



Appeal Decision

Site visit made on 22 August, 2017

by S. J. Buckingham, BA (Hons) DipTP MSc MRTPI FSA

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

Decision date: 26th September, 2017

Appeal Ref: APP/J1535/W/17/3175558

1 Brook Parade, Chigwell, IG7 6PD

- 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 Domino's Pizza UK & Ireland Plc against the decision of Epping Forest District Council.
 - The application Ref: EPF/2931/16 dated 4 November, 2016 was refused by notice dated 1 February, 2017.
 - The development proposed is change of use from Use Class A2 (Financial and Professional Services) to use for purposes within Use Class A5 (Hot Food Takeaway); replacement of compressors; erection of extraction duct and new shop entrance; and new fresh air intake grill.
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Decision

1. The appeal is allowed and planning permission is granted for is change of use from Use Class A2 (Financial and Professional Services) to use for purposes within Use Class A5 (Hot Food Takeaway); replacement of compressors; erection of extraction duct and new shop entrance; and new fresh air intake grille at 1 Brook Parade, Chigwell, IG7 6PD in accordance with the terms of the application, Ref: EPF/2931/16 dated 4 November, 2017 subject to the conditions set out in the Schedule to this Decision.

Application for costs

2. An application for costs was made by Domino's Pizza against Epping Forest District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of development given above is different from that on the original application but the change was agreed by the parties and I have therefore used the revised description.
 4. The appellant has submitted revised plans which take account of mitigation measures recommended in the appellant's Noise Assessment report, also submitted as part of appeal information. I have considered whether the development would be so changed that any party would be prejudiced by being deprived of an opportunity to be consulted on these plans, and have concluded that they would not. I have therefore accepted these plans and taken them into account in reaching my decision.
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5. The Council has drawn my attention to its Draft Local Plan for consultation, although as this is at a relatively early stage in its preparation, its policies may be subject to change. This therefore diminishes the weight I can attach to its policies, and I have therefore considered this appeal in the light of the policies contained within the Local Plan and Alterations 2006 (the LP).

Main Issue

6. Part of the single reason for refusal given was that the proposal would provide a service already provided for in the locality, and that therefore there is no overriding need for the development which would outweigh the harm it is likely to cause. However, these are commercial considerations, which are not rightly the subject of planning decisions, and no national or local policy requires an assessment of the need for a development to be demonstrated.
7. Accordingly, the main issue is solely the effect of the proposal on the living conditions of neighbouring occupiers with respect to noise and disturbance.

Reasons

8. Brook Parade is an early twentieth century shopping parade in the Chigwell Local Centre with a range of shops and other businesses at ground floor level and two storeys of residential accommodation above. It is set on a small access road to the front, which contains spaces for customer parking, and a service road, Brook Mews, to the rear with access to parking for residents and businesses, refuse storage and other functional uses. There are small residential balconies to the front elevation, and a number of properties have roof terraces for residents to the rear, including one on the upper floor of the appeal building. Most of the ground floor businesses have plant on the rear elevation. The parade is a busy one during the day, and is set on the busy High Road, close to the tube station.
9. The proposed change of use from a former bank to a hot food takeaway would include the installation of plant including an extract duct and air compressors. The submitted expert Noise Assessment report was compiled in line with standards set out in BS 4142:2014. It concludes that, subject to the mitigation measures included in the revised plans, the operation of this plant would not exceed acceptable noise levels. The revised plans show the air conditioning and compressor units moved into a basement area and the incorporation of silencers into the fans, following the recommended mitigation measures. On this basis, I can see no reason to doubt the findings and recommendations of the appellant's Noise Assessment, while the Council has submitted no technical evidence of its own which would cause me to do so.
10. While acknowledging these findings, the Council is clear that it does not agree with the report, due to the subjective nature of noise, by which I take it to mean the way in which it is experienced by receptors. Hours of operation by the proposed use are cited as taking place up to 01:00, which, it is contended would be an important factor in the impact on receptors, the neighbouring occupiers, and would constrain certain, although unspecified, activities.
11. However, it appears to me from the submitted evidence that the Council and the appellant had previously agreed that the hours of operation would extend only to 23:00 at night, and that the appellant is willing to accept a condition restricting opening hours to up to 23:00. The appellant has submitted

evidence demonstrating that these hours have been found acceptable elsewhere in the district in terms of their effects on neighbouring occupiers, and I can see no reason to disagree with this.

12. The Noise Assessment also concludes that the impact arising from delivery vehicles associated with the use would be negligible or minor. It has been made clear by the appellant that delivery vehicles would not include mopeds, and that they would operate from the front of the premises, with parking spaces to the rear reserved for staff. As also there would be likely to be free parking spaces to the front during the evenings, I can see no reason why delivery vehicles would cause disturbance to the rear of the block which would be the area most sensitive to disturbance for residents.
13. I conclude therefore that noise levels arising from plant associated with the proposed use would be attenuated, and that their effect on receptors in an area of ambient noise caused by existing plant, a busy shopping centre and a busy road would not be harmful. I conclude also that due to the operational arrangements and hours set out above harmful levels of noise and disturbance would not arise from delivery vehicles.
14. It appears to me from the evidence supplied that there would be a reasonable expectation that the majority of meals would be delivered rather than picked up on site by customers. Consequently, and as no convincing evidence has been submitted to the contrary, I conclude that there would not be likely to be significant levels of customer activity on site, and that harmful levels of noise or disturbance would not therefore be likely to arise from that source.
15. As the proposal would not therefore be likely to cause harm to the living conditions of neighbouring occupiers, it would not conflict with policy DBE9 of the LP, which seeks development which does not result in an excessive loss of amenity for neighbouring properties, including in respect of noise, smell or other disturbance.

Other Matters

16. As I have set out at the beginning of this decision, issues relating to commercial considerations are not planning matters, and neither is the concern that the proposed use would be by a corporate chain, or the possible effects on dietary habits of local residents. Fear of crime is also cited as a concern, but no evidence has been put before me to persuade me that the presence of a pizza delivery business would lead to an increase in criminality in the area. As food would generally be taken to be consumed elsewhere, I conclude that there would not be likely to be a significant effect on levels of litter in the vicinity. The proposed extract duct would extend to a metre above the height of the roof, and would not be situated close to the roof terrace below, and I conclude therefore that it would not have a harmful effect in terms of smells.

Conditions

17. The Council has supplied a list of suggested planning conditions, on which the appellant has had an opportunity to comment, and I have taken these into account. A condition requiring implementation of the scheme in accordance with the approved plans, taking into account revisions, would be necessary in the interests of clarity.

18. The appellant has indicated that details relating to the equipment to suppress and disperse cooking fumes and smells have been submitted as part of the application, and that rather than a pre-commencement condition, a condition ensuring compliance with the details provided should be applied. It appears to me that this would be reasonable and necessary, and that such a condition should be applied. It appears to me also that the external appearance of the extract duct has already been shown on the approved plans, and that it would not be reasonable or necessary to condition this aspect of the scheme. Furthermore, details of provision for foul drainage and grease separation are matters for the Building Regulations or Environmental Health rather than the planning system, and accordingly a condition relating to these would not be reasonable or necessary either.
19. A condition controlling hours of opening, taking account of the previously agreed closing time of 23:00, would be necessary in the interests of protecting the living conditions of neighbouring occupiers. A condition restricting the works of construction in relation to the change of use would also be necessary in the interests of protecting the living conditions of neighbouring occupiers.

Conclusion

20. For the reasons given above therefore, and taking into account all other matters raised, I conclude that the appeal should be allowed.

S J Buckingham

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: DB214-LP, DB214-BP revision B, DB214-EX-01 revision A, DB214-EX-02 revision A, DB214-EX-03 revision A, DB214-EX-04, DB214-GA-05 revision A, DB214-EL-06 revision A, DB214-EL-07 revision A, DB214-EL-08 revision A.
- 2) The development hereby permitted shall not be occupied until equipment to control the emission of fumes and smell from the premises shall have been constructed in accordance with details shown on the approved plans.
- 3) The premises shall only be open for customers between the following hours: 10.00 – 23.00 Mondays – Sundays inclusive.
- 4) Demolition or construction works shall take place only between 07.30 to 18.30 on Mondays to Fridays, 08.00 to 13.00 Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.