The Planning Inspectorate

Appeal Decision

Site visit made on 13 September 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2022

Appeal Ref: APP/Z4718/W/22/3299449
2 Town Road, Kirkheaton, Huddersfield HD5 0HW

- 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 Jonathan Holmes of Willow Properties (Yorkshire) Ltd against the decision of Kirklees Council.
- The application Ref 2021/62/94032/W, dated 19 October 2021, was refused by notice dated 28 February 2022.
- The development proposed is change of use from shop (Class E) to Italian takeaway (Sui Generis).

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the proposed development on:

   - the safe and efficient use of the highway;
   - the living conditions of nearby residents with regard to noise and odour; and
   - the character and appearance of the area.

Reasons

Highway Safety

3. The appeal property is a corner site fronting onto Town Road. Close to the property, there is a sharp bend in the road where it becomes Shop Lane which limits forward visibility. There is a four-arm junction located close to the property, where Town Road, Shop Lane, Bankfield Lane and New Road meet. The pavements in the immediate vicinity are quite narrow, particularly along Shop Lane. Bus stops are nearby on Town Road and New Road.

4. No on-site parking is proposed. Double yellow lines are present on the highway outside the property and on Shop Lane, and for a short distance on Bankfield Lane and New Road in the immediate vicinity. There are unrestricted on-street parking areas a short distance from the site on these roads. However, many of these are outside residential properties, several of which do not have off-street parking provision.

5. The appellant's evidence states that it is highly likely that customers would prefer a delivery service rather than pick up, although no details are provided

about the number of vehicles this may involve. Nevertheless, I am required to consider the proposal over its lifetime and there could be no guarantee that future operators would provide the same service. Furthermore, while I acknowledge the increased use of takeaway delivery generally, customers do often still have the choice of whether to pick up their order. There is also likely to be some drop-in trade.

6. Not every customer would visit by vehicle. Nevertheless, those who do would be reliant on finding parking in the surrounding area, as would any delivery drivers.

7. A parking survey was submitted in support of the proposal. This contains a series of photographs that show the nature of parking on Town Road, Bankfield Lane and New Road at various times. However, no parking beat surveys have been carried out. The photographs appear to show that on-street parking is well used in the area, with relatively limited available capacity apparent. This tallies with my site visit observations of the parking situation on these roads, which I appreciate was a snapshot in time on a weekday afternoon.

8. Some of the parking that I observed was likely associated with day-time commercial uses in the vicinity and would not therefore be present during the proposed hours of operation for the takeaway. Nevertheless, there are other commercial uses that operate into the evenings and the nature of the residential properties in the vicinity, with many reliant on on-street parking provision, means that there is still likely to be a relatively high demand for such parking provision during the evening. As such, it is likely that parking for customers and delivery drivers would not always be readily available close to the property.

9. The lack of on-site parking would give rise to a risk of customer and delivery vehicles parking in inappropriate locations within the vicinity, including areas with double yellow lines; on pavements; at or close to a four-arm junction; and close to a sharp bend in the road, bus stops, and accesses to residential driveways. This would increase the likelihood of conflict between road users, as well as parked vehicles obstructing the free flow of traffic at a point where full concentration on the road is required to make decisions about directions of travel, to accommodate other traffic entering and leaving the highway and to have an awareness of pedestrians crossing the road.

10. Furthermore, crossing points on Shop Lane are not easy to negotiate due to the road alignment. Similarly, while there is a pedestrian refuge on Town Road near to the property, visibility of oncoming vehicles is somewhat restricted due to the bend in the road and pedestrians have to be mindful of the four-arm junction located in very close proximity. I appreciate that customers of the two nearby pubs may also cross these roads. However, these are existing uses, and it is necessary for me to determine the appeal against up to date policy including the National Planning Policy Framework (the Framework) which states that proposals should not have an unacceptable impact on highway safety.

11. I acknowledge that the previous retail use would also have had no on-site parking provision, and this would also be the case for other uses within Class E, which could be implemented at the property without the need for planning permission. I also note the appellant's contention that such uses would likely operate during the day-time, as is the case with the nearby barbers and hair salon, when traffic volumes on roads in the vicinity may be greater.

12. However, due to the nature of the development proposed, it has the potential to have different effects on the highway to that of a retail unit, other Class E uses or hair salons/barbers. This is mainly due to a greater likelihood for inappropriate parking due to the relatively short period of time needed to collect an order or the likelihood of delivery drivers parking near to the property, especially when orders are at their greatest and there is a need for a quick turnaround.

13. I therefore conclude that the proposed development would give rise to an unacceptable impact on the safe and efficient use of the highway. Consequently, it would conflict with the highway safety and parking requirements of Policies LP16(d and e), LP21 and LP22 of the Kirklees Local Plan Strategy and Policies, adopted 2019 (the Local Plan) and chapter 9 of the Framework.

Living Conditions

14. The appeal property is the ground floor and basement of a two storey end of terrace building. There is residential accommodation above. This flat has two windows in the end elevation where the flue would be located as well as windows to the front and rear. On the opposite side of the road is a hair salon with residential accommodation above, which from what I could observe during my site visit, are 46 and 48 Shop Lane. These flats have windows overlooking the appeal property, and from what I observed, a number are likely to serve habitable rooms.

15. The extraction system would pass close to the windows of the residential accommodation above and would face those of the properties at 46 and 48 Shop Lane. There is therefore the potential for noise and odours to arise from the operation of the extraction system into the evening, up until 23:00 when residents of these properties would be expecting a reasonable level of quiet in particular.

16. Although the appellant's Design and Access Statement refers to the inclusion within the flue of filters to attenuate cooking odours and associated noise, no technical details are provided of the extraction system such as the specification of the equipment or noise assessment data. In the absence of such information, I cannot be satisfied that the noise and odours from the proposed development would not unduly compromise the living conditions of residents of 2 Town Road and 46 and 48 Shop Lane. Furthermore, as I have no substantive evidence to indicate that suitable mitigation could be achieved, it would not be appropriate to leave such matters entirely to conditions.

17. The property at 42 Shop Lane is a dwelling with its gable elevation facing the appeal property. The small first floor window has obscured glazing, as does the window at ground floor level. It appears to me unlikely that these windows serve habitable rooms. In addition, the metal security bars on the ground floor window would hinder the ability to open it to any great extent. Other windows in this dwelling and its outdoor amenity area are orientated away from the appeal property or are screened from it by the adjacent building. Given these circumstances, I am not persuaded that the living conditions of residents of this dwelling would be harmed to an unacceptable extent by the proposal.

18. I conclude that it has not been demonstrated that the proposed development would not have an unacceptable effect on the living conditions of neighbouring

residents of 2 Town Road and 46 and 48 Shop Lane with regard to noise and odours. The proposed development would therefore conflict with the residential amenity requirements of Policies LP16(b) and LP24 of the Local Plan and chapter 12 of the Framework, and the objectives for managing pollution in Policy LP52 of the Local Plan and chapter 15 of the Framework.

Character and Appearance

19. The plans submitted with the application and on which the Council based its decision show an external flue of 350 millimetres diameter with a black finish on the side elevation of the property. Given the orientation of the property and its relationship with the highway network, this elevation is clearly visible from several public vantage points. Its attachment to this elevation would appear as a prominent and incongruous addition to the property and would cause harm to the character and appearance of the street scene.

20. The appellant has indicated that they own the residential flat above the property and so there would be the potential to accommodate a flue internally. As part of the appeal, the appellant submitted an amended plan which shows details of such an arrangement, illustrating that only the upper most part of the flue would be visible, projecting from the hipped roof. Due to its siting and smaller scale, this approach would not have a harmful effect on the character and appearance of the area.

21. Given that details have been submitted demonstrating that an acceptable solution could be implemented, I am satisfied that this matter could be addressed through a condition requiring further details of the design of the flue in the event of a successful appeal. I therefore conclude that, subject to such a condition, the proposed development would not have a harmful effect on the character and appearance of the area. Accordingly, it would accord with the design objectives of Policies LP16(g) and LP24(a) of the Local Plan and chapter 12 of the Framework.

Conclusion

22. I have found that, subject to an appropriate condition, the proposed development would not cause harm to the character and appearance of the area. However, I have found that there would be unacceptable harm to the safe and efficient use of the highway, and I am unable to conclude that there would not be unacceptable harm to the living conditions of neighbouring residents with regard to noise and odours. These are matters of overriding concern and to this extent there would be conflict with the development plan when considered as a whole as well as the Framework. Therefore, the appeal should be dismissed.

F Wilkinson

INSPECTOR