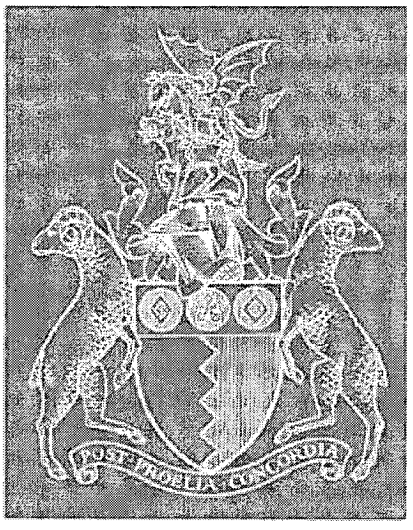
HINCKLEY AND BOSWORTH BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 78



Hinckley & Bosworth Borough Council

APPEAL BY

PERFECT PIZZA

AGAINST THE REFUSAL OF PLANNING PERMISSION

FOR CHANGE OF USE FROM A1 RETAIL TO A5 HOT FOOD TAKEAWAY

AT 7 LAWNWOOD ROAD GROBY

HBBC REFERENCE

08/00657/FUL

THE PLANNING INSPECTORATE REFERENCE

APP/K2420/A/08/2086935/NWF

1.0 Introduction

2.0 Site History

3.0 The Local Authority's case

4.0 Comments on the Grounds of Appeal

5.0 Conclusions

Appendix A 1995 Inspectors Decision.

Appendix B Suggested Conditions

1.0 Introduction

1.1 This statement is a written submission in support of the decision by Hinckley and Bosworth Borough Council to refuse planning permission for change of use of 7 Lawnwood Road Groby from Class A1 (retail) to Class A5 (hot food take away) (Planning Application reference number 08/00657/FUL). It should be read in conjunction with the information previously supplied as part of the attachments to the Appeal Questionnaire.

1.2 7 Lawnwood Road is a ground floor commercial unit located within a parade of units which together form the Lawnwood Road, Local Shopping Centre. The units have flats above and date from the 1970's. The parade also contains a hairdressers, financial advisor and hardware store. There are two units currently vacant which used to from the video store. It is one of these units that forms the subject of this appeal.

2.0 Site History

2.1 The only relevant planning history relating to 7 Lawnwood Road was for Change of use of hot food take-away (A3) (planning reference 94/00412/COU) which in 1994 was refused and subsequently dismissed at appeal in 1995 (ref: T/APP/K2420/A/95/247462/P8). A copy of the Inspectors report can be found within Appendix A. In addition number 2 Lawnwood Road was refused planning permission on two occasions in 1986 for a hot food take away, and number 13 had a similar application withdrawn in 1989.

3.0The Development Plan Policies

3.1 The Development Plan for the purposes of this appeal is the adopted Hinckley and Bosworth Local Plan (adopted February 2001).

3.2 Policy BE1 of the adopted Hinckley and Bosworth Local Plan – Design and Siting of Development – states amongst other matters that the Borough Council will seek to protect the amenities of the occupiers of nearby properties.

3.3 Policy Retail 7-Local Shopping Centres- defines Lawnwood Road as a Local Shopping Centre which will serve the local community, whilst Policy Retail 8 – Change from retail use within local centres- allows none retail uses within local shopping centres providing the proposed use does not adversely affect the overall retail development of the area or the amenities enjoyed by occupiers of nearby residential properties.

3.4 Full copies of the relevant local development plan policies and explanatory text have been included in the Appeal Questionnaire.

4.0 The Local Planning Authorities Case

4.1 The Council refused to grant planning permission for this development for the following reason:

"In the opinion of the Local Planning Authority the proposed hot food takeaway by virtue of the operational hours, potential odours, vehicle and pedestrian movements is likely to detrimentally affect the amenities of neighbouring residents and the general character of the area particularly in the evenings, contrary to Policies BE1 and Retail 8 of the adopted Hinckley and Bosworth Local Plan."

4.2 Lawnwood Road is a quiet residential area with no commercial properties other than those within the same parade of shops as the appeal property. At the present time these units cease trading in the early evening, at the end of the standard working day, after which point the residential character dominates the area.

4.3 The Local Planning Authority believe that the introduction of a use that encourages vehicular and pedestrian trips to and from the site, resulting in noise created, for example by car doors closing, outside of the normal working hours would detrimentally affect the character of the area and the amenities of neighbouring residents particularly the nearby elderly persons accommodation to an unacceptable level. This would be exacerbated by the generally quiet surroundings of the area in the evenings.

4.4 This view was supported by the Inspector in the 1995 appeal decision which stated that 'the use would thereby extend the time during the evening when nearby residents would suffer noise from customers... and in my view would seriously harm their amenity'. This decision had regard to the use of one of the units as an off licence which at that point opened later into the evening than any of the existing commercial units presently do.

Whilst this pre-dates the current local plan, both documents had the common objective of protecting the amenities of neighbouring residents. It is therefore considered that the history is a material consideration in the determination of this appeal and the circumstances are equally pertinent in this case.

5.0 Comments on the Grounds of Appeal

5.1 The appellants claim that the proposal would not detrimentally affect the amenities of neighbouring residents nor the character of the area through controlling the hours of opening, the proportion of deliveries from the site and the installation of a filter extract system.

5.2 In the opinion of the Local Planning Authority, the opening hours proposed would still conflict with the other uses in this small parade of shops and this coupled with the increased comings and goings is not acceptable in this generally quiet residential location.

5.3 The appellant states that 70% of the trade would be deliveries. Whilst this may be the objective, it can not be guaranteed or controlled by condition. The Local Planning Authority has to have regard to other permitted uses allowed under the same Use Class which may result in a larger proportion of collections being undertaken. Even with a high proportion of the business being telephoned orders being delivered, disturbance to local residents would still result from the comings and goings of the delivery drivers. It is for these reasons it is considered that this application is unacceptable.

5.4 Odours were considered at the application stage, at which point the Environmental Health Officer had concerns as it had not been demonstrated how the odours were to be controlled. This issue was also considered by the Inspector in relation to the 1995Appeal and although the appellant intends to let the first floor accommodation with the hot food take away business the previous Inspector considered that not withstanding the installation of suitable extraction equipment ..'the proximity of the living accommodation over adjoining shops and the mention of domestic cooking smells passing between units already..' the nuisance from odour would not be completely avoided (paragraph 7). The Local Planning Authority and the borough Councils' Environmental Services Department remain of this view.

5.5 The appellant has stated that the unit could be used as an internet café without requiring planning permission. Under the Town and Country Planning (Use Classes) Order 1995 this would be the case. Similar uses that have comparable affects on surrounding properties are grouped together under this act and in this it is considered that a hot food takeaway is a materially different use to that of an internet café and hence an application is required in this instance.

6.0 Conclusions

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permissions and appeals to be determined in accordance with the Development Plan for the area unless material considerations indicate otherwise. There is an up to date Development Plan. The relevant policies were identified as being Policy BE1 and Retail 8. These policies, seek to protect the character of the area and the amenities of surrounding residents. For the reasons contained above it is the Local Planning Authorities opinion that the proposal is contrary to these policies.

6.2 There are no other material considerations that indicate that the appeal proposal should be determined otherwise than in accordance with the adopted Development Plan. On the basis of the information contained in this written statement and to previous information attached to the Appeal Questionnaire the Local Planning Authority respectfully requests that the appeal be dismissed.

6.3 If the Inspector were minded to approve the appeal the Local Planning Authority would request the inclusion of the conditions itemised in Appendix B.

Appendix A:

The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

MW6

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27 JUL 1995

Mr & Mrs R Mistry
7 Lawnwood Road
Groby
LEICESTER
LE6 0BH

Your Ref:

Our Ref: T/APP/K2420/A/95/247462/P8

Date: 26 JUL 1995

Dear Sir & Madam

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
APPLICATION NO:- 94/00412/COU

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal. Your appeal is against the decision of the Hinckley and Bosworth Borough Council to refuse planning permission for the change of use to a hot food take away at 7 Lawnwood Road, Groby. I have considered the written representations made by you, by the Council and the Groby Parish Council. I have also considered the representations made by interested persons including those made directly to the Council which have been forwarded to me and I inspected the site on 10 July 1995.

2. The development plan in this case is the North Eastern Parishes Local Plan, adopted in 1991. This provides for the use of premises for the sale of food and drink within local centres but only where there will not be significant harm to the traffic and parking situation, residential amenity or the character of the locality. The emerging Hinckley and Bosworth Local Plan continues the thrust of this policy.

3. The Council has not suggested that significant highway problems would result from the change of use. Thus from the written representations and my view of the appeal site and its surroundings, I find that the main issue in this appeal is whether it would seriously harm the amenities of the occupiers of adjoining and nearby dwellings.

4. The appeal building is one of a row of 6 modern shops on a housing estate in Groby. It is used at present as a newsagent's and the remainder of the parade consists of a hardware shop, a video store, a hairdresser's, an off licence and a general store. Each shop appears to have residential accommodation above. Apart from this, the nearest housing to the appeal site is a development of 8 old persons bungalows at Holmes Close while other properties in the locality are a mixture of bungalows and houses.

5. The Groby Parish Council has strongly objected to the proposed change of use on the grounds that it would harm residential amenity through increased noise, litter, smell and

parked cars. These points have also been put forward by a number of nearby residents who are concerned about the impact of the use both on themselves and on the occupiers of the old persons bungalows.

6. It was evident from my inspection that the Lawnwood Road shopping parade is small and set within a quiet residential area. In this type of location, it seems to me that uses which carry on beyond the normal shop opening hours are likely to create activity which will be more noticeable to nearby residents because of the generally quiet surroundings at this time. Indeed, a number of letters mention noise nuisance in the evenings from young people congregating near the shops.

7. I noticed that the off licence appeared to close at 22.00 hours each day. You have stated that the hours of the hot food shop could be open to negotiation but I would expect that any proprietor would wish its hours to extend well beyond 22.00. The use would thereby extend the time during the evening when nearby residents would suffer noise from customers going to the shop either on foot or in cars and in my view would seriously harm their amenity. Smell and litter are other problems mentioned. You have confirmed that extraction equipment would be installed as necessary but, bearing in mind the proximity of the living accommodation over adjoining shops and the mention of domestic cooking smells passing between the units already, I consider it unlikely that this type of nuisance would be completely avoided. Objectors have referred to the existing heavy litter problem at the shops and, even with the provision of additional bins, I consider that this problem may well be exacerbated by a hot food shop use with resulting harm to the local environment. In conclusion, I find that the proposed change of use would be contrary to the development plan because it would seriously harm the amenity of the occupiers of adjoining and nearby dwellings.

8. I have considered your grounds of appeal, including the points that having a shop open later at night would reduce the noise from youths congregating outside the shops. However, this point is disputed by objectors and I do not find that it is a convincing argument for allowing a late night use in a small local shopping parade. You have also referred to the lack of objection from your immediate neighbours and the old persons bungalows nearby. However, even if such lack of objection indicated some local support for the change of use, it is clear to me that the proposal would be inappropriate in this closely developed and quiet residential area. Having considered all the representations, there are no matters which outweigh those leading to my conclusion that planning permission should not be granted in this case.

9. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal.

Yours faithfully

J. Jones

Mrs J Jones MA DipTP MRTPI
Inspector

Appendix B: Suggested Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Se4ction 91 of the Town and Country Planning Act 1991.

2. Before the use hereby permitted is commenced a scheme showing the filtered extract system shall be submitted to and approved in writing by the Local Planning Authority. The system shall be installed and thereafter maintained in accordance with the submitted details.

Reason: To ensure a sufficient standard of extraction system is installed to ensure that odours do not detrimentally affect the amenities of neighbouring residential properties in accordance with Policy BE1 and Retail 8 of the adopted Hinckley and Bosworth Local Plan.

3. The hot food take-away shall not be open to the public between 2130 hrs and 1700 hrs Monday to Friday, 2200 and 1100 hrs Saturdays and 2100 hrs and 1700hrs on Sundays.

Reason: To protect the amenities of neighbouring residents in accordance with Policy BE1 of the adopted Hinckley and Bosworth Local Plan.