



Appeal Decision

site visit made on 12 April 2000

by **Anthony Thickett** BA(Hons) BTP MRTPI DipRSA

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

The Planning Inspectorate
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Date

26 APR 2000

Appeal Ref: T/APP/F2415/A/00/1036838/P7

- 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 brought by Mr B Patel against Harborough District Council.
- The site is located at 8 Telford Way, Thurnby, Leicester.
- The application (ref: 99/01096/FUL), dated 5 October 1999, was refused on 8 December 1999.
- The development proposed is a change of use from retail shop to hot food take-away.

Summary of Decision: The appeal is dismissed.

Procedural matters

1. The appeal application includes proposed alterations to the shopfront and the provision of a ramp. The Council has raised no objections to these alterations. Although the whole of the appeal application is before me, I consider that the proposed alterations to the shopfront are acceptable. I have therefore confined myself to dealing with the proposed change of use.

The main issue

2. I consider the main issue in this case to be the impact of the proposal on the living conditions of nearby residents with particular regard to noise and disturbance and odours.

Policy

3. I am not aware of any development plan policies relevant to this appeal. Policy IN/1 of the emerging Harborough District Local Plan sets out standards for development. These include, amongst other things, that development should not adversely affect the amenities of neighbouring uses and that provision should be made for vehicle parking off the highway. Policy SH/3 sets out similar requirements for retail developments on the edge of shopping and business areas.
4. The emerging plan has been subject to a Public Local Inquiry and has been modified following the Inspector's recommendations. It is expected that the Plan will be adopted later this year. The Plan has reached an advanced stage and I shall afford it considerable weight in accordance with advice in paragraph 48 of Planning Policy Guidance Note 1, General Policy and Principles (PPG 1).

Inspector's reasons

Living Conditions

5. The appeal premises is one of a group of four shops sitting at the head of a short cul-de-sac. The appeal premises and its neighbour at No.7 Telford Way have flats above. The shops overlook a large green but are flanked on either side by residential properties. At the time
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of my site visit the appeal premises was vacant and the remaining shops were closed. The other shops in the group comprise a newsagents, off licence and a carpet shop.

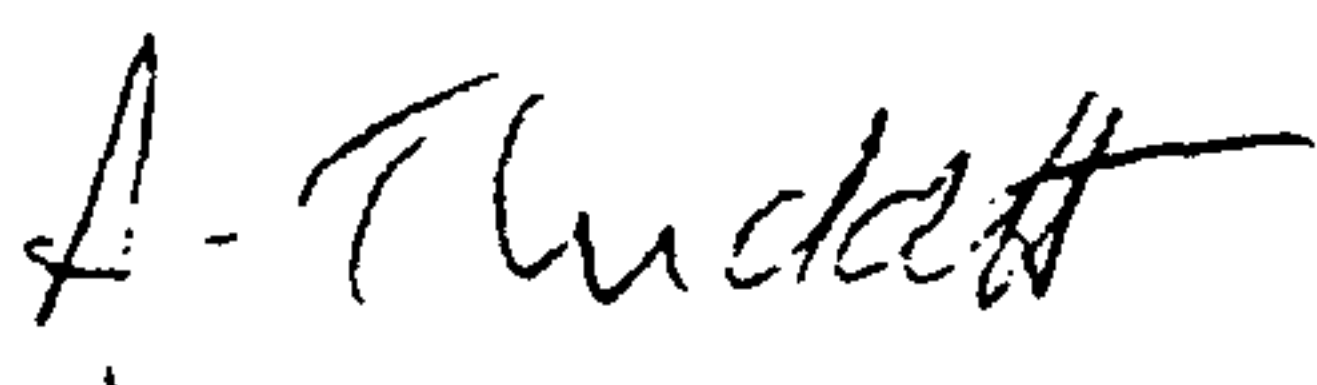
6. It is proposed that the take-away would open until midnight. The carpet shop's hours were advertised as 0900 to 1700. It was not possible to determine the opening hours of the other shops as they were obscured by shutters. However, I consider it highly unlikely that they would trade as late as the proposed take-away. I have considered the appellant's contention that noise would not be a problem and that the business aims to trade mainly with pedestrian custom.
7. The appeal site sits on the edge of a large housing estate and it is highly likely that customers would drive to the premises. None of the shops in this small group provide parking for customers and I have read nothing to suggest that through the normal working day a take-away would generate a greater demand for parking than a shop. However, my concern lies with the environmental impact of the proposal rather than its impact on highway safety. Customers visiting the take-away by car would park in the cul-de-sac and pedestrians would pass close to nearby houses. It is inevitable, in my view, that the arrival, lingering and departure of customers, the associated conversation, the noise of turning vehicles and slamming of car doors would result in an unacceptable level of late night noise and disturbance to nearby residents and in particular to anyone living above the shops.
8. The proposal includes the installation of a flue to the rear of the premises and I note that the appellant is willing to install a fume extraction system. I have no doubt that an appropriately designed system could be installed that would safeguard the amenities of nearby residents. However, my findings in this respect do not outweigh the adverse consequences of the scheme described above. I conclude, therefore, that the proposal would be seriously detrimental to the living conditions of nearby residents by way of noise and disturbance contrary to the provisions of the soon to be adopted Local Plan.

Other Matters

9. I have taken into account all other matters raised in the representations including the vitality of the shopping area, litter, and crime. The vitality of this small group of shops is not, in my view, dependant on the provision of a hot food take-away. I am sure that there are many retail uses which could provide a useful service to the community. I have no doubt that the appellant would seek to keep the area tidy. I have considered the views of the Police who feel that the proposal may discourage anti-social behaviour which has been reported to the front of the shops at night. I do not make light of these concerns. However, the adverse consequences of the scheme described above provide compelling grounds to dismiss this appeal. Neither these, nor any other matters are sufficient to outweigh the considerations which lead me to my conclusion.

Formal Decision

10. For the reasons given above, and in exercise of the powers transferred to me, I hereby dismiss this appeal.



Inspector