



Penderfyniad ar yr Apêl

Appeal Decision

Ymweliad â safle a wnaed ar 27/03/12

Site visit made on 27/03/12

gan David Kaiserman BA DipTP MRTPI
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 19/04/12

by David Kaiserman BA DipTP MRTPI
an Inspector appointed by the Welsh Ministers
Date: 19/04/12

Appeal Ref: APP/H6955/A/12/2169121

Site address: 26 West View, Chirk LL14 5HN

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Miah against the decision of Wrexham County Borough Council.
- The application Ref P/2011/0684, dated 20 September 2011, was refused by notice dated 16 December 2011.
- The development proposed is the change of use of the ground floor to a hot food takeaway.

Decision

1. The appeal is allowed and planning permission is granted for the change of use of no. 26 West View, Chirk LL14 5HN to a hot food takeaway, in accordance with the terms of the application, Ref P/2011/0684, dated 20 September 2011, and the plans submitted with it, subject to the following conditions:
 1. The development hereby permitted shall begin not later than five years from the date of this decision.
 2. The use hereby permitted shall not be open to customers outside the hours of 16.00 to 22.00, seven days a week.
 3. Before the development commences, full details of an extraction system, which shall contain a functioning fumes / odour filtration mechanism, shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be implemented as approved, and the equipment installed shall thereafter be operated and maintained in accordance with the manufacturer's instructions.

Procedural Matters

2. For the avoidance of any doubt, I have noted that the Council have withdrawn their statement of case. I therefore have disregarded its contents and any comments made by the appellant which directly relate to it. The application form stated that the intended hours of opening are 16.00-22.30 throughout the year; however, the appellant has said that he would accept a closing time of 22.00, and I have taken this into account in determining the appeal. In addition, I have altered the description of the proposal to make it clear that it relates only to the ground floor of the premises.

Main Issues

3. The main issues in this case are the effect of the proposals (a) on the living conditions of nearby residents; and (b) on highway safety and convenience. My understanding of the Council's case is informed primarily by reading the assessment contained in the relevant officer report.

Reasons

(a) Policy background

4. The appeal property is lies within a small group of shops and other commercial uses grouped in a symmetrical pattern around the entrance to a residential estate. It faces the main road into Chirk from the north (B5070) across a broad landscaped strip, part of which also accommodates free and unrestricted public parking for around 7-8 cars. The semi-detached buildings which make up this small sub-centre are two storeys in height, with dormers set into the roof. There is residential accommodation above the appeal site and also above number 25, another hot food takeaway. I am told that the property to the north of the appeal site is in use as a taxi-office, and that it too has a flat above. General housing surrounds the commercial enclave to the north, east and south.
5. The officer report on the planning application states that there are no policies in the Unitary Development Plan (UDP) which relate specifically to Class A3 uses (which perhaps should have been a reference to A5 uses, given the nature of the application). Reliance is therefore placed on UDP policy GDP1(f) which, to summarise it, seeks to ensure that development is not the cause of any environmental nuisance; the Council are concerned in this case about the impact of cooking odours and noise on nearby properties. In addition, they see conflict with policies GDP1(d) and T8, which are designed to ensure safe and convenient access and adequate car parking.
6. On this basis, it would appear that the Council have no objection in principle to the change of use, only to its specific impact. However, I consider it appropriate to give substantial weight to *Local Planning Guidance Note 9: Hot Food Takeaways*, which has been formally adopted by the Council. I have been given two versions of this document: the first covers restaurants and public houses as well as takeaways, and is dated October 1994. The second only relates to takeaways and is dated December 2011. It is said to "update" the earlier version, which I assume means that it replaces it. The officer report, however, continues to refer to the original document, and the Council have not explained the discrepancy.
7. The issue is of some importance. The 1994 document identifies four types of location where what were then Class A3 uses might be acceptable in principle. These included "local shopping parades" and "other isolated shopping units." In the former, a closing time of 10.00 was considered appropriate, but this reduced to 18.00 in the latter category. The 2011 version describes only three types of location: Wrexham Town Centre, designated district shopping centres (which do not include this site) and "other local mixed residential / commercial areas and isolated locations", where applications would be considered on their merits, but where the operating hours are likely to be restricted to a closure time of 18.00. In addition, it clearly states that new hot food takeaways should not be located in "primarily residential areas". The appellant has relied on the 1994 version of the guidance, concluding that the appeal site lies within a local shopping parade.

8. I take the view that it would be illogical to base my decision on an out-of-date policy document. The presumption in this case should therefore be that, while there is no objection in principle to the proposal based on its location, the clear guidance is that any planning permission granted should be subject to the more restricted hours regime. I intend to proceed on that basis.

(b) Impact on living conditions

9. As to the first issue, I have taken it that the focus of the Council's concerns is the flats to which I have referred. I am told that the one above the appeal site itself is let (by the Council) in conjunction with the commercial premises below but that, in a formal sense, there is nothing to prevent a separate leasing arrangement being concluded. Were this to occur, I accept that the arrangement could result in a degree of nuisance for any future tenants; however, it would also be the case that they would be in a position to assess the likely extent of this for themselves. I also understand that, despite the lack of a formal arrangement, the Council's normal practice is to advise potential lessees of their flats located above shops that they can only be occupied by someone associated with the business. I have noted that the appellant has said that he is willing to accept a condition on any planning permission restricting occupation of the flat to a person (or persons) employed in the business, but I consider that such a condition would not be appropriate, since the application relates only to the change of use of the ground floor of the property and not to the flat itself.
10. The impact of the use on the occupier of the flat above the taxi office (and other nearby residents) would be less in that noise transmission from the takeaway itself would not be an issue. However, there clearly remains some risk that the general comings and goings associated with the use would be the cause of disturbance on occasion, especially during the evening. That having been said, I consider that the specific location of the appeal site is such that, subject to an appropriate hours regime, the impact would be within acceptable limits. There will already be a degree of general activity associated with the taxi office, the nearby takeaway and the traffic on the main road, which in aggregate will be higher than that which would be expected in a purely residential context. This suggests to me that the 18.00 closure time advised in the revised LPGN9 need not be strictly adhered to in this case, and that the 22.00 time suggested by the appellant would be appropriate. I have noted that this is also the advertised closing time of the takeaway at no 25.
11. I have some sympathy with the specific concern about the proposed duct from the extraction system, the location of which is shown superimposed on a photograph of the rear of the property. This would appear to be close to first floor flats on either side; nevertheless, no objection in principle was raised by the Council's public protection officers, and I see no reason why an appropriately-worded condition should not deal reasonably satisfactorily with the issue.

(c) Highways and parking

12. I am wholly unconvinced by the Council's case against the scheme on these grounds. I have previously mentioned the parking area directly opposite the appeal site; in addition, there is no restriction on parking along the broad highway of West View itself. The assertion that the appeal proposal would be likely, in conjunction with existing commercial activities, "to lead to parking and congestion problems in the locality" is both vague and unsubstantiated.

(d) Conclusion and conditions

13. I have decided that the appeal should be allowed. No conditions have been suggested to me by the Council, but those I have imposed reflect the comments I have made about the hours of opening and the way in which cooking smells and fumes should be handled.

David Kaiserman

Inspector