

Appendix 2



Appeal Decision

Site visit made on 1 July 2002

by **Michael J. Muston BA(Hons) M.Phil. MRTPI**

an Inspector appointed by the First Secretary of State

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Date

15 AUG 2002

Appeal Ref: APP/G3110/A/02/1082869
68A Abingdon Road, Oxford

- 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 Shama A. Khan against the decision of Oxford City Council.
- The application (Ref: 01/01152/NF), dated 18 June 2001, was refused by notice dated 10 September 2001.
- The development proposed is the change of use from chemist shop to hot food takeaway.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. The site visit was intended to be an accompanied one, with representatives of both the Council and the appellant present, but the latter failed to attend or be represented. As I was satisfied that I could deal with the appeal on the basis of what I could see from public vantage points, I carried out an unaccompanied visit.

Main Issues

2. I consider the main issues in this appeal to be:-
 - whether the change of use would result in an unacceptable reduction in available neighbourhood shopping.
 - the effect of traffic generated by the proposal on highway safety.
 - the effect on the living conditions of occupants of nearby dwellings, by reason of increased noise, disturbance or smell.

Planning Policy

3. The development plan for the area includes the Oxford Local Plan (1997). The relevant policies are COM4 and COM17. Policy COM4 seeks to secure the retention of individual small shops. Policy COM17 states that applications for food and drink establishments will not normally be approved where they result in nuisance to neighbours from noise, smell or visual disturbance.

Reasons

Reduction in available neighbourhood shopping

4. The appeal premises are located on one of the main roads into Oxford, approximately 1.5

kilometres south of the city centre. The predominant land use in the area is residential, both in Abingdon Road, and in the roads leading from Abingdon Road to the west. Corner shops exist on most of the junctions of those roads with Abingdon Road, and the appeal site is one of those. There is a launderette opposite the appeal site at 66 Abingdon Road, and other retail uses are in operation at the junctions of Abingdon Road with Whitehouse Road to the north, and Newton Road to the south. These premises undoubtedly perform a function as neighbourhood shops within the surrounding residential area, and the loss of this unit would be contrary to Policy COM4 of the Local Plan. The appeal premises are currently vacant, and appear to have been vacant for some time. I acknowledge that the appeal proposal could make constructive use of the premises, but I have no evidence that the property is not viable in retail use, and in my opinion the benefit of bringing the building back into use would be outweighed by the loss of retail premises and the highway safety considerations. I therefore conclude that the proposed change of use would result in an unacceptable reduction in available neighbourhood shopping.

Effect on highway safety

5. Parking is prohibited on both sides of Abingdon Road by means of restrictions forbidding waiting at any time. As a result, most customers arriving to visit the proposed takeaway by car would seek to park in Kineton Road. Parking exists for approximately 6 cars outside and opposite the appeal premises in Kineton Road, limited to one hour between 08.00 and 18.00 Monday to Saturday. If vacant, it would provide suitable parking for customers to the proposed takeaway. Beyond these spaces, the parking on both sides of Kineton Road is restricted to residents by means of a permit system. Given the Council's evidence in respect of the lower number of spaces available compared to permits issued, I would expect these residents' spaces to be rarely available for takeaway customers in the evening. This factor is also likely to reduce the availability of the time limited spaces at the eastern end of Kineton Road. It is therefore likely that takeaway customers would find difficulty in parking in the residential part of Kineton Road in the evenings, and would probably be limited to the time limited spaces, if any of these were available.
6. From the evidence submitted, it appears that the level of parking in Kineton Road is considerably higher in the evening than is the case during the day. The proposed takeaway would be likely to result in much greater demand for evening parking than a retail use. Given the limited availability of spaces in Kineton Road, drivers seeking to find spaces in that road would be likely to pose a safety risk, particularly to children, whilst they seek to find spaces and manoeuvre into and out of spaces.
7. If no parking is available in Kineton Road, customers picking up takeaways would then be tempted to park illegally on Abingdon Road. This would reduce the capacity of the road, restrict visibility, and lead to manoeuvring around the parked cars. This in turn would endanger pedestrians and other road users. The appellant argues that the takeaway would attract people from the local area who would not use cars. However, in my opinion, most customers would want to collect their food quickly and ensure that it was still hot, and would therefore be more likely to use cars than walk. I conclude that the proposed change of use would be harmful to highway safety.

Effect on the living conditions of occupants of nearby dwellings

8. Considerable traffic noise already exists in Kinton Road, as a result of the traffic noise along Abingdon Road. I do not consider that such limited parking as might be possible in Kinton Road would be likely to add materially to any noise and disturbance already suffered by residents in the vicinity of the appeal site.
9. Many representations from residents have raised the potential problem of smell from the takeaway. However, I consider that this could adequately be dealt with by the installation of appropriate filtration equipment. If I had been proposing to allow the appeal, this could have been covered by the imposition of conditions. I conclude that the proposed change of use would not have a material effect on the living conditions of occupants of nearby dwellings.

Conclusions

10. The appellant draws attention to the petition submitted in support of the proposal. I have taken this into account, but it cannot outweigh serious planning objections to the proposal. I have concluded that the appeal proposal would not cause material harm to the living conditions of local residents. However, I have also concluded that it would unacceptably reduce the level of neighbourhood shopping and be harmful to road safety. I consider that this outweighs the lack of harm caused to residents, and, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Formal Decision

11. In exercise of the powers transferred to me, I dismiss the appeal.

Information

12. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.



INSPECTOR

Appendix 3



Appeal Decision

Site visit made on 4 December 2006

by **Martyn Single DipTP MRTPI**

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

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Date 08 January 2007

Appeal Ref: APP/G3110/A/06/2024606

68 Abingdon Road, Oxford, OX1 4PL.

- 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 Ms Khan against the decision of Oxford City Council.
- The application ref: 06/00244/FUL, dated 1 February 2006, was refused by notice dated 21 March 2006.
- The development proposed was described as change of use of ground floor office to hot food outlet (for delivery only) (shown on drawing no.4295/E^A).

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. The Council's decision includes a reason relating to the discharge of cooking odours having an adverse impact on the amenities of nearby residential occupiers. However, this matter has already been considered by a colleague Inspector in respect of an earlier appeal relating to the change of use of the property to a hot food takeaway. In his decision (ref: APP/G3110/A/02/1082869) he considered the issue of potential smell and concluded that the change of use would not have a material impact on the living conditions of occupants of nearby dwellings. I have no reason to come to a different conclusion in respect of this matter. The success of equipment to control odour emission is dependant on its operation and maintenance in accordance with the supplier's specification. In my experience, modern equipment is capable of effectively controlling odour emission and a planning condition could be imposed to require its maintenance in accordance with an agreed regime.
2. A revised drawing no. 4295/E^B was submitted during the appeal process and I have taken it into account in my decision

Inspector's Reasons

3. In light of the above I consider there to be one main issue in this appeal, namely the effect of the development on parking and highway safety.
4. The appeal property comprises a former ground floor office on the corner of Abingdon Road and Kinton Road. Other than a launderette on the opposite corner and a small number of nearby local shops the immediate area is predominantly residential in character. Kinton Road, where the appellant proposes to accommodate the parking of twice weekly deliveries of incoming goods and delivery cycles/mopeds, is a wholly residential street of two storey terraced dwellings.
5. Abingdon Road is a busy arterial route from the City Centre where parking associated with the appeal premises would be undesirable in terms of highway safety and the free flow of traffic. Kinton Road provides on-street parking for residents only, other than two short lengths of limited waiting for five or six vehicles on each side outside the appeal premises. At the time of my visit a van wholly occupied the parking bay on the

nearside with one other space available opposite. Having regard to the evidently limited space available within the locality for parking, with very few dwellings having space off-street, I understand the Council's caution with regard to a use that would potentially impose more pressure for the available spaces.

6. To the rear of no. 68 a garage and car port are excluded from the appeal site, as they provide off street parking for the upper floor flat. However, the appeal proposal does include a garage beyond these which, whilst owned by the appellant, is otherwise within the curtilage of no. 70 Abingdon Road. In my view, in an area where there is clearly pressure for parking space, leading to the introduction of restricted parking for residents only, it would be undesirable to reduce the amount of available off street residential curtilage parking to essentially subsidise a commercial use that would otherwise be devoid of parking space.
7. Although the Council considers the parking bays outside the premises were not intended for delivery vehicles I see no reason why they should not park there, but there is uncertainty regarding availability and I perceive difficulties if all spaces are occupied. Whilst the appellant proposes that the vehicle bringing incoming deliveries would park in front of the garage, I believe that its physical separation from the appeal site would be such an inconvenience to the driver that it would not happen in practice, no matter the level of encouragement that might be given by the appellant.
8. Likewise, I consider it unlikely that vehicles used for the deliveries of hot food would utilise this area. If small cars or vans were to be used the space available would be insufficient, but I acknowledge that it could accommodate the parking of cycles or mopeds. However, whichever type of transport is used this area is immediately adjacent to the main entrance to the adjoining dwelling, no. 1 Kineton Road with potential to be a nuisance to its occupiers.
9. The Council is concerned that it would be difficult to prevent a 'delivery only' service becoming a takeaway shop by default, potentially attracting even more customer vehicles and adding to parking problems around this corner, but the issue is even more fundamental in my opinion. Even with a 'delivery only' service I believe that the parking facilities available for incoming and outgoing deliveries would be inadequate and would be likely to impose even more pressure for parking in a residential street.
10. Nevertheless, I consider that once operational as a delivery service it is possible that customers would call, in expectation of being able to make a purchase, no matter what measures the appellant may take to discourage this. I do not believe that obscuring the windows, as suggested, would overcome this possibility.
11. Having regard to the position of the site and limited parking available for potential customers and delivery vehicles I conclude that the development would be likely to have an adverse effect on parking and highway safety. Oxford Local Plan Policy RC.12 provides that food and drink outlets will be permitted where the Council is satisfied that there would not be an unacceptable environmental problem. I consider that the absence of adequate parking would come within such a category and the development would be unacceptable.
12. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should not succeed.

Martyn Single

INSPECTOR

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