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## Appeal Decision

Site visit made on 21 March 2023

**by K Ford MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26th May 2023**

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**Appeal Ref: APP/B3438/W/22/3311337**

**95 High Street, Biddulph, Staffordshire ST8 6AB**

- 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 Emrah Karapinar against the decision of Staffordshire Moorlands District Council.
  - The application Ref SMD/2022/0306, dated 22 June 2022, was refused by notice dated 17 August 2022.
  - The development proposed is change of use of retail premises to kebab/ pizza takeaway.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. I have used the description of development as it is set out in the Council's Decision Notice as it accurately and comprehensively summarises the development proposed.

### Main Issues

3. The main issues are:
  - The effect on the vitality and viability of the primary shopping area.
  - The effect on the living conditions of neighbouring residents with regards odour and noise.

### Reasons

#### *Vitality and Viability*

4. The appeal site is a small vacant retail shop with residential use above located between an architect's office and nail bar on Biddulph High Street, defined within the Staffordshire Moorlands Local Plan (Local Plan) as a primary shopping area.
5. To the rear of the property is a cobbled alleyway that separates the properties on High Street and the terraced dwellings on John Street. The proposal is for a change of use from retail to a kebab/ pizza takeaway outlet opening 14:00-23:00 selling hot food to mostly be consumed off the premises. The change of use from retail to a takeaway involves a change in use from class E to sui generis and therefore requires planning permission.

6. Policy TCR2 of the Local Plan supports retail use within primary shopping frontages. Development falling within other use classes is only permitted where it would not create a concentration of non-shopping uses and result in an unacceptable change in the retail character of the immediate area or have an adverse effect on the vitality or viability of the town centre. The supporting text provides examples of what is meant by concentration which includes 3 or more adjacent units in a non retail use.
7. The proposal would result in a row of 4 non retail units. The use would attract visits at certain times of the day reflecting the fact that it would largely be serving and evening and night time economy. Whilst it would provide a use for the unit and is located in an accessible location, the benefit to the functioning of the town centre would be limited by the nature of the proposed use.
8. The proposal would lessen the reason and desire for people to visit this part of the town centre during certain times of the day and would weaken the retail function of the street. A reduced footfall would have an adverse impact on the vitality and viability of that part of the town centre.
9. The appellant says that the Council's policy is out of date following changing trends and Government statements. The National Planning Policy Framework (NPPF) requires planning policies to define a network and hierarchy of town centres and promote their long term vitality and viability by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows suitable mix of uses and reflects their distinctive characters.
10. The NPPF also requires planning policies to define the extent of town centres and primary shopping areas and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre. From the evidence before me Policy TCR2 provides guidelines for the role of town centres such as Biddulph, with focus on their vitality and viability. On this basis, Policy TCR2 is consistent with national policy in this regard.
11. The development would harm the vitality and viability of Biddulph town centre and as such would conflict with the parts of Policies SS6, TCR1 and TCR2 of the Local Plan which seek to enhance the role of Biddulph town centre as a significant service centre and market town and support its regeneration. As outlined above the policies seek to protect and enhance the vitality and viability of Biddulph town centre through positive management and restricting the concentration of non-retail uses.

### *Living Conditions*

12. There are residential properties in close proximity to the premises. The proposed use has the potential to introduce odour and noise and there is potential for the nearby residents to be adversely affected by the odour and noise.
13. No extraction system is proposed as part of the scheme. However, this could be addressed by appropriately worded planning conditions to ensure that unsatisfactory cooking odours outside the premises is minimised and to avoid noise disturbance. This has been confirmed by the Council's Environmental Health Officer. As there are other food related premises on High Street which

also back onto John Street there is little to indicate that a suitable system could not be implemented.

14. Subject to appropriately worded planning conditions the development would not harm the living conditions of neighbouring residents as a result of noise and odour. It would not therefore conflict with Policy SD4 of the Local Plan. Amongst other things, this policy supports polluting development where the impacts can be mitigated via planning conditions or a planning obligation to make adverse effects acceptable. It would also conflict with the part of Policy DC1 of the Local Plan which requires new development to protect the amenity of the area in terms of pollution such as noise and odour.

### **Conclusion**

15. The proposed development would not harm the living conditions of neighbouring residents. However, there would be harm to the vitality and viability of Biddulph town centre. For the reasons identified, I conclude that the appeal should be dismissed.

*K Ford*

INSPECTOR