



Appeal Decision

Site visit made on 21 July 2009

by **Anthony J Wilson BA MA DipLA**
MRTPI

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

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Decision date:
10 August 2009

Appeal Ref: APP/W0734/A/09/2103188

97 Cumberland Road, Middlesbrough, Cleveland, TS5 6PP

- 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 Arshad Ali against the decision of Middlesbrough Borough Council.
- The application Ref: M/FP/2016/08/P, dated 23 December 2008, was refused by notice dated 9 February 2009.
- The development proposed is the change of use of the ground floor from A1 to A5 hot food takeaway.

Decision

1. I dismiss the appeal.

Main issue

2. I consider the main issue is the effect of the proposed development on the living conditions of the occupiers of the neighbouring residential properties, with particular regard to noise and disturbance.

Reasons

3. The appeal site is an existing retail premises, located within an extensive housing area to the south of Middlesbrough centre. Although there is a further retail property in the other half of this semi-detached building at No 99, and two more shops on the opposite side of Cumberland Road, the character of the area is predominantly residential. I also understand that the upper floor of the building is in use as a separate residential flat.
4. Whilst the application was determined under the provisions of the Middlesbrough Local Plan, this part of the development plan has been subsequently replaced by the Middlesbrough Local Development Framework (LDF). The LDF is thus the relevant development plan currently in force for the locality and Policy DC1 sets out the principles which will be taken into account when assessing development proposals. Amongst other things, these require that the effect of proposals on the surrounding environment and the amenities of the occupiers of nearby properties will be minimal.

Noise and disturbance

5. The appeal site stands near to the junction of Cumberland Road and Southwell Road and is closely associated with several dwellings in these two predominantly residential streets. In my opinion, it is important that the residents of these properties should be able to enjoy their homes and gardens
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without unreasonable interference from other land uses and the provisions of the LDF seeks to ensure that this is so.

6. The appellant argues that the levels of customer activity, both by car or on foot, would be little different from any other retail unit with late night opening. In this respect, I agree that the former shop use would have brought a degree of noise and disturbance to the adjacent dwellings, and to other homes in the immediate locality. I also acknowledge that some of the nearby dwellings would still be subjected to some disturbance from other, existing, noise sources, including from the current activity at the general store opposite, and from passing traffic.
7. Nevertheless, my own experience leads me to agree with the Council that a successful takeaway enterprise would attract a considerable number of car-borne customers. In my opinion, therefore, there would be additional noise and disturbance, arising from the regular movements of an increased number of calling vehicles as they stop, start and manoeuvre, together with the inevitable opening and closing of doors, and that this would be readily noticeable in the dwellings close to the site. I consider that the impact of this increased activity would be particularly marked towards the end of a normal working day and through into the late evening, when local residents would be expecting to rest and relax in their homes. This would diminish the amenities of the occupiers of the neighbouring dwellings, at variance with the objectives of LDF policy.
8. I have considered whether the impact of noise and disturbance would be sufficiently mitigated by the imposition of the planning conditions suggested by the appellant, including a requirement for closure at 23:00hrs and on Sunday and the submission of a noise attenuation scheme for the building. However, bearing in mind that further time is also required by the proprietors to close down the operation after that last customer has left, even with the suggested closing time, it is unlikely that the premises would finally fall silent on most days until about 23:30hrs. In my opinion, this would still be unacceptable. Moreover, my concern about noise and disturbance mainly relates to that generated outside the premises, rather than within it, and this would remain unaffected by any noise attenuation works to the building itself.
9. Notwithstanding the established retail use of the building, therefore, I conclude that the increased noise and disturbance would be sufficiently noticeable to local residents during the evening period to unacceptably harm the living conditions which they might reasonably expect to enjoy from their properties. This would be in conflict with Policy DC1 of the LDF.

Other matters

10. It has been drawn to my attention that there is another hot food takeaway operating in close proximity to nearby homes at No 79 Cumberland Road. However, I do not have the full details surrounding the approval of an A5 use in this location to make a meaningful comparison. Nor does the presence of this hot food outlet affect the harm I have identified would occur about the appeal site. I have therefore proceeded to determine the appeal on its merits, in relation to current development plan policy.

11. I have had regard to the fact that the proposal would restore commercial use to a property which has been vacant for some time. In addition, the large number of people who have signed the petition in support of the proposed takeaway indicates that, for some, the proposed use would be a welcome addition the retail facilities on offer to the local community. I also recognise that it could reduce the need for customers to travel to other, existing, hot food outlets further afield. However, I do not consider these advantages would outweigh the harm that would be caused to the amenities of those residents living closest to the site; nor do they divert me from my conclusion that the appeal should not succeed.

Anthony J Wilson

INSPECTOR