



Appeal Decision

Site visit made on 22 September 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2022

Appeal Ref: APP/Q3060/W/22/3298913

179 Berridge Road Central, Nottingham NG7 6HR

- 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 Razan Karim against the decision of Nottingham City Council.
 - The application Ref 22/00495/PFUL3, dated 6 March 2022, was refused by notice dated 28 April 2022.
 - The development is a change of use from retail to café/restaurant (class E) and hot food takeaway (sui generis) with ventilation system.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from retail to café/restaurant (class E) and hot food takeaway (sui generis) with ventilation system at 179 Berridge Road Central, Nottingham, NG7 6HR in accordance with the terms of the application, Ref 22/00495/PFUL3, dated 6 March 2022, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Existing and Proposed Plans – A01 rev 01 sheet 2 of 3; 3D views – A01 rev 01 sheet 3 of 4; Ventilation Detail – DSZ dated 02/03/2022.
 - 2) The premises shall only be open for customers between 0900 to 2300 hours.
 - 3) The installed kitchen fume extraction system shall be retained in accordance with the details provided on the plan: Ventilation Detail – DSZ dated 02/03/2022. It shall be operated and maintained in accordance with the manufacturer's instructions and specifications and retained for so long as the use continues.

Preliminary Matters

2. The description of development as it is shown on the planning application form includes superfluous commentary. For ease of reference, I have taken solely the development for which planning permission is sought. The change of use has taken place.
3. The Council's Officer report states that it is now the case that cafe/restaurant uses are within Class E, the same as retail uses, and planning permission is not required for this element. The Council's assessment therefore focussed on the hot food takeaway component. I have taken the same approach in my decision.

Main Issue

4. The main issue is the effect of the development on the living conditions of nearby residents with regard to noise and disturbance.

Reasons

5. The appeal property is the ground floor of an end terrace property within the Berridge Road Centre of Neighbourhood Importance. There is residential accommodation above. This flat has a number of windows in the end elevation including close to the entrance door of the appeal property. The property adjoins 91 Ewart Road, a two storey terraced dwelling. The appeal property is beside, although does not adjoin, 181 Berridge Road Central, also a two storey terraced dwelling. The surrounding area comprises a mix of uses, with a number of commercial premises on Berridge Road Central, many of which have residential accommodation above, and rows of terraced dwellings in the adjoining streets.
6. I noted a number of takeaways on Berridge Road Central in close proximity to the appeal property. No information has been submitted regarding any planning restrictions on the opening hours of these units, or the other commercial uses nearby such as the small supermarket opposite the appeal property. While acknowledging the residential uses above and beside the appeal property, it is within a designated Centre of Neighbourhood Importance which is a focus for convenience goods and service provision to meet local needs and small scale community and leisure facilities. Expectations in terms of activity would be different in such areas compared to a wholly residential area.
7. Nevertheless, while the Council appears to be satisfied that noise and disturbance from the ventilation system would not be unacceptable, hot food takeaways can generate noise and disturbance from customers arriving, departing and queuing, such as car engines, slamming car doors and voices. However, there will already be customers arriving and departing the appeal property given the café/restaurant use. It is likely that the hot food takeaway element of the business will have increased activity to some extent, including in the evening. However, the additional noise and disturbance generated by the takeaway element would not be an intensification on a significant scale.
8. Based on the submitted information, I am not persuaded that the addition of a hot food takeaway to an operational café/restaurant located in a Centre of Neighbourhood Importance where similar uses already take place, would generate a level of noise and disturbance sufficient to unacceptably harm the living conditions of neighbouring residents. Furthermore, I am satisfied that any potential noise and disturbance could be adequately mitigated via the imposition of a suitably worded condition controlling the opening hours of the premises.
9. I appreciate that a previous proposal for a hot food takeaway from the property was dismissed on appeal in 2003¹ on grounds of noise impact on neighbouring residents. Only very limited details of this previous proposal are before me. However, based on the submitted information, it differs from the current appeal scheme in that it did not involve a takeaway element operating from an existing café/restaurant.

¹ Application reference 03/00217/PFUL3

10. For the above reasons, I conclude that the development does not cause unacceptable harm to the living conditions of nearby residents with regard to noise and disturbance. Consequently, it accords with the residential amenity requirements of Policy 10 of the Aligned Core Strategies Part 1 Local Plan adopted 2014, and Policies DE1, SH7 and LS1 of the Land and Planning Policies Development Plan Document, Local Plan Part 2, adopted 2020.

Conditions

11. The Council has not suggested any conditions to be imposed in the event that I allow the appeal. However, a condition to require the development to be carried out in accordance with the approved plans is necessary in the interests of certainty. To safeguard living conditions of neighbouring residents, a condition is necessary to limit the hours of operation. The appellant and Council were given the opportunity to comment on the hours of operation, which the appellant did. For the same reason, a condition is necessary to ensure that the ventilation system is retained and operated.

Conclusion

12. For the reasons given above, having considered the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should succeed.

F Wilkinson

INSPECTOR