Appeal Decision

Site visit made on 5 October 2010

by R Ogier BA MRTPI

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

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Decision date:
8 October 2010

Appeal Ref: APP/K2420/A/10/2131597
The Pantry, 102 Rugby Road, Hinckley 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 Jogi Singh against the decision of Hinckley & Bosworth Borough Council.
- The application Ref 10/00241/FUL dated 24 March 2010, was refused by notice dated 17 May 2010.
- The development proposed is described as 'change of use from retail shop (Class A1) to hot food takeaway (Class A5), and retention (of) external extractor flue (retrospective)'.

Decision

1. The appeal is dismissed.

Preliminary matters

2. The use in the development description of the word 'retention' in relation to the extractor flue is inappropriate. 'Retention' is not an act of development under section 55 of the Town and Country Planning Act 1990. I shall therefore base my consideration of that part of the appeal proposal as relating to 'the erection of an external extractor flue (retrospective)'.

3. The Grounds of Appeal state erroneously that the appeal relates to two applications, 09/00749/FUL for the retention of the extractor flue and 09/00755/CLU seeking a certificate of lawful use (CLU) for the use of the appeal premises as a hot food takeaway and restaurant. This appeal relates to planning application 10/00241/FUL only. Whilst this application sought retrospective planning permission for the flue, it also sought planning permission for Use Class A5 to be determined on the merits of the proposed use, but not any determination as to the lawful use of the site. Information about the past use of the site intended to demonstrate lawful use could not therefore result in any formal determination in this appeal as to the lawfulness of that use. However, the manner in which the shop portion of the premises has been used in the recent past may be a material consideration in the assessment of the merits of the proposed use in planning terms.

Main issues

4. There are two main issues in this appeal. The first is the effect of the proposed A5 use on the amenity of neighbouring residents, in terms of general disturbance and noise from associated vehicular and pedestrian activity. The second is the effect of the external flue on the visual amenity of adjoining residents and the street scene in Rugby Road.

Reasons

First issue – effect of proposed use on residential amenity

5. An old painted sign on the front façade of the appeal premises bears the wording 'The Pantry – hot and cold food'. The Council considers the lawful use of the non-residential part of the building to be that of a shop (Class A1) and maintains that any sale of hot food for consumption on or off the premises was ancillary to the shop use. The appellant refers to the use of the premises as a café between 2003 and 2009 with 'an element' of takeaway use, but no CLU has been granted either for A3 or A5 use.

6. The proposed use would be for the purposes of Class A5 with a suggestion in the floor layout plan of some seating accommodation which to my mind would not necessarily change the A5 status. Even if the takeaway operated only until 20:00 from Mondays to Saturdays, it would have the potential to attract more intensive custom than the site may have generated in the past. Car parking opportunities are reasonably good on the east side of Rugby Road, with half hour parking permitted in designated bays during the day, and more permissive conditions during the evening. Little use was being made of this space at the time of my lunchtime site visit.

7. Saved Policy Retail 8 of the Hinckley & Bosworth Local plan (LP) favours the grant of planning permission for hot food takeaways in Local Centres subject to the consideration of neighbours' amenity and other criteria. The appeal site does not fall within any designated Local Centre. Criterion (i) of saved LP Policy BE1 requires new development not to adversely affect the occupiers of neighbouring properties. The Council's published Supplementary Planning Document (SPD) *Shopping & Shop Fronts* states that hot food takeaways can be harmful to adjoining neighbours, and are not likely to be favourably considered in locations where existing houses are adjoining or close to the proposed use. The SPD observes that uses falling within Classes A3 to A5 can have a greater amenity impact if they operate late at night.

8. I accept that the appeal premises are situated in a mixed use area, but there is a concentration of residential properties near the appeal site. The building adjoins an existing semi-detached house to which it is attached, 100 Rugby Road, and stands opposite other houses, particularly 155, 157 and 159 Rugby Road. Rugby Road is an arterial traffic route from the town centre with its own noise environment from the passage of vehicles, and the greatest impact of the proposed use would therefore be on No. 100. The proposed facility is intended to be open between 07:00 and 20:00 from Mondays to Fridays. This suggests that it is primarily intended to provide hot food and drinks for the employees of local businesses and passing travellers which may have been a function of the previous use of the premises, although the proposed closing time would potentially allow for a substantial supper trade for residents and passers-by.

9. The potential for the disturbance of neighbours at No. 100 might not be so great as could occur if the outlet was open until, say 23:30. Yet a concentration of trade towards the earlier closing time of 20:00 is still likely to result in the manoeuvring of vehicles, the opening and closing of vehicle doors and the regular passage and congregation of pedestrians outside the premises such as to disturb the amenity of those living immediately next door at No.

100. Representations made on behalf of the occupants of No. 100 also refer to the possibility of noise emanating from the cooking area adjoining the party wall between the two properties, and from the extractor fan which would be associated with the fume extraction system. I conclude that the combined effect of these internal and external activities would be harmful to the living conditions of those neighbours in the first part of the evening, notwithstanding the relatively early closing time. It follows that the objectives of saved LP Policies BE1(i) and Retail 8(b) and of the supporting SPD guidance would not be satisfied.

Visual impact of extractor flue

10. The flue projects from the rear of the building and extends horizontally towards its south eastern corner, before turning upwards to terminate above the eaves and partially above the roof hip near that corner. I accept that the top of the flue is some way below the height of the ridge of the roof, and that the visual impact of the flue in the street scene is limited by its location at the rear of the building and by frontage trees on the east side of Rugby Road to the south of Willowbank Road, a commercial rather than residential street.

11. The flue is thus visible from parts of Rugby Road, but not prominent in the street scene. It is also visible from the rear windows of 100 Rugby Road, but beyond tall vegetation near the property boundary and at an oblique angle for anyone looking out of a rear window. I therefore conclude that it is not materially harmful to the street scene nor to the visual amenity of any neighbouring resident. I find no conflict with LP Policy BE1 or the SPD guidance.

Other matters and overall conclusion

12. The Council is not alleging that if planning permission were to be granted for the proposed change of use, then this could be used as a precedent to justify in the future a later closing time than is presently proposed and which would be difficult to resist. Any such proposal would need to be considered on its own merits. However despite the conclusion as to the impact of the flue I am satisfied that the conclusion on the first main issue in this appeal justifies withholding the grant of planning permission. On that basis, and taking into account all other matters raised in the written representations, the appeal does not succeed.

Richard Ogier

Inspector