

Appeal Decision

Site Visit made on 15 February 2021 by Hilary Senior BA (Hons) MCD MRTPI

Decision by R C Kirby BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2021

Appeal Ref: APP/G4240/W/20/3261539

151 King Street, Dukinfield SK16 4JZ

- 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 Ikhlaq Mohammed against the decision of Tameside Metropolitan Borough Council.
 - The application Ref 20/00565/FUL, dated 1 July 2020, was refused by notice dated 18 September 2020.
 - The development proposed is Change of use from a shop to hot food take away together with external alterations including new shop front and installation of flue to rear elevation.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matter

3. The description of development in the banner heading above is taken from the decision notice as it is more concise than the application form.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of neighbouring occupiers with particular regard to noise and disturbance.

Reasons

5. The appeal premises comprise the ground floor of a two storey end of terraced property located at the junction of King Street and Hope Street, in an area of commercial and residential development. Next door and attached to the appeal premises is No 149, a residential dwelling. There is a flat on the upper floor of the premises, and residential properties nearby in Hope Street. The rest of the terrace includes retail and commercial premises, including a hot food takeaway at No 145, which is located between commercial uses.
6. The appellant has indicated that he wishes the premises to be open from 16.00 hours to 23.00 hours, seven days a week. The proposed use of the takeaway would generate noise from customers coming and going to the premises, whether on foot or by motor vehicle. Consequently conversations held outside

- the premises, in close proximity to the ground and first floor windows of No 149 and the windows of the flat above would be likely to result in noise and disturbance, particularly late at night, when background noise levels are likely to be less, when occupiers might reasonably expect a reasonable degree of peace and quiet as they relax or sleep in their homes.
7. Moreover, whilst noting that King Street is subject to double yellow lines and zigzag road restrictions there would be the potential for vehicles to stop on the road outside the premises and their drivers pick up food, with the attendant engine noise and door closing which would cause disturbance to nearby occupiers particularly in the evening and late at night.
 8. I note that the Council's Environmental Health team raised no objection to the proposal, subject to conditions. Nevertheless, no substantive evidence has been submitted which persuades me that there is reasonable certainty that the impact of the noise and disturbance as a result of customers arriving and leaving the premises, and potentially congregating outside on the pavement, would not adversely affect the living conditions currently enjoyed by the neighbouring occupiers.
 9. I note the suggestion that nearby hot food takeaways have closed, and that customer activity in the vicinity of the property will not increase, however there is no certainty that such uses will not resume and this matter does not provide justification for the proposal.
 10. The appellant has indicated that they run a long-standing business and would employ apprentices in collaboration with local colleges. Whilst the proposal may bring economic and social benefits to the area there is no evidence of these benefits before me and in any event these matters do not overcome the identified harmful effect on the living conditions of nearby occupiers.
 11. In conclusion, I find that the proposal would harm the living conditions of neighbouring occupiers and accordingly there is conflict with Policies 1.12 and S7 of the Tameside Unitary Development Plan (2004) which amongst other things, seek to ensure that development does not harm the residential environment of nearby occupiers. The proposal also conflicts with paragraph 127 of the National Planning Policy Framework which seeks to create places which promote health and well-being, with a high standard of amenity for existing and future users.

Recommendation

12. For the reasons given above and having regard to all other matters raised, I recommend that the appeal is dismissed.

Hilary Senior

APPEAL PLANNING OFFICER

Inspector's Decision

13. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

RC Kirby INSPECTOR