



Appeal Decision

Site visit made on 11 May 2010

by **David Fitzsimon MRTPI**

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

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**Decision date:
21 July 2010**

Appeal Ref: APP/D0650/A/10/2121435

Occasions, Ascot Avenue, Runcorn, Cheshire WA7 4YW

- 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 Sean Bell against the decision of Halton Borough Council.
- The application Ref. 09/00351/COU, dated 8 July 2009, was refused by notice dated 29 September 2009.
- The development proposed is the change of use from Class A1 retail to Class A5 hot food takeaway, together with new flue and rear fire escape door.

Decision

1. I allow the appeal, and grant planning permission for the change of use from Class A1 retail to Class A5 hot food takeaway, together with new flue and rear fire escape door at Occasions, Ascot Avenue, Runcorn, Cheshire WA7 4YW in accordance with the terms of the application, Ref. 09/00351/COU, dated 8 July 2009, subject to the conditions contained within the attached Schedule.

Main issues

2. The main issues in this case are as follows:
 - The effect of the proposal on the occupiers of nearby dwellings with particular regard to noise and disturbance and the fear of crime and anti-social behaviour;
 - The effect of the proposed flue and the potential for littering on the character and appearance of the local area; and
 - The effect of the proposal in terms of highway safety.

Reasons

Living conditions

3. The Council's Environmental Health Officer (EHO) accepts that the odours emitted from the proposed takeaway could be adequately dealt with by a suitable extraction and filtration system and I have no reason to disagree.
4. In my experience, takeaways can sometimes attract youths and a degree of anti-social behaviour, and noise and disturbance can be generated by some customers congregating outside to talk and eat their food, along with associated vehicle movements. Nevertheless, highly material to my consideration of this proposal is the fact that the appeal property could lawfully trade as a shop, such as an off-license. This could also attract a degree of general noise and disturbance and anti-social behaviour, even accounting for the fact that a convenience store trades next door.

5. Furthermore, I understand that the trading hours of the lawful use of the appeal property are without restriction, whereas the proposed takeaway would shut at 22.30 hours, which could be controlled by the imposition of a planning condition. I also understand that a degree of anti-social behaviour has been experienced outside the adjacent convenience store. Whilst this shop may currently close at 21.00 hours, its trading hours are beyond the control of the local planning authority, and therefore its proprietor could choose to close later at any point. Whilst the Council suggests that the convenience store would close later in the evening if the takeaway was permitted, this assertion is unsubstantiated.
6. The proposal includes the introduction of a bin store to the rear of the appeal property. The appellant has explained that the takeaway would not generate a materially greater level of waste than if the unit traded as a shop and the Council's arguments to the contrary do not persuade me otherwise. Furthermore, I can see no reason why the intermittent filling of the bin within the proposed store would cause undue disturbance for the occupiers of the houses to the rear, particularly given that they are buffered by substantial fences reinforced by mature vegetation.
7. In addition, I am mindful that planning permission has recently been granted for a two storey community centre/church at No. 70 Clifton Road (Ref. 09/00492/FUL), which is very close to the appeal property. The community centre could be used for an array of activities including youth clubs and discos etc. which would, in all likelihood, attract young people. Supervision beyond the community centre itself cannot be guaranteed and I note that its opening hours are not restricted by the terms of the planning permission. Whilst I cannot be certain that this development will take place, I find it highly relevant that the Council has recently permitted a use which, in itself, could attract youths to this part of Ascot Avenue in the evenings.
8. As I have explained, the houses to the rear of the appeal site, Nos. 6 to 10 Clifton Court have substantial rear boundary fences, reinforced by mature vegetation and they are separated from it by a walkway with grass verges on either side. Meanwhile, given the presence of the car park to the front of the commercial units, the dwellings of Ascot Avenue are some distance away. Bearing in mind these physical relationships, combined with the fact that the proposed takeaway would close at 22.30 hours, I am satisfied that the development would not be any more disturbing, and would not lead to any greater levels of anti-social behaviour, than if the unit operated within the terms of its lawful use. Nor have I seen or read any evidence to persuade me that the introduction of a takeaway would directly lead to a material increase in crime within the local area.
9. In light of the above factors, I conclude that the proposal would not have an unduly harmful effect on nearby residents with particular regard to noise and disturbance and the fear of crime and anti-social behaviour. In such terms, the proposal accords with policy BE1 of the Halton Unitary Development Plan (UDP) and it does not conflict with the overall aims of the Crime and Disorder Act 1988.

Character and appearance

10. The proposed development involves the installation of a flue in order to mitigate the cooking odours emitted from the proposed takeaway. The flue would be enclosed within a brick chimney of a modest width and depth, and its finish could match the external brickwork of the takeaway. Although the chimney would extend a significant distance above the ridge of the appeal property which is single storey, it would abut the side elevation of the adjoining two storey unit and it would sit below the ridge of this building.
11. Given the above factors, I am satisfied that the flue would be acceptable in visual terms. It would sit comfortably within the street scene and its overall scale and positioning would not harm the predominantly residential character and appearance of the local area or the outlook for the occupiers of the nearest properties, Nos. 6 to 10 Clifton Court. As such, I conclude that this element of the scheme accords with policies BE1, BE2 and TC11 of the UDP.
12. The appellant has offered to provide a litter bin outside the appeal property and to pick up any litter within the immediate vicinity. I appreciate that securing a litter patrol by way of a planning condition would be difficult to enforce, and that takeaway trays and wrappings are often dropped some distance from their source. Whilst it is unfortunate that a proportion of takeaway customers do litter, which can harm the perception of the immediate area, some customers of shops which sell food do the same, as conceded by some of the local residents who have strongly opposed the appeal proposal. Furthermore, I consider that it would be unreasonable to withhold planning permission for the proposed takeaway on the basis that some of its customers might litter, otherwise it follows that planning permission would never be granted for takeaway uses.

Highway safety

13. The Council has provided no evidence to dispute the appellant's assertion that the bin store proposed at the rear of the unit would be on privately owned land. Whilst the Council suggests that the collection of the bin from the store would necessitate the refuse vehicle mounting the highway verge, I consider that wheeling the bin to the side of the car park for collection, as suggested by the appellant, would be an entirely suitable arrangement. Furthermore, no evidence is before me to suggest that the level of waste generated by the proposed takeaway would be materially greater than that which could be generated by, say, a sandwich shop. Equally, I fail to see how servicing the proposed takeaway would be materially different to servicing a shop.
14. Nearby residents have also expressed concern that the proposal would generate additional demand for car parking, and this could lead to vehicles parking on the bend of Ascot Avenue, particularly at peak times when the car park and nearby roads are often used for the dropping off and picking up of schoolchildren. Nevertheless, with the capacity to accommodate about 15 cars, the car park is sizeable and there were plenty of spaces available at my midday visit. Furthermore, I have not seen nor read anything to convince me that the proposed takeaway would be likely to generate materially greater levels of traffic from customers or deliveries than if the unit was to trade as a shop. Moreover, it is of note that the takeaway would not be open at the beginning or

end of the school day and the Council's Highway Officer has not objected to the scheme in terms of traffic generation or parking provision.

15. In light of the above factors, I conclude that the proposal would not have a harmful effect on highway safety. On this basis, I find it compliant with policies BE1 and TC11 of the UDP

Other matters

16. Concern has been expressed that the proposed takeaway would be close to a large school and that it could only encourage pupils and adults alike to eat chips and other convenience food. I accept that this would, to a degree, undermine the Council's initiatives which actively promote healthy eating in response to studies which have found that a high percentage of residents within the Borough have a poor diet. Nevertheless, in the absence of any development plan policy or supplementary planning guidance which specifically seek to restrict the number of takeaways within any defined area and/or their proximity to schools and, whilst I have accorded this consideration some weight, I am not persuaded that it would justify the refusal of planning permission in this particular case.
17. Objection has also been raised to the levels of light pollution that would be generated by the takeaway, but there is no reason why this should be any greater than if the unit traded as a shop. Nor should the potential for vermin be greater. Whilst the matter of provision for people with disabilities has also been raised, other legislation, such as the Building Regulations, could adequately address this issue. In addition, concerns have been raised about the effect of the proposal on the value of nearby houses and the actual need for the takeaway given the abundance of similar establishments within Runcorn, but these are not matters for me to consider.

Overall conclusions

18. Whilst I sympathise with the concerns and fears raised by a significant number of local residents, I conclude that the proposal would not have an unacceptable impact on the occupiers of nearby dwellings by way of general noise and disturbance or the fear of crime and anti-social behaviour. I am also satisfied that it would not cause undue highway safety issues and the proposed flue would be visually acceptable, whilst the risk of some customers dropping littering is not a reasonable reason for withholding planning permission.
19. The Council has not suggested any conditions in the event that the appeal is successful. Nevertheless, it is necessary to impose a time limit on the implementation of the development along with a condition to ensure that it takes place in accordance with the approved plans in the interests of proper planning and in order to provide clarity. In addition, a condition requiring the brick finish of the chimney to match the external finish of the unit itself is necessary to secure a visually appropriate form of development.
20. Although the appellant has suggested that the details of an extraction and filtration unit have been agreed with the Council's EHO and accompany the application, only general information is before me in this regard. On this basis, and as suggested by the appellant, a condition requiring the installation, use and maintenance of an effective system is necessary in order to safeguard the

living conditions of nearby residents, along with a condition to limit the hours of trading to those proposed. I am of the view that no party will be disadvantaged by me imposing such conditions in allowing this appeal.

David Fitzsimon

INSPECTOR

SCHEDULE OF 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 not be carried out except in complete accordance with the details shown on the submitted plans, Refs. H144-1A, H144-2A and H144-220409.
- 3) The bricks to be used in the construction of the external surface of the chimney hereby permitted shall match those of the existing building.
- 4) The use hereby permitted shall not take place other than between the following hours:
11.30 to 13.30 and 16.30 to 22.30 Mondays to Saturdays; and
17.00 to 22.00 Sundays.
- 5) No development shall take place until details of an extraction and filtration system have been submitted to and approved in writing by the local planning authority. The system shall be installed in accordance with the approved details before the takeaway hereby permitted first operates, it shall be retained and maintained in accordance with the manufacturer's specification thereafter, and it shall be fully operational whenever cooking takes place.