
Appeal Decision

Site visit made on 6 January 2015

by Mark Caine BSc (Hons) MTPL MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 January 2015

Appeal Ref: APP/N1350/A/14/2228133
15 Belvedere Road, Darlington

- 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 Jesbir Singh against the decision of Darlington Borough Council.
 - The application Ref 14/00563/FUL, dated 2 June 2014, was refused by notice dated 28 August 2014.
 - The development proposed is described as the "change of use from shop to A5 hot food takeaway and rebuild of shop front & extractor duct. Reapplication with noise & odour filters and additional information."
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from shop (A1) to hot food takeaway (A5) and external alterations including new shopfront to front and side, insertion of ground floor side window and extractor flue pipe to side elevation at 15 Belvedere Road, Darlington in accordance with the terms of the application, Ref 14/00563/FUL, dated 2 June 2014, subject to the conditions in the attached Schedule.

Procedural Matter

2. Notwithstanding the description of the development set out in the banner heading above, which is taken from the application form, it is clear from the plans and accompanying details before me that the development comprises the change of use from shop (A1) to hot food takeaway (A5) and external alterations including new shopfront to front and side, insertion of ground floor side window and extractor flue pipe to side elevation. Therefore, for clarity, I have determined the appeal on this basis and used this description in my formal decision.

Main Issue

3. The main issue in this appeal is the effect of the proposal on the living conditions of neighbouring residents, in terms of noise, disturbance and odours.

Reasons

4. The appeal relates to a two-storey end terrace property that is situated on a prominent corner location at the junction of Belvedere Road and Leafield Road. The ground floor was previously in retail use but is currently vacant and

boarded up. The surrounding area is predominantly residential comprising terrace housing with no off-street car parking provision.

5. The Council has not found the proposed shopfront alterations objectionable and I have no reason to disagree with this view. Nonetheless, hot food takeaways have the potential to cause disturbance to neighbours due to the noise generated by the coming and goings of customers and the operation of equipment to deal with fumes and smell. This is particularly so at times when neighbours might have a reasonable expectation of a quieter environment.
6. I appreciate that A5 uses often attract customers with cars and that there may be some home deliveries from the site. As such the proposal would be likely to result in some noise and disturbance from car engines, car audio systems, slamming of doors and people conversing. Nevertheless, I do not consider that this would be very different from the activities associated with the previous retail use or that it would generate significantly more litter or traffic than this.
7. Furthermore, the appellant has now indicated his willingness to accept a condition restricting the opening hours to those that were granted permission for a hot food takeaway at the nearby 87 Grainger Street. These are 11:30 - 21:00 hours Monday to Saturday and 12:00 - 19:00 on Sundays and Bank Holidays. I do not consider these hours of operation to be at antisocial times, or when residents would reasonably expect a certain degree of peace and quiet.
8. There is also little substantive evidence before me to demonstrate that the proposal would result in unacceptable smell or fume nuisance. I am satisfied that there is scope to install an effective form of extraction that would not harm the living conditions of neighbouring occupiers by reason of noise caused through its operation and cooking smells. In reaching this conclusion I have had regard to the Council Environmental Health Officer's comments that raise no objections to the proposal subject to conditions relating to noise, smells and waste.
9. Therefore, subject to a condition to restrict the opening hours to those suggested by the appellant, and conditions requiring approval of schemes for the control of noise, fumes and odours which might be generated by the use, I am satisfied that the proposal would not have a materially harmful effect on the living conditions of neighbouring residents.
10. I therefore conclude that the proposal would not conflict with the aims of Policy CS16 of the Darlington Local Development Framework Core Strategy 2011 (Core Strategy). Amongst other matters, this seeks to ensure that there is no detrimental impact on the environment, general amenity and the health and safety of the community.
11. Local residents have raised a number of other matters which include concerns about highway safety, the amount of other hot-food takeaways nearby, obesity, anti-social behaviour, and existing problems with rats and vermin. However, the Council's Highway Engineer not raised any objections to the increase in traffic or available space for customer parking and deliveries, and I am satisfied that the proposal would not result in any highway safety risk.
12. Whilst it has been put to me that there are other hot-food takeaways nearby, I have not been referred to any development plan policy which seeks to restrict

the over concentration of such uses. There is also little substantive evidence before me that would lead me to conclude that the location of the proposal would have a direct correlation with childhood obesity or that existing problems with vermin and rats would be exacerbated. Nor is there any firm evidence to substantiate that the development would lead to an increase in anti-social behaviour.

13. In reaching my conclusions I have also taken into account the objectives of the National Planning Policy Framework (the Framework). Nonetheless, I have not been provided with any substantive evidence that would lead me to conclude that the Core Strategy Policy referred to above is inconsistent with the Framework, nor is there anything in the Framework that would lead me to reach a different decision.

Conditions

14. I have considered the conditions suggested by the Council against advice in the Planning Practice Guidance: *Use of planning conditions*. In addition to a condition to secure compliance with the submitted plans (for the avoidance of doubt and in the interests of proper planning), a condition is necessary to restrict the opening hours to those referred to by the appellant in the interests of safeguarding the living conditions of neighbouring occupiers. Schemes for the control of noise, fumes, odours, storage of waste and a condition for the provision of a grease trap are needed to prevent smells arising and in the interests of avoiding disturbance, flooding and pollution. I also consider suggested condition 2 to be reasonable and necessary to provide easier access for those with disabilities. Nonetheless, the noise rating level suggested in condition 3 can be added to the details that are required to be incorporated in the scheme to reduce noise and vibration. I have therefore replaced suggested condition 3 with condition 4.
15. Therefore, my overall conclusion is that the appeal should be allowed.

Mark Caine

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: Ref 190314 Issue 2 and location plan Ref "15 Belvedere Road".
- 3) The development hereby permitted shall not begin until a scheme indicating the provision to be made for disabled people to gain access to the premises has been submitted to and approved in writing by the local planning authority. The agreed scheme shall be implemented before the development hereby permitted is brought into use.

- 4) The development hereby permitted shall not begin until a noise survey, following the guidelines set out in BS4142: 1997 has been submitted and approved in writing by the local planning authority. The survey shall take account of noise and vibration from all fans, louvers, ducts and external plant to be used as a result of the change of use hereby permitted, and shall include noise mitigation measures such as will achieve 5Db below existing background noise levels. The approved noise mitigation measures shall be implemented prior to the use commencing and be retained at all times thereafter.
- 5) The development hereby permitted shall not begin until the equipment to control the emission of fumes and odours from the premises has been installed in accordance with details which have been submitted to and approved in writing by the local planning authority. The approved scheme shall thereafter be implemented prior to the use commencing and shall subsequently be retained and maintained in accordance with manufacturers specifications as long as the premises shall continue to operate as a hot food takeaway.
- 6) The development hereby permitted shall not begin until a scheme for the storing of waste or refuse is submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the use commencing and shall be retained at all times thereafter.
- 7) The use shall hereby permitted shall not be open to customers outside the following times: -
11:30 – 21:00 Mondays to Saturdays and 12:00 – 19:00 on Sundays and Bank Holidays.
- 8) The use hereby permitted shall not begin until a grease trap has been provided on the drainage outlet(s) from the food preparation areas.