
Appeal Decision

Site visit made on 15 January 2026

by **G Sylvester BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 January 2026

Appeal Ref: APP/K0235/W/25/3374667

35A Elstow Road, Bedford, Bedfordshire MK42 9NT

- 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 M Choudhury against the decision of Bedford Borough Council.
 - The application Ref is 25/00197/FUL.
 - The development proposed is a single storey front extension, installation of extraction flues x2 and Change of Use to Sui Generis (Hot Food Takeaway).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - Whether the appeal site is in a suitable location for the proposed use with particular regard to the health of children and proximity to a school.
 - The effect of the proposal on the living conditions of occupiers of nearby residential properties, with particular regard to Number 37 Elstow Road and the effects of noise and disturbance.
 - The effect of the proposal on the character and appearance of the area with particular regard to kitchen extract flues.

Reasons

Health of children

3. Chapter 8 of the National Planning Policy Framework (“the Framework”) seeks to promote healthy and safe communities. Paragraph 96 states that planning decisions should aim to achieve healthy places which enable and support healthy lives through promoting good health and preventing ill-health, especially where it would address identified local health and well-being needs. Examples of which include access to healthier food.
4. It sets the context for Framework paragraph 97, published December 2024, which states that local planning authorities should refuse applications for hot food takeaways and fast food outlets within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre. To my mind, Framework paragraph 97 sets a presumption against hot food takeaways in those locations as it appears implicit that the food types available to purchase from them are more likely to be relatively unhealthy by comparison to those available from other land uses.

5. Walking distance from a school is not defined by the Framework. However, a number of appeal decisions^{1,2,3} have used a distance of 400 metres for the purposes of assessing proposals for hot food takeaways. In the absence of an alternative definition, I have used that distance for the purposes of this appeal.
6. The main parties agree that the proposed hot food takeaway would be located within a 400 metre walk from the closest school on Pearcey Road, which is a primary school. Having walked the route between them, which took about 5-minutes, I consider the appeal site to be within a reasonable walking distance of the school.
7. Consequently, the proposed hot food takeaway is contrary to Framework paragraph 97 as it would be located within walking distance of a school and not within a designated town centre. In this instance, the route between the proposed hot food takeaway and the school would be relatively direct and it would be clearly visible to a good number of children and their parents/carers who would pass by it on their regular journeys to and from school.
8. Neither party has submitted any substantive evidence relating to concerns over the health of children in this part of Bedford. However, an absence of such evidence does not displace the Framework's clearly expressed presumption against a hot food takeaway at the appeal site.
9. The appellant intends to operate a pizza takeaway with a secondary option for fish & chips. In my experience and judgement those are generally amongst the foods considered to be unhealthy. Healthy types of hot food could be made available to purchase from the takeaway as implied by the appellant. However, there is nothing of substance to indicate that would happen or what those foods deemed healthy might be.
10. As land-use planning is normally operator-neutral and operators would be able to choose the types of hot food they make available to customers, I am not convinced that the planning system could restrict the use to serve only healthy foods. No objective definition of healthy foods is before me. There is no suggested condition from either party which demonstrates that the types or amounts of food available to purchase from the proposed takeaway could be controlled whilst meeting the tests in Framework paragraph 57.
11. The existing Class E use of the premises is described as a bubble tea establishment including an element of consumption of food and drink off the premises. However, there is nothing of substance before me to show that the types and quantities of food available from it would be comparable to the proposed takeaway use. In any case, Framework 97 applies to hot food takeaways and fast food outlets, and no others.
12. Whether or not children would be served hot takeaway food from the premises would appear to be at the discretion of the operator and not the land-use planning system. I have not been made aware of any age restriction on the purchase of takeaway food or any suggested condition that could prevent children purchasing food from the takeaway whilst meeting the tests in Framework paragraph 57. Children would be at school under the supervision of staff during school term times

¹ APP/U5930/W/25/3360723

² APP/E5900/W/24/3357255

³ APP/B5480/W/24/3350708

and it seems likely that most primary school aged pupils would be accompanied by a carer or parent on their journeys to or from school. However, it is reasonable to suppose that carers/parents could purchase food and share it with a child, and a similar conclusion was reached in another appeal decision⁴.

13. Proposed opening times would be similar to nearby businesses in the area, including the nearest takeaway, which the evidence indicates are in the range of approximately 11am – 11pm on most days. As such, they would not be effective in avoiding the likelihood of children and their parents/carers purchasing food.
14. Alternative opening hours are not specified, and it is not for me to propose them. Even if alternative opening hours were to avoid the time when children are most likely to be walking home from school, there is nothing to show that pupils would be confined to walking home immediately after school. In my judgement, they might first walk to the homes of friends, family or childcare providers in the locality, before walking home later in the day and potentially past the appeal site. It has not been shown that afterschool care, such as childcare settings or sports/activity clubs, do not operate regularly with children leaving school at later times of the day.
15. Dismissing the appeal would not alter the fact that comparable takeaway foods would be available to purchase from existing premises located relatively close to the primary school. However, the appeal proposal would consolidate such uses in walking distance of a school and would harmfully undermine the Framework's objective of supporting healthy lives through promoting good health and preventing ill-health.
16. Taken together, those considerations hold limited weight in favour of the appeal proposal, insufficient to outweigh and displace the Framework's presumption against hot food takeaways within walking distance of schools, and its potential harm to the health of children.
17. Policy 85 of the Bedford Borough Local Plan 2030, Adopted January 2020 ("the BBLP") makes no explicit reference to the proximity of takeaways to schools or the health effects of takeaway food on children. In this instance, I am not satisfied on the evidence before me that the health effects of consuming hot takeaway food is a side effect falling within scope of Policy 85. Therefore, insofar as this main issue is concerned and in the absence of convincing evidence to the contrary, I find no clear conflict with the Policy.
18. Nonetheless, given the presumption against hot food takeaways within walking distance of schools, this main issue does not turn on Policy 85. Consequently, I conclude on this main issue that the appeal site is not in a suitable location for the proposed use with particular regard to the health of children and proximity to a school, contrary to Framework paragraphs 96 and 97, the requirements of which are set out above.

Living conditions

19. Aside from the appellant's technical noise assessment for the proposed kitchen extract ventilation system, no other technical noise assessment of the appeal scheme is before me. Therefore, the effects on the proposed use on the living

⁴ APP/U5930/W/25/3360723

conditions of the occupiers of nearby property is a matter of judgement based on the evidence before me and my experiences at my site visit.

20. The appeal premises is situated on the end of a short row of commercial premises, including a shop and hot food takeaway that are set back from Elstow Road behind a sizable car park at the junction with Kennedy Road. Although predominantly residential, this is a relatively busy part of the town with a good proportion of commercial uses. At the time of my visit, Elstow Road, which appears to be a main highway route through to the town centre, was subject to a regular flow of traffic and commensurate levels of noise and disturbance.
21. It is likely that the existing commercial premises already generate noise and disturbance from frequent vehicle movements and customer activity, often extending into the night. This activity would be expected to occur mostly in the front car park, close to the boundary with Number 37, and what I am advised is living accommodation above Number 35. It would include cars manoeuvring, engines running, doors closing and the bustle of customers, all of which are likely to be audible to the occupiers of those neighbouring properties. However, I am not aware of any complaints relating to the current use.
22. Although the proposed use would involve similar types of activity at broadly the same times of day, it is likely to increase the intensity of those activities, particularly the number and frequency of comings and goings, including into the night. Whilst this would add further noise and disturbance to the area, it must be considered in the context of the existing noise environment and current commercial activity.
23. When assessed against the existing baseline condition of the existing noise environment in the area of the appeal site, I am satisfied that any increase in noise and disturbance from the proposed use would be relatively modest and not harmful to the living conditions of occupiers of nearby residential properties, with particular regard to those of Number 37.
24. For those reasons, I conclude on this main issue that the proposal would not conflict with Policy 32 of the BBLP, insofar as it requires development proposals to minimise and take account of the effects of noise pollution and disturbance, and the suitability of the existing environment in relation to it. For the same reasons, I find no conflict with Framework paragraph 135, insofar as it requires development decisions to create places with a high standard of amenity for existing users.
25. Although not cited in the second refusal reason, the Council refers to Policy 85 of the BBLP in its Officer Report and Statement of Case. The proposal would be consistent with Policy 85, insofar as it supports town centres use where noise effects would not give rise to a detrimental effect on amenity.

Character and appearance

26. I share the Council's assessment that if both flues shown on the drawings were installed, their combined visual effects would be harmful to the character and appearance of the area. However, the appellant intends to operate the proposal with a single flue, and both flues were only shown on the drawings to indicate viable options for the extraction of fumes from cooking different foods, following suggestions by Council officers.

27. As planning permission runs with the land, a future occupier might choose to cook different food types using different processes, necessitating an alternative flue system. However, it does not seem realistic to require the appellant to propose multiple different flues to account for that possibility. It seems likely that a planning application would be required if an alternative flue system was subsequently required and constituted development.
28. In this instance, I am satisfied that it would not be unreasonable to impose a condition preventing one of the flues from being installed. To do so would not unreasonably prejudice the appellant who has made clear that only one flue would be installed, nor any third parties who may have expected the installation of both.
29. Therefore, I have proceeded on the basis that only one flue would be installed and have assessed the effects of the proposed fish & chip flue as it would be slightly larger and set closer to the road. However, given the general similarities between them, my conclusions would apply equally to the proposed pizza flue.
30. Policy 30 of the BBLP requires development proposals to give particular attention to a development's relationship with its context, including its townscape qualities. In the area of the appeal site, they are predominantly derived from the wide tree lined Elstow Road and the consistency of the traditional residential properties that front onto it, intermingled amongst which are several commercial properties that have an appreciably different character. They include the row of which the appeal property forms part of and other nearby shops and a petrol filling station.
31. The shape and metal construction of the proposed flue would have an industrial aesthetic when compared to the domestic character and appearance of the traditional bricks and mortar residential properties nearby. However, it is a slim profiled structure with limited mass that would be set close to the side wall of the two-storey predominant commercial building at Numbers 33/35. It would be well contained within the gap between it and the flanking two-storey dwelling and would project only a modest distance above the eaves levels of those buildings and would remain well below their ridge levels.
32. When seen amongst the greater massing of the row of two-storey commercial buildings and dwellings, including the existing flue at Number 33, the proposed flue would not be a prominent or intrusive structure in close distance public views and private views from nearby properties. In longer distance views from Elstow Road and the roads that join onto it, views of the proposed flue would be largely screened by the massing of those taller buildings. Even when not in leaf, the canopies of the several street trees alongside the road would filter the appearance of the flue in some medium distance views, including from Beechdale Road.
33. In those views, the appearance of the proposed flue would not be incongruous in the context of the proposed use or the row commercial uses, and it would not be harmfully out of keeping with those properties or the wider residential area. For those reasons, I conclude that the proposed development would not be harmful to the character and appearance of the area, and therefore it would be consistent with Policies 28S, 29 and 30 of the BBLP insofar as they require high quality development that respects and integrates well within its context.
34. For the same reasons, I find no conflict with Framework paragraphs 131 and 139, insofar as they require development to achieve good design and high quality places that reflect local design policies.

Other Matters

35. Given the scale of the proposal the economic benefits of bringing a vacant commercial unit back into a productive use would be modest and does not outweigh the potential harm to the health of children. An absence of harm in respect of the second and third main issues are policy requirements of almost any well-designed scheme and are neutral factors that carry no positive weight in favour of the appeal. The appellant's concerns over the Council's processing and handling of the planning application have no bearing on my assessment of its planning merits on appeal.

Conclusion

36. The proposed development complies with the Policies of the BBLP that are set out above and the development plan as a whole. However, as it would be located outside of a town centre and within walking distance of a school, it would be expected to harm the health of children, contrary to Framework paragraphs 96 and 97. The development plan pre-dates Framework paragraph 97. The proposal's conflict with the Framework in that regard is an important matter of significant weight that outweighs its compliance with the development plan and the other considerations brought to my attention. Consequently, a decision other than in accordance with the development plan is justified in this instance and the appeal should be dismissed.

G Sylvester

INSPECTOR