridge Street, a busy main road leading into Buckingham.
6. The application form indicates that it is proposed to open the hot food takeaway seven days a week from 1100 through to 2300, including Sundays and Bank Holidays. The drycleaners unit would open for business from 0900 to 1800 Monday to Saturday and at no time during Sundays and Bank Holidays.
7. The area in the immediate vicinity of the appeal site, has a comparatively high level of background noise, mostly arising from vehicles using Bridge Street. However, it is likely that general background noise levels would be lower in the evening as the site is outside the town centre and in a mixed use area that encompasses several dwellings. The impact on living conditions of neighbours needs to be considered in this context.
8. The residential properties at 1, 3, 5a and 5b Bourton Road have common boundaries with the appeal site and have short rear gardens. They have windows serving habitable rooms in their rear elevations facing towards the appeal site. Customer car parking is proposed directly adjacent to the common boundary. Given this relationship, noise and disturbance, is likely to occur at close range as customers arrive or leave the hot food take-away, or as a consequence of them congregating outside the premises before continuing their journey. This would make the gardens less enjoyable places within which the occupants could spend time during the evening. The habitable rooms of Nos 1, 3, 5a and 5b would also be less pleasant places to use and enjoy, especially at times when windows are left open for ventilation.
9. I have taken into account the appellant's suggestion that a noise mitigation plan could be secure by condition. Whilst recognising the benefits of such a plan I am not satisfied that it would address the harm that I have identified above. In particular, as drafted, it would limit only manage/control noise form internal areas and the behaviour of delivery drivers. It would not provide an effective control over the behaviour of customers, and their associated vehicular and pedestrian movements, which would be the most likely source of noise and disturbance. Even if, customer behaviour could be managed, I consider that enforceability of the plan would prove difficult.
10. The first floor flat, above the retail unit at 20 Bridge Street, has a patio area onto which habitable rooms face. Given the position of the proposed entrance doors and parking areas away from this space, I find that customer activity would be unlikely to directly affect the living conditions of the occupiers of this particular dwelling. That said, the proposed flue, serving the hot food takeaway, would lie in close proximity to this residential unit and its associated patio.
11. In this regard I have taken into account the Noise Impact Assessment Report submitted by the Appellants and the views expressed by the Council's

Environmental Health Officer (EHO). In this regard the EHO has indicated that there would be no significant noise impacts arising from the operation of the premises subject to the provision of silencing equipment to the ventilation system and odour abatement measures. The Council accept that a condition would provide a degree of mitigation of noise and odours but do not consider that it would be enforceable. An unenforceable condition for the purposes of the six tests would be one where it is impossible for the planning authority to detect a breach of the condition. This is a practical question, and it should not be merely difficult for the authority to monitor compliance. A judgment should be made as to whether monitoring in the circumstances would be unreasonably onerous or practicably impossible. In this regard I consider that a condition that contains appropriate requirements in terms of noise and odour could be imposed that would be capable of being monitored. By imposing such a condition, I am satisfied that the living conditions of the occupiers of the first floor accommodation at No 20 would not be significantly affected by the proposal.

12. The proposed hours would be similar to those of the New Inn public house and the Sainsbury's Local. The New Inn is a long-established enterprise and residents in the locality are well accustomed to the activity associated with it. Furthermore, whilst acknowledging that the premises have a late night licence, I have no evidence before me to show that the activity arising from the premises has resulted in any complaints from neighbouring residents. The car park to Sainsbury's and the entrance to the store is remote from residential properties, when compared with the appeal proposal, and any impact on neighbouring residents would be more limited. Consequently, the presence of these facilities and services does not justify a proposal that would result in harm to the living conditions of those residing close by.
13. For the reasons given above, I conclude that the proposal would cause significant harm to the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance. It would therefore be contrary to Policy BE3 of the Vale of Aylesbury Local Plan (2021), and paragraph 130 of the National Planning Policy Framework (the Framework), which jointly seek to provide a high standard of amenity for existing and future users.

Other Matters

15. The Council consider that the site is in a sustainable location close to the town centre and have no objection to the principle of the change of use. Furthermore, the proposal would result in the investment in an underutilised property and provide improved choice and competition. These are factors that weigh moderately in favour of the development given its modest scale. Accordingly, they do not outweigh the significant harm to the living conditions of neighbouring occupiers, and the conflict with the development plan, that I have identified above.
16. I acknowledge that the appellant has sought the advice of the Council as to what would be acceptable development, and has made amendments to the proposal, however this does not alter the conclusions that I have reached.

Conclusion

17. There are no relevant considerations, of sufficient weight, to indicate the application should be determined other than in accordance with the development plan, taken as a whole. For the reasons given above, I therefore conclude that the appeal should be dismissed.

John Gunn

INSPECTOR