



# Appeal Decision

Site visit made on 19 October 2009

by **Jennifer Vyse** DipTP DipPBM MRTPI

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

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Decision date:  
28 October 2009

**Appeal Ref: APP/C3430/A/09/2107645**

**13 Station Road, Cheslyn Hay, Walsall, South Staffordshire WS6 7ED**

- 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 M C Ip against the decision of South Staffordshire Council.
- The application No 09/00215/COU, dated 8 March 2009, was refused by a notice dated 19 May 2009.
- The development proposed is described as change of use Class A1 shop to Class A5 hot food takeaway premises.

## Inspector's Decision

1. For the reasons that follow I dismiss the appeal.

## Main Issue

2. The main issue in this case is the effect of the development proposed on the living conditions of the occupiers of neighbouring residential properties with particular reference to noise, disturbance and cooking odours.

## Reasons for the Decision

3. The appeal premises comprise one of a pair of semi-detached properties, with a vacant shop at ground floor and a small yard and storage building behind. The adjoining property is wholly in residential use. The site lies close to the centre of the village and, whilst there are some commercial properties in the vicinity, I agree with the Council that the area is essentially residential in character.
4. Permission is sought to use the ground floor as a hot food takeaway, opening until 23.30 hours Monday-Friday, 00.30 hours on Saturdays, with no Sunday or Bank holiday opening. The first floor would remain in residential use, comprising a three bedroom flat. The application form indicates that four parking spaces would be provided to the rear of the site.
5. In residential areas, local residents might reasonably expect a lessening in general activity during the evening, at a time when ambient noise levels might be expected to decrease. The main traffic associated with hot food takeaways generally occurs during the evening, whereas a retail premises, even if open until late, does not usually increase its business as the evening wears on. In addition to noise from within the building, noise and disturbance can occur from vehicle manoeuvring, the banging of car doors, car radios playing and general noise arising from the congregation and movement of customers on a regular basis. Activity around the site could also expect to continue after closing, as customers vacate the premises. In coming to a view on the proposal I am also mindful of the comments of the Inspector who dealt with a previous appeal by the appellant for use of the premises as a hot food

takeaway in 1993 (APP/C3430/A/93/ 431788). That appeal was dismissed in part on the grounds that the use would cause unacceptable levels of noise and disturbance for neighbouring occupiers.

6. I recognise that three hot food takeaways, including the appellant's current premises, and a public house, are located some 50m away to the west of the appeal site on Rosemary Road. However, those are established uses and are not immediately adjoined by a residential property as is the case at the appeal site. In my view, they do not set a precedent for the development proposed.
7. With regard to cooking odours, the submitted plans indicate that a flue would be installed on the side wall of the appeal premises, to vent at high level. I recognise in this respect, that details of any such installation could be secured by means of a planning condition were the appeal to succeed. However, whilst modern, properly installed and maintained extraction and ventilation equipment can significantly reduce the nuisance caused by cooking smells, odours can still escape through open windows and doors, especially during summer months. It is my opinion that neither mechanical means nor a planning condition could adequately eliminate these harmful effects in relation to the occupiers of those properties in closest proximity to the appeal site.
8. Although other permissions for restaurants with takeaway facilities have been referred to by the appellant, those premises are not identified and I do not have full details of the circumstances associated with those approvals to make a meaningful comparison. I confirm that I have considered this case on its own merits in relation to current development plan policy.
9. I am in little doubt that the occupiers of adjoining and nearby residential properties in the area would experience an unacceptable increase in noise and disturbance were a hot food takeaway to operate from the appeal premises, with further harm to living conditions caused by cooking odours. The development would therefore conflict with the provisions of saved policy BE26 of the South Staffordshire Local Plan (December 1996) which, among other things, seeks to protect residential amenity.

#### **Other Matters**

10. Although not a reason for refusal, the matter of highway safety is raised by local residents and the Parish Council. I note in this respect that the previous appeal was dismissed partly on these grounds. However, some on-site parking is proposed and, given the location of the premises in what is essentially a residential area, it is not unreasonable to suppose that a number of customers would walk to such a facility. Furthermore, whilst the premises are currently vacant, the authorised retail use would, in all likelihood, generate a certain amount of traffic. No evidence is before me to show that the existing parking arrangement would not be adequate for the development proposed and I note that the Highway Authority does not support a refusal on this basis. There would be no conflict therefore, with saved policy TR4 of the Local Plan.

#### **Conclusion**

11. I have had regard to the fact that the proposal would restore a commercial use to premises that have been vacant for a while and that there would, in all likelihood, be sufficient parking for the use proposed. I also recognise that the

extent of the accommodation available at the appellant's current premises is causing problems in terms of his ability to improve food storage and to provide dedicated staff facilities, which could have implications for his business. Be that as it may, those considerations do not provide sufficient justification in my opinion, to outweigh the significant concerns that I have identified in relation to the amenities of those local residents living close to the site. For the reasons set out above, I conclude on balance that the appeal should not succeed.

*Jennifer A Vyse*

INSPECTOR

1. Introduction

2. Methodology

3. Results