



Appeal Decision

Site visit made on 7 November 2022

by Emma Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8TH December 2022

Appeal Ref: APP/Q4625/W/22/3305461

58 Station Road, Marston Green, Solihull B37 7BA

- 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 Ali Zafran against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2022/00493/PPFL, dated 8 March 2022, was refused by notice dated 18 July 2022.
 - The development proposed is the change of use of existing units 1, 2 and 3 from Class E (retail) to Sui Generis to form a Hot Food Takeaway. Amalgamation of units 1 and 3 to form a single unit including the erection of a single storey extension. Unit 2 to remain separate.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of existing units 1, 2 and 3 from Class E (retail) to sui generis to form a hot food takeaway. Amalgamation of units 1 and 3 to form a single unit including the erection of a single storey extension. Unit 2 to remain separate, at 58 Station Road, Marston Green, Solihull B37 7BA in accordance with the terms of the application, Ref PL/2022/00493/PPFL, dated 8 March 2022, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have used the description of the development on the Council's decision notice as this more accurately describes the proposal and the development as shown on the submitted plans. The planning application was advertised on this basis and the appellant has indicated that they have no objection to the revised wording. Therefore, no injustice would arise to any party if the Council's decision is used.

Main Issues

3. The main issue is whether the appeal site is a suitable location for the proposed hot food takeaway use, having particular regard to public health.

Reasons

4. 58 Station Road is a two storey semi-detached property, it comprises a commercial use at ground floor with residential accommodation above. It lies at the end of a small parade of similar properties, which include a pharmacy, hairdresser, estate agent, hot food takeaway and a children's day nursery. The appeal proposal seeks to change the use of the ground floor of the property from three retail units (Class E) to two hot food takeaways (sui generis).

5. Policy P18 of the Solihull Local Plan 2013 (the LP) sets out that proposals should promote, support and enhance physical and mental health and wellbeing. It requires that where any adverse health impacts of development proposals are identified, the development will be expected to demonstrate how these will be addressed or mitigated.
6. Policy P18 states that proposals for hot food takeaways in areas where there is already a high concentration of such uses will be resisted. It acknowledges the link between poor diet and obesity and aims to increase opportunities to consume fresh food as opposed to unhealthy food. In that regard it seeks to manage the concentration of hot food takeaways particularly around schools, in order to reduce the likelihood of the consumption of unhealthy food.
7. The appeal property lies a short distance from the entrance of Marston Green Primary School. Whilst it is located in a small parade of shops and services it falls within the wider Marston Green Local Centre. The parties do not dispute that four of the existing 34 units therein are currently in use as hot food takeaways, as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended), which amounts to a total of 12 percent of the units. Moreover, these units are positioned throughout the Marston Green Local Centre, with three being located in a separate frontage to the appeal site. The current situation would therefore not represent a high concentration of takeaway uses in the area, and the provision of two additional hot food takeaways as proposed would not be precluded by Policy P18. Furthermore, I have not been provided with any substantive evidence to demonstrate that there would be any adverse health impacts as a result of the proposal.
8. Whilst I note concern expressed by local residents in relation to the number of existing takeaways and the lack of need for further provision, for the reasons set out above the proposal would not give rise to conflict with Policy P18. Moreover, there is no policy requirement to demonstrate a need for the proposed development.
9. I therefore conclude that the appeal site would be a suitable location for the proposed hot food takeaway use, having regard to public health. Accordingly, I find no conflict with Policy P18 of the LP, which broadly accords with advice in the Framework in relation to promoting places which enable and support healthy lifestyles. The Council's refusal reason refers to emerging Policy P18 of the Solihull Plan Review which is currently being examined. However, the evidence suggests that there are unresolved objections to the policy and the plan has not yet been adopted. Whilst there is a degree of conflict with the emerging policy, specifically in relation to thresholds for the percentage of hot food takeaways, in light of the above, I am only able to attach limited weight to this conflict in the assessment of the proposals.

Other Matters

10. A number of concerns have been expressed by third parties relating to highway and pedestrian safety, including increased traffic generation, parking congestion and deliveries. The appeal site is accessible by a range of modes of transport, including by foot or bicycle, from the surrounding residential properties. There are a number of on-street parking bays to the front of the appeal site which provide parking for up to an hour for visitors who travel by car to the commercial units in the parade. Furthermore, there is no substantive evidence to suggest that the proposed hot food takeaway uses would generate

a significant uplift in vehicular movements or parking requirements over and above the existing use of the building for retail purposes. Moreover, neither the Council nor the Highway Authority have raised concerns regarding the effect of the proposal on highway safety and I have no reason to disagree.

11. With regards to noise and odour, this can be controlled through the imposition of suitable conditions relating to an appropriate extraction system, including the siting and design of any external plant as well as the opening hours of the units. There is no evidence to suggest that the proposed use would attract anti-social behaviour or at unsociable hours, or that it would generate rubbish associated with the use. Furthermore, there is no substantive evidence that the loss of existing retail units would harm the vitality or viability of the local centre.
12. My attention is drawn to an appeal for a hot food takeaway in Northumberland. Whilst there are some similarities with the issues raised, I do not have full details in respect of the development so I cannot be sure of the circumstances of the case. In any case, each development proposal is to be considered on its own merits.

Conditions

13. The conditions set out in the accompanying schedule are based on those suggested by the Council in their appeal statement should the appeal be allowed. The appellant was given the opportunity to comment on them. Where necessary I have amended the wording of the suggested conditions, in the interests of precision and clarity, and in order to comply with advice in the Planning Practice Guidance.
14. In addition to the standard condition relating to the commencement of development, it is necessary to specify the approved plans to provide certainty. In the interests of the living conditions of the occupiers of neighbouring properties, it is necessary to impose conditions relating to the provision of a ventilation system, sound insulation of plant/machinery and sound insulation of the ground floor ceiling in the property.
15. I note the proposed hot food takeaway use would include dry oven baking only and would not require any frying or deep fat frying of food. However, given that the planning permission granted is for the use of the building and not specifically the appellants' currently intended end user, it is important to impose conditions to cover all matters which may be relevant. In the event that the end users activities do not require all features, such as grease filtration, this matter would be for consideration as part of the discharge of condition process.
16. A condition is also necessary to restrict the opening hours of the takeaways, in the interest of protecting the living conditions of occupiers of the nearby residential properties by way of noise and general disturbance. The hours are suggested by the Council's Public Protection Officer having regard to the ambient noise levels are 1000 – 2300 Mondays – Saturdays and 1000 – 2200 on Sundays and Bank Holidays. However, the appellant has highlighted that there are other hot food takeaway uses within the Marston Green Centre which open until 2300 every day and suggests the same should be applied in this instance. Furthermore, it has not been demonstrated that reduced opening hours on Sundays and Bank Holidays would have a meaningful effect on noise

levels or that it is necessary to safeguard the living conditions of nearby residents. As such a condition to restrict opening hours to between 1000 and 2300 every day would be reasonable.

17. In addition, the Council has suggested a condition to restrict the consumption of food and drink on land to the front of the premises, to no later than 2000 Monday to Saturday and 1800 on a Sunday. However, in practice, this would be very difficult to enforce given that customers may eat/drink as they leave the premises for example. Furthermore, even if it were enforceable, it would be likely to simply displace customers onto the adjoining highway where they could continue to congregate close to residences. As such, the condition is not deemed necessary.
18. The Council has suggested a condition to secure the installation of external lighting and CCTV. However, in the absence of any evidence as to how this would protect the neighbourhood from any increase in ambient noise levels, the condition is not deemed necessary.

Conclusion

19. For the reasons set out above the appeal succeeds.

Emma Worley

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 31047 - Location Plan; 31047 - Elevations; Left Side; 31047 - Elevations - Right Side; 31047 - Elevations - Rear; 31047 - Floor Plans - Layouts; and 31047 - Floor Plans - Proposed Floor Areas.
3. Prior to the first use of the development hereby approved, a ventilation system, incorporating grease and odour filtration and/or suppression shall be installed in accordance with a scheme to be submitted to and approved by the Local Planning Authority. The installation shall be subject to testing to demonstrate it is capable of reducing odours to an acceptable level; the methodology for such testing shall form part of the agreed scheme. If as a result of the testing process the equipment does not reduce odours to an acceptable level, then upgrading of the system shall take place in accordance with details to be submitted to and approved by the Local Planning Authority. The use hereby permitted shall not commence until the upgraded ventilation system has been installed in accordance with the approved details. Thereafter the system shall be used and maintained in accordance with the approved scheme in perpetuity.
4. Prior to the first use of any specified plant and/or machinery on the premises, it shall be enclosed with sound insulating material and mounted in a way which will minimise transmission of structure borne sound, in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. Thereafter the plant and/or machinery shall be used and maintained in accordance with the approved scheme in perpetuity.
5. Prior to the first use of the development hereby approved, the ground floor ceiling shall be insulated in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. The details approved shall be implemented and retained thereafter in perpetuity.
6. The premises shall only be open for customers between the hours of 1000 – 2300.

*****End of Conditions*****