



Appeal Decision

Site visit made on 11 January 2022

by Katherine Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2022

Appeal Ref: APP/N1350/W/21/3286024

309 North Road, Darlington, Durham DL1 2JR

- 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 Leigh Porter against the decision of Darlington Borough Council.
 - The application Ref 21/00505/FUL, dated 20 April 2021, was refused by notice dated 28 September 2021.
 - The development proposed is "change of use from A1 to A5".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council have amended the description of the development to "Change of Use from shop (Use Class E) to hot food takeaway (sui generis) including replacement aluminium shop front with roller shutter doors, alterations to windows/doors on rear side elevation, installation of extraction flue to rear and associated internal alterations". I have determined the appeal on that basis as it better describes the proposal before me and reflects the current designation of the existing and proposed uses within the Town and Country Planning (Use Classes) Order 1987 (as amended)¹.

Main Issue

3. The main issue is the effect of the development on the living conditions of neighbouring residents with particular regard to noise and disturbance.

Reasons

4. The appeal site is located within a short terrace of commercial premises on North Road which forms a main arterial route into Darlington. The appeal site lies within a small group of retail and other commercial uses centred around the junction of North Road with Thompson Street. There is a flat above the appeal premises and above other commercial premises within the terrace.
5. There are semi-detached residential properties on North Road opposite. To the rear, terraced houses on Ruby Street and Peabody Street have rear yards and rear elevations close to the elevation of the appeal premises where the proposed flue would be located. The general character of North Road is one of residential properties punctuated by small areas of commercial uses. There are

¹ Amended by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 which came into force on 1 September 2020

two other hot food takeaways in proximity to the appeal premises at 303 and 318 North Road.

6. Noise generated by the use within the property itself is likely to be experienced by the occupiers of the flat above and noise and vibration from the flue is likely to adversely affect not only this flat but the adjacent one as well. Noise and general disturbance generated from the comings and goings of customers to the hot food takeaway would be likely to include noise from car engines, car doors slamming, people talking and possibly congregating in groups on the footway outside and also would be likely to arise from staff legitimately engaged in activities such as clearing away and locking up the premises at closing time which would all impact on occupiers of the properties both above and in the wider locality.
7. The proposed flue on the rear elevation is of a commercial specification and has the potential to create unacceptable levels of mechanical noise and vibration. The Council considers that the level of insulation required to mitigate the effects of the flue for the flat directly above the appeal premises together with the proximity of it to a first-floor window in the adjacent flat would lead to unacceptable levels of noise and disturbance to the occupiers of both these properties. I have not been provided with any evidence to the contrary and I have no reason to disagree. There is no evidence to suggest that any such noise could be adequately attenuated and given the relationship between the flue and the adjacent first-floor window it would not be reasonable to leave the acceptability of any such measures to be approved by way of a planning condition.
8. Noise from customers, staff and the flue identified above would all arise close to residential properties. This would be more intrusive during the evening when background noise levels would be lower. It is likely that the ambient noise level will decrease as the evening progresses as business use and traffic levels also decrease. Even though the appeal site is located on a main arterial route into the town, residents would have a reasonable expectation that their living environment would be quieter in the evening. Moreover, any noise and disturbance linked to the other hot food takeaways nearby would be added to and magnified.
9. There may be some disturbance already experienced by residents in the vicinity of the appeal site from other hot food takeaways in the area. However, these would not likely cause unacceptable levels of noise and disturbance to the flat directly above the appeal premises and the others within the terrace especially with respect to the flue and extraction equipment. I note that the appellant would be willing to accept a condition to restrict the opening hours of the premises to 2100 hours in line with other hot food takeaways in the area, however this would not overcome or outweigh the harm that I have found in this respect and on other matters.
10. For these reasons, I find that the proposal would cause harm to the living conditions of the occupiers of nearby residential properties, it would therefore conflict with policy CS16 of the Darlington Local Development Framework Core Strategy (2011) which seeks, amongst other matters, to ensure that new development causes no detrimental impact on the environment, general amenity and the health and safety of the community. The proposal would also be contrary to paragraph 130 of the National Planning Policy Framework which

seeks to ensure that new development provides a high standard of amenity for existing and future users.

Other Matters

11. The appellant has drawn my attention to a number of other hot food takeaways on North Road which have been granted planning permission in recent months. I do not have the details of these cases before me and do not know the details surrounding the granting of these permissions. Therefore, I cannot be certain that there are any direct comparisons between these and the proposal before me that would weigh in its favour. In any event I have considered this appeal on its own merits.
12. I acknowledge that the butcher's shop which previously occupied the premises cooked their own pies and bakery products and there was previously an extractor fan located in the window at the rear of the premises. However, the activity and the extraction employed were materially different from that which is now proposed and does not outweigh the harm that I have found.

Conclusion

13. For the reasons given above, having considered the development plan as a whole and all relevant material considerations, I conclude that the appeal should be dismissed.

Katherine Robbie

INSPECTOR