



Appeal Decision

Site visit made on 17 August 2022

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 7th October 2022

Appeal Ref: APP/V4305/W/22/3293572

8 Moorfield, Tower Hill, Kirkby L33 1XD

- 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 T Thiruppathy (Tisa Property Limited) against the decision of Knowsley Council.
 - The application Ref 21/00759/FUL, dated 14 September 2021, was refused by notice dated 23 December 2021.
 - The development proposed is the change of use of the ground floor of the premises from a mixed sui generis use (public house & hot food take-away) to use retail convenience (Use Class E), the erection of a 2m high close board fence and gates, along with the reinstatement of car parking at the site.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Tisa Property Limited against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. Prior to my site visit a fire caused damage to the appeal property. I have not taken the current state of the building in this manner into account in my assessment of the proposal.

Main Issues

4. The main issues are the effect of the proposed development on: the living conditions of the occupiers of neighbouring residential properties, with particular regard to noise and disturbance; and crime and anti-social behaviour.

Reasons

Living conditions

5. The site comprises the Farmer's Arms, a vacant public house with associated car park located at the junction of Moorfield and Mossborough Drive. The immediate surrounds are primarily residential, with dwellings located directly opposite and adjacent to the site. A school and collection of commercial units including a convenience store are also located further along Moorfield.
6. Given the currently vacant nature of the building, retail premises in this location would lead to an increased number of movements associated with the

site. It would result in a greater presence and gathering of people, with comings and goings on foot and in vehicles. I acknowledge the nearby school and its associated noise during certain times. Nevertheless, the likely more steady stream of activity associated with the proposal would in turn be likely to generate additional noise throughout the day. This is due to the activity associated with the comings and goings of both customers and delivery vehicles such as vehicle doors slamming, vehicle engine noise and raised voices of customers. This would likely be noticeable within the otherwise largely residential area, particularly outside of school hours.

7. This noise would be experienced most by the properties immediately surrounding the site, with those directly across the road on Moorfield and Mossborough Drive being in particularly close proximity. As a result of the limited separation distance, the activity associated with the proposal throughout the day would likely create additional disturbance for these occupiers.
8. The appellant is agreeable to opening hours of 07:00 – 21:00, and is willing to condition delivery times so as to limit the periods during which noise would be experienced. However, even within these hours, noise from the proposal would be likely to occur in the early mornings and late evenings of weekdays and weekends. Activity at the premises would be extended into periods when nearby residents would reasonably expect a level of peace and quiet, when they are likely to be home and ambient noise levels are reduced.
9. I acknowledge there is a convenience store further along Moorfield, the opening hours of which are similar to those proposed. However, this is part of a wider row of commercial units set back from dwellings and located adjacent to Shervington's Lane, a main throughfare of a different nature to the quieter residential streets immediately surrounding the site. As such, despite its proximity, the immediate setting of this store has a different character to the appeal site.
10. In addition, being at the opposite end of Moorfield, noise associated with the current store would not be experienced to a significant degree within the immediate area of the site. I observed this to have notably less activity than the commercial units and properties further along Moorfield. Accordingly, the presence of the commercial units nearby do not justify the proposal.
11. I further acknowledge that, although vacant for some time, the existing use of the building is a pub and hot food takeaway, for which a certificate of lawfulness was granted in June 2021. This has less sociable operating hours than the proposal, during which there would likely be associated levels of noise and disturbance. However, the appellant is clear that such a use does not align with their business plan and intentions for the site. As such, notwithstanding the certificate of lawfulness and the fact that the surrounding houses may provide a customer base for such a use, I do not consider there is a real prospect or possibility of a pub and takeaway re-opening at the site, given that this is not the clear intention of the appellant. On the evidence before me this is currently no greater than a theoretical possibility, such that it is not a realistic fallback position and attracts limited weight.
12. For the reasons given above I find that the development would have a significant adverse effect on the living conditions of neighbouring residents with particular regard to noise and disturbance. As such, in respect of this

issue it would fail to comply with Policies SD1, CS2 and CS19 of the Knowsley Local Plan Core Strategy adopted January 2016 (Core Strategy) and saved Policies H5 and ENV2 of the Knowsley Replacement Unitary Development Plan adopted June 2006 (UDP) which, among other things seeks to mitigate negative impacts of proposals, ensure good standards of amenity and avoid unacceptable increases in noise levels.

Crime and Personal Safety

13. Concerns have been raised regarding the potential for the proposal to contribute to crime and anti-social behaviour within the area. In this regard I have been provided with reports from Merseyside Police acknowledging that the site is in an area of high crime and anti-social behaviour.
14. Given these reports it is reasonable to conclude that the presence of a convenience store with later opening hours could be a realistic target for theft in the area and lead to other anti-social behaviour. However, the appeal site in its currently vacant and disused state would also contribute to these issues, being a likely target for gatherings and vandalism in an area with an established record of high crime.
15. The appellant has submitted a Crime Prevention Management Strategy outlining measures to address potential crime and anti-social behaviour. Certain measures are outlined in limited detail or by their nature could not be secured by way of condition. However, I note that the appellant is agreeable to the installation of CCTV at the premises, a scheme which could be addressed via a planning condition.
16. This, combined with other measures that are commonplace at such premises such as signage and removal of valuables at night, would provide a level of deterrence to crime and anti-social behaviour that does not currently exist at the vacant site. As such, even acknowledging the risk of theft and loitering associated with the proposal, I do not consider that it would have a significant adverse effect with regards to crime and anti-social behaviour. Rather, when taking account of the current situation, it would provide an opportunity to better tackle such issues and install measures to deter this behaviour. This represents a benefit of the proposal, to which I attach significant weight.
17. For the reasons given above the proposal would not result in significant adverse effects with regards to crime and anti-social behaviour. As such, it would comply with Policies CS2 and CS19 of the Core Strategy and saved Policies H5 and DQ2 of the UDP which, among other things, seek to avoid unnecessary impacts on amenity, provide good levels of security and minimise crime, fear of crime and anti-social behaviour.

Other Matters

18. I acknowledge that the appeal site falls in the Tower Hill Action Area, within which, in accordance with Policy CS12 of the Core Strategy, small scale enhancements to retail appropriate to the scale and function of a local centre will be facilitated. Given the proximity of the site to the local centre, I find that it could provide enhancements in this regard. I further note the support in the National Planning Policy Framework for the provision of local shops to provide facilities that would enhance the sustainability of communities. I therefore attach significant weight to these benefits of the proposal.

19. I note that Merseyside Police have raised no objection to the appeal site becoming an off-licence. However, such licensing of the site would fall under a separate regime from the planning process and as such does not have any weight on the planning merits of the case.
20. The concerns raised in relation to how the application was considered by the Council have not had a bearing on my decision. I have considered the appeal on its own merits based on my observations of the site and the totality of the evidence before me, including all comments from the Council's Environmental Health Officer.
21. It is acknowledged that there are no objections from neighbouring residents noted on the consultation list. Nevertheless, other objections have been received. While the appellant states that neighbouring residents are in favour of the proposal, I have no substantive evidence that this is the case. In any event, it is necessary to ensure that adequate living conditions for current and future neighbouring occupiers are maintained. Consequently, the lack of an objection is not sufficient to outweigh the harm identified above.

Planning Balance Conclusion

22. I have concluded that the proposal would provide an opportunity for betterment with regards to crime and anti-social behaviour within the area. I have also found that the proposal would have benefits insofar as providing facilities to enhance the sustainability of the local community, to which I attach significant weight.
23. Nevertheless, local and national policy are clear that development should ensure high standards of amenity and living conditions. Even acknowledging the significant weight attached to the above benefits of the proposal, it would not outweigh the significant adverse effect of the proposal on the living conditions of surrounding residents with regard to noise and disturbance.
24. For the reasons given, the proposal would not accord with the development plan when taken as a whole. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

C Rafferty

INSPECTOR