



Appeal Decision

Site visit made on 22 October 2024

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2024

Appeal Ref: APP/U4610/W/24/3346497

290 Charter Avenue, Coventry, CV4 8DA

- 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 K Niranjana against the decision of Coventry City Council.
 - The application Ref is PL/2023/0001989/FUL.
 - The development proposed is described as "change of use from Post Office (class E) to Takeaway (Sui Generis)."
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are;
 - The effect of the proposed development on the health of the local community in respect of availability of unhealthy food, with particular regards to the concentration of uses and proximity to schools; and
 - The effect of the proposed development on the living conditions of nearby residents with particular regards to noise and odour.

Reasons

Concentration

3. The appeal site forms part of a building with commercial units to the ground floor and residential to the first and second floors. The building has various commercial units, a convenience store, sandwich shop, and hair dresser in addition to the appeal site (a former Post Office, now closed). The building is set back from the road behind a small car park. A bus stop is located on the pavement in front of the building and car park. A public house is located to the east and a church and fish and chip takeaway to the west.
4. The Council have pledged to improve the population's health and wellbeing and reduce health inequalities. The justification for Policy R6 of the Coventry City Council Local Plan (2017) (LP) states that one of the challenges the Council faces in promoting healthy eating is the availability of foods high in fat, salt, and sugar in local neighbourhoods, including the prevalence of hot food takeaways in some areas. LP Policy R6 requires that proposals do not result in harmful cumulative impacts and are in accordance with the Council's Hot Food Takeaway Supplementary Planning Document (2019) (SPD).

5. The Council's SPD defines an area that has become overconcentrated with hot food takeaways if the proposed address falls into a Lower Super Output Area (LSOA) where the number of takeaways per one thousand population exceeds the average for England as per the most up to date data. The current data outlined in the Council's submission details that the appeal site is located in an area where the number of takeaways per 1,000 is 1.18, with the national average being 1.05. As such there is already a higher concentration of such uses in the immediate and wider area.
6. I note that the appellant argues that the tool for calculating the hot food take aways in an area is not accurate. However, they have not provided any evidence of the inaccuracies or detailed what the statistics should show or an alternative method of calculation. In the absence of any cogent evidence regarding this, I see no reason to doubt the figures.
7. Evidence provided within the Council's SPD also details obesity levels in their area. These detail that obesity levels in the Council area are at 22.9% for children in reception class, increasing to 38.2% by year 6. This is a higher percentage than the national average.
8. The aim of the SPD, however, is to improve the health of the entire population of the district, not just school children. Data provided by the Council indicates that overweight or obese adult figures are above the national average.
9. Paragraph 96 c) of the National Planning Policy Framework (the Framework) indicates that planning decisions should enable and support healthy lifestyles, especially where this would address identified local health and well-being needs. Further advice is given in the Healthy and safe communities Planning Practice Guidance (PPG) which indicates that planning can influence the built environment to improve health and reduce obesity and excess weight in local communities. Where the evidence demonstrates it is appropriate, the PPG indicates that planning can seek to limit the proliferation of particular uses. In doing so it indicates that, amongst other things, it should have regard to: proximity to locations where children and young people congregate; evidence indicating high levels of obesity, deprivation, health inequalities and general poor health; and overconcentration of certain uses in an area.
10. Both national and local policies highlight the role of planning in helping to improve the health of the population. The evidence outlined above shows that this is an area where there is already a higher number of hot food takeaways and a higher level of obesity than average in England.
11. Following on from this it is incumbent upon the Council to use those powers it has to try and address this problem. Its SPD builds upon wider Council policy to promote healthy living and represents a policy response to the proliferation of hot food take aways in the Council area. In seeking to control these it is attempting to redirect people to healthier eating options which is consistent with the Framework.
12. Whilst LP Policy R6 states that the local centre may in principle be a suitable location for hot food takeaways, and the proposal may not give rise to concerns with regard to parking and highway safety, the policy also requires consideration to be given to the cumulative impact of such uses in the area. Although the policy may not specifically mention the cumulative impact of such uses on the health of the population it requires compliance with the SPD which

contains this information. Furthermore, national and policy guidance clearly supports the health of communities.

13. Given the existing high concentration of hot food takeaways in the area and the obesity levels of the local population, I consider the site would not be a suitable location for a hot food takeaway. Accordingly, it would not accord with LP Policy R6 of the guidance contained within the SPD which together seek, amongst other things, to ensure that developments do not result in harmful cumulative impacts on the populations health.
14. It would also not accord with Paragraphs 8 and 96 in the Framework that development should, respectively, not prejudice the ability of future generations to meet their own needs, support communities' health and well-being, and provide access to healthier food.

Proximity to Schools

15. Requirement 4.2 of the SPD states that hot food takeaways will not be approved within a 5-minute walk from the gates of any primary or secondary school. The appeal site is located close to Charter Primary School and Westwood Academy Secondary School and fall within the 5-minute walking time noted within the SPD.
16. The possible link between the availability of 'unhealthy' food, whether from a hot food takeaway or some other form of eating establishment such as a restaurant or a café, and obesity is one that has been subject to considerable academic investigation in recent years. The appellant has directed me to a number of academic publications and an impact study produced by Brighton and Hove City Council.
17. These have conflicting views on whether there is a correlation between the proximity of these uses to schools and obesity. However, the Brighton and Hove impact study details that off-campus lunchtime purchases by pupils were very unhealthy and that children would travel up to and beyond an 800-metre radius from the school.
18. My site visit was conducted over lunch time and I noted that a number of school children passed the appeal site and utilised the nearby convenience store and shops. Whilst this was only a snap shot in time, due to the numbers of children using and passing this commercial area and having regard to the comments made in the impact study, it would not be unreasonable to conclude that some children would use the take away at lunch time.
19. Based on the evidence before me I find that, as the proposed development would be located in close proximity to primary and secondary schools, it would increase the access of unhealthy food to children in an area where obesity levels are in excess of the national average. Accordingly, it would not accord with LP Policy R6 of the guidance contained within the SPD which together seek, amongst other things, to ensure that developments do not result in new hot food takeaways in close proximity to schools.

Living Conditions

20. As noted above the appeal site is a ground floor unit in a row of commercial uses with residential units to the first and second floor. The area is mixed in

use with commercial and residential properties nearby and is located on a busy road in to Coventry.

21. Due to the location of residential uses above the proposed development, there is a potentially sensitive relationship between the scheme before me and these uses. Whilst I accept that some noise and disturbance is inevitable due to living above commercial premises, there is no robust evidence before me that existing non-residential uses operate with similar implications in terms of noise, disturbance, and odour as the proposed development. I note that the proposed use, associated comings and goings and ventilation would operate through lunch time to late in the evening.
22. I accept that some details of the ventilation system have been provided, and there is nothing to indicate that achieving industry standards could not be achieved in that regard. A noise survey has been undertaken which concludes that, subject to the fitting of an attenuator and the use of flexible couplings and anti-vibration mounts used in the fixing of the fans, that noise levels would be below World Health Organisation guideline levels.
23. Details of the extraction fans and vents are included on the drawings and technical details of a baffle filter, cell panel filter and activated carbon filters have been submitted. Whilst the Council consider a condition would not be suitable, based on the noise assessment and the detail provided on the plans and technical details I am satisfied that suitable details could be provided under condition which could ensure that the extraction equipment be installed to an appropriate specification that would minimise disturbance from noise and odours.
24. Consequently, the proposal would not give rise to an unacceptable level of harm to the living conditions of occupiers of nearby residential properties. This would accord with LP Policies R6 and DE1 which seeks, amongst other things, to ensure that development would not result in significant harm to the amenity of nearby residents. The development would also be contrary to Paragraph 135 of the Framework which seeks to ensure that development provides a high standard of amenity for existing and future users.

Other Matters

25. I acknowledge that the proposed development would deliver certain benefits in terms of occupying a vacant unit, providing additional choice for consumers, providing jobs, and supporting the economy. The appellant has also drawn my attention to Paragraphs 85 and 96 of the Framework which state that significant weight should be placed on the need to support economic growth and that planning policies should promote active street frontages.
26. At the time of my visit the centre appeared to be busy and vibrant, with a high footfall. There was also an existing hot food takeaway in very close proximity to the appeal site along with a sandwich shop and convenience store. Whilst I note the appellant's statement that the property is vacant, I have also been provided with no details of attempts at alternative uses or the length of time or any marketing. Based on the current low vacancy rate in the centre, it appears unlikely the property could not be readily occupied for an alternative use. As such, the benefits of the proposal do not outweigh the harm I have identified to the health of the wider community and school children.

Conclusion

27. For the reasons given above the appeal should be dismissed.

Tamsin Law

INSPECTOR