The Planning Inspectorate

Appeal Decision

Site visit made on 22 August 2011

by Chris Hoult BA BPhil MRTPI MIQ

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

Decision date: 2 September 2011

Appeal Ref: APP/K2420/A/11/2149588
102 Rugby Road, Hinckley, Leicestershire, LE10 0QE

- 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 J Singh against the decision of Hinckley & Bosworth Borough Council.
- The application Ref 10/00908/FUL, dated 12 November 2010, was refused by notice dated 6 January 2011.
- The development proposed is a change of use from Retail (Class A1) to Hot Food Takeaway (Class A5) and the erection of an external extractor flue (retrospective).

Procedural matter

1. The appeal relates to a shop unit in which works to convert it to the proposed use were under way at the time of my visit. The extractor flue was already in place on the rear wall of the premises. The application is therefore partly retrospective and I deal with the appeal on that basis.

Decision

2. The appeal is allowed and planning permission is granted for a change of use from Retail (Class A1) to Hot Food Takeaway (Class A5) at 102 Rugby Road, Hinckley, Leicestershire, LE10 0QE, in accordance with the terms of the application, Ref 10/00908/FUL, dated 12 November 2010, subject to the following 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 approved plan ref. 09/09/148/A. The use of the premises hereby permitted shall not commence until soundproofing to the adjoining property (no. 100 Rugby Road) has been carried out fully in accordance with the approved plan and the written confirmation of the local planning authority has been obtained to that effect. The approved soundproofing shall be retained at all times thereafter.

    3) Notwithstanding the information submitted as part of the planning application, the use of the premises hereby permitted shall not commence until a scheme for the installation, maintenance and management of the ventilation system, including mitigation measures, has been implemented in accordance with details that shall have been submitted to and approved in writing by the local planning authority. The system shall be maintained and managed in accordance with the approved details at all times thereafter.

4) The use hereby permitted shall not be open to customers outside the hours of 07:30 to 18:00 on Mondays to Saturdays, including Bank Holidays, or at any time on Sundays.

3. I have taken account of the views of local residents and other interested parties in reaching this decision.

Background and main issue

4. The appeal follows the dismissal on appeal of a previous application for the change of use. The appellant seeks to address the concerns of the Inspector by reducing the hours of opening and by soundproofing measures to the party wall with the adjoining no. 100. The Inspector concluded that the flue was not prominent in the street scene and that no material harm arose on that account. The Council considers that it does not have an unduly adverse effect on the character of the area sufficient to sustain a refusal of permission on that basis. Accordingly, the single main issue for consideration is the effect of the proposal on the living conditions of neighbouring occupiers, with regard to the potential for noise and disturbance and their outlook.

Reasons

Noise and disturbance

5. The appeal premises is to the south of the town centre, not far from the edge of it, in a locality which is mainly residential but which, just to the north, has shop units fronting the main road interspersed with frontage dwellings. The road is a major arterial route into and out of the town. Slightly further north again, beyond its junction with Clarendon Road, there is a parade of shops, which is a designated local shopping centre. I noted the presence of two Chinese takeaways, a fish and chip shop and a betting office in the parade, all of which are likely to be open and attract custom in the evenings.

6. There is therefore a transitional element to the character of the area, which will be further reinforced by two large-scale redevelopment schemes on former industrial sites which will introduce mixed commercial, retail, employment, office and residential development into it. Construction of one of these schemes is well under way on a site which is on the opposite side of a side street (Willowbank Road) to the appeal premises. Although the premises is not within a defined local centre, it would be fair to describe the character of the area where it is located as mixed. Moreover, in its former guise as "The Pantry", there is evidence to indicate that, though a retail unit, the premises was involved in the sale of takeaway hot food for many years.

7. The previous Inspector accepted that the premises is in a mixed use area. However, he had particular concerns regarding the effects on occupiers of houses in close proximity to the premises from a full-scale takeaway use, both adjoining it and on the opposite side of the road. His concerns were about the potential for trade, between tea-time and the proposed closing time of 20:00, to introduce noise and disturbance from vehicles manoeuvring and pedestrians congregating at a time when wider background noise would be lessening. He was also concerned about noise from the cooking area and extractor fan causing disturbance to the occupiers of no. 100.

8. The Council's environmental health officer is satisfied that the soundproofing now proposed, whose details are set out in the submitted plan, would reduce

noise to an acceptable level. He considers that the extraction system should be sufficient to deal with odours provided that it is installed and managed correctly. The proposed change in closing time, from 20:00 to 18:00, would address concerns about noise and general disturbance in the mid-evening. These can all be required by a condition attached to a grant of planning permission. In the light of this, I consider that the Inspector's concerns are satisfactorily addressed by the current proposal.

9. The Council accepts that some effort has been made to mitigate the concerns but maintains that the issue in essence comes down to a non-conforming use in a residential area. I have set out the reasons why I consider that the area is not exclusively residential. In the light of this, I conclude that, suitably conditioned, the use would not materially harm the living conditions of neighbouring occupiers with regard to the potential for noise and disturbance and that there would be no conflict with saved Policy BE1 of the Hinckley and Bosworth Local Plan 2001.

Outlook

10. I considered whether, in spite of its limited visibility in the street scene, the flue unacceptably affects the outlook of neighbouring occupiers. Oblique views of the flue may be obtained from rooms to the rear of no. 100 and from the garden, but intervening tall conifer trees on the boundary with the appeal property largely screen it. The flue's top part is visible across rear gardens from properties on Clarendon Road. However, it is a distant feature and does not appear overly intrusive as part of a wider view of the rear of properties fronting the main road and the redevelopment site beyond. I conclude that no material harm arises to the outlook of occupiers and, therefore, to their living conditions and no conflict arises on that account with Policy BE1.

Conditions

11. Although the application is partly retrospective, the use as a hot food takeaway has not yet commenced so the standard time condition should be imposed. It is necessary to require that the development be carried out in accordance with the submitted plan, in particular, the proposed soundproofing. For the condition to operate effectively in the interests of the amenity of the adjoining occupiers, it is necessary for the Council to be satisfied that the works have been properly carried out before the use commences and for the soundproofing measures to be in place at all times. For similar reasons, a parallel condition is imposed in relation to the odour extraction system. A condition restricting the hours of opening is also necessary, in line with the appellant's proposals, in the interests of wider residential amenity.

Conclusions

12. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

C M Hoult

INSPECTOR