



Appeal Decision

Site visit made on 16 July 2024

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st August 2024

Appeal Ref: APP/P4605/W/24/3341094

63-65 Mason Road, Birmingham B24 9EH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Sujath Ponnraj against the decision of Birmingham City Council.
 - The application reference is 2023/06270/PA.
 - The development proposed is the change of use of ground floor unit from retail to fried chicken hot food takeaway, installation of a flue to the rear elevation and alteration to shopfront with a new entrance door.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of ground floor unit from retail to fried chicken hot food takeaway, installation of a flue to the rear elevation and alteration to shopfront with a new entrance door at 63-65 Mason Road, Birmingham B24 9EH in accordance with the terms of the application, reference 2023/06270/PA, subject to the conditions set out in the schedule to this decision.

Main Issue

2. The main issue is whether the site is an appropriate location for the proposal taking into account its effect on the living conditions of the occupiers of nearby residential properties; vehicle parking; and the compatibility with other commercial units within the same parade.

Reasons

3. The appeal property is a ground floor retail unit within a 2-storey mid-terrace building. It stands within a short parade of commercial premises on Mason Road in a mainly residential area. The proposal is to subdivide the existing unit into 2 separate elements with a change of use of one unit to a hot food takeaway. Shopfront alterations are also sought including a new front entrance and the installation of an external flue to the rear of the appeal building.

Living conditions

4. As the proposed opening hours for customers would be 9am to 11pm, Monday to Saturday, and 10am to 10pm on Sundays, the hot food takeaway would be open when most units within the same parade are likely to be closed. As a result, the proposal may generate some activity from customers and their vehicles in the evening at a time when most residents above and near to the appeal premises are likely to be at home.

5. Customers visiting the new use may behave inconsiderately by, for example, talking loudly outside the premises, slamming vehicle doors and leaving car radios on and engines running. However, the potential noise and general disturbance from these and other activities, even when considered together with noise from people visiting the supermarket, which is currently open into the late evening, would be unlikely to be more than what residents of such properties would reasonably expect within or close to a local shopping parade.
6. Reference has been made to odours and noise from the use of equipment on the premises. It is not unusual for shopping parades in residential areas such as this to contain a hot food takeaway even where there are residential units above and close by. In my experience, modern odour, noise and vibration attenuation measures can minimise the effect on the living conditions of nearby residents, which could be secured by conditions.
7. Concern is also expressed about an increase in litter problems although there is no detailed evidence to indicate that the proposal would exacerbate these problems nor lead to conditions that would justify withholding planning permission. Interested parties also refer to an increase in antisocial behaviour and the potential for the proposed use to become a focal point for people to congregate outside the appeal premises. However, on the evidence before me I am not persuaded that the proposal would encourage such behaviour.
8. For all these reasons, the proposal would not materially harm the living conditions of the occupiers of nearby residential properties. I also note that the Council's Environmental Pollution Control Team raise no objection subject to the imposition of conditions.

Vehicle parking

9. Given the modest scale of the new use, it is unlikely to draw significant levels of car borne trade from a wide catchment area. For those customers that do arrive by car, the local area is well served by on-street parking in marked bays in front of the site, which is time restricted, and further along Mason Road, which is unrestricted on both sides of the carriageway.
10. While interested parties refer to problems arising from the high demand for on-street parking, the Transportation Authority states that the proposal is likely to have a similar parking profile to that of the existing supermarket. Given those circumstances, I am not convinced that high levels of parking would result from the proposal nor is there evidence that visitors would park their vehicles inconsiderately or illegally to the extent that highway safety or traffic flows would be prejudiced.
11. Against that background, I am not persuaded that the proposal would cause or unduly add to parking problems nor pose a significant risk to highway safety. I also note that the Transportation Authority does not object to the proposal subject to conditions.

Compatibility

12. The parade of which the appeal premises forms part mainly contains shops and an office. If planning permission were to be granted, an additional unit would be introduced to the parade. It would also result in a smaller retail unit and a new hot food takeaway. This arrangement would not conflict with any

development plan policies or guidance that are before me nor would it result in the loss of a retail unit, as some interested parties suggest.

13. I recognise that residents often regard hot food takeaways to be undesirable and problematic and that there is considerable local opposition to this proposal that is supported by a lengthy petition. I also acknowledge that change to the character and feel of a parade and the local area can result incrementally from small scale decisions consistently taken over time. However, allowing an existing shop to be subdivided and for one part of that unit to sell hot food to takeaway would not significantly alter the predominantly retail character of the parade as most units would remain in commercial use. Overall, there would be no significant change to the range of services available to the local community and the parade's primary function in this residential area, which is to provide for people's day-to-day needs, would remain unchanged.
14. From what I saw, the existing parade appears to be in good health, and I have no obvious reason to conclude that its overall condition would significantly change because of the proposal. While there are hot food takeaways some distance from the site, this is not a strong indication that there is proliferation of such uses within the local area. As such, I am unable to conclude that the proposal would lead to an excessive number of such uses.
15. Taking all these considerations into account, I find that the proposal would be compatible with the remainder of the parade and in the wider area.

Conclusion on the main issue

16. Overall, I conclude on the main issue that the proposal would be an appropriate location for the proposal. Therefore, it does not conflict with Policies PG3, TP21 and TP24 of the Birmingham Development Plan, Policies DM2 and DM15 of the Development Management in Birmingham Development Plan Document or the National Planning Policy Framework. These policies broadly aim to ensure that development is appropriate to its local context and support economic growth.

Other matters

17. The Council raises no objection to the proposed shop front alterations to create an entrance to the new takeaway. I, too, find this element of the appeal scheme acceptable since the design would respect the character and appearance of the host building and other units in the same terrace.
18. As the proposed flue would be at the back of the appeal premises, away from the road, it would not be evident in the street scene, nor would it be unexpected within a parade such as this. There is no convincing evidence that the proposal would cause drainage problems nor justify withholding planning permission on health grounds.

Conditions

19. In addition to the standard time limit condition, it is necessary to impose a condition that requires the development to be carried out in accordance with the approved plans for certainty. A condition that restricts the opening hours of the new hot food takeaway to those proposed is necessary to protect the living conditions of the occupiers of nearby residential properties. Few details of the proposed extraction system and acoustic insulation of the appeal building have been provided. Therefore, further information is necessary to

safeguard the living conditions of local residents. For the same reason, details of any industrial plant and machinery to be used within the premises are required. Where appropriate, I have amended the conditions suggested by the Council mainly for clarity and precision.

20. An additional condition is suggested in the Officer's report to cover the boundary treatment of the forecourt of the appeal premises to prevent its unlawful use for parking or access by vehicles. I agree that such a condition is necessary particularly given the possibility of short-term parking on the forecourt mainly by delivery drivers. It has therefore been imposed in the interests of public safety.

Conclusion

21. There are no material considerations that indicate the proposal should be determined other than in accordance with the development plan. For the reasons set out above, I therefore conclude that the appeal should be allowed.

Gary Deane

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Refs AMA 793-001 Revision A, AMA 793-002, AMA 793-003 and AMA 793-004.
- 3) The hot food takeaway use hereby permitted shall not commence until fume extraction and odour control equipment, has been installed in compliance with a scheme that has been previously submitted to and approved in writing by the local planning authority. The approved equipment shall thereafter be operated and maintained in accordance with manufacturer's instructions and be always operated when cooking is carried out.
- 4) The hot food takeaway hereby permitted shall only be open for customers between the following hours: 0900 to 2300, Monday to Saturday, and 1000 to 2200 on Sundays, Bank or Public Holidays.
- 5) Prior to the first use of the development hereby permitted, the building shall be acoustically insulated in accordance with a scheme that has previously been submitted to and approved in writing by the local planning authority. The measures shall be implemented as approved and retained thereafter.
- 6) Before any plant and/or machinery is used on the premises, it shall be installed in accordance with a scheme that has previously been submitted to and approved in writing by the local planning authority. The measures shall be implemented as approved and retained thereafter.
- 7) Prior to the first use of the development hereby permitted details of the boundary treatment to prevent the use of the forecourt to the premises for vehicle access and parking shall be submitted to and approved in writing by the local planning authority. The boundary treatment shall be completed in accordance with the approved details before the use is first commenced and retained thereafter.