



Appeal Decision

Site visit made on 30th April 2013

by **Clive Whitehouse BA(Hons) MCD MRTPI**

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

Decision date: 16 May 2013

Appeal Ref: APP/J1915/A/12/2174868

**Unit 4A Hadham Industrial Estate, Church End, Little Hadham,
Hertfordshire SG11 2DY**

- 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 D Collins against the decision of East Hertfordshire District Council.
 - The application Ref 3/11/1881/FP, dated 26th October 2011, was refused by notice dated 26th March 2012.
 - The development proposed is the addition of a sui-generis use to an existing B1, B2 and B8 use – change of use of the unit for hot and cold food production/ hot and cold food delivery (sui-generis) plus B1, B2 and B8 (retrospective). Extract flue located on roof and extract flue from mechanically operated hood over gas cooker (including air filtration and neutralisation) (retrospective).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the business is sustainably located, having particular regard to transport considerations and the objectives of the National Planning Policy Framework (NPPF).

Reasons

Whether in a Sustainable Location

3. The business trades as "Masala Express" from a small unit (about 70sq.m) in a converted farm building. It consists of a kitchen used for preparing Indian-style foods, and has been in operation since early 2011. According to the supplementary planning and access statement submitted with the application, the business has two main sources of income. One involves the preparation of sauces and meals which are supplied on a wholesale basis to restaurants in towns in the region. The other is a home delivery service of hot meals. There is a small counter in the building where customers calling at the premises can buy food to take away. Figures supplied by the business suggest that in 2011 "trade" custom generated about 74% of turnover; home delivery about 24%, and customer collection about 2%.
4. The unit is within a small industrial estate that has been developed within a range of former agricultural buildings at Church End Farm. The farm is located in a rural area at the end of a cul-de-sac off the A120 road. The nearest town

is Bishops Stortford, the centre of which is about 5km to the east, whilst small villages are scattered across the surrounding rural area.

5. The business occupies a sub-divided part of a building for which planning permission was granted in 2011 for a change of use to B1 (business), B2 (general industrial) and B8 (storage and distribution).
6. The Council has found it difficult to categorise the business by reference to the Use Classes Order, but has concluded that the mixed character of the business does not fit within any use class and, accordingly, regards it as a sui-generis use (singular use) for which planning permission is required.
7. In the Council's assessment, the delivery of prepared foods to other restaurants would, by itself, fall within the scope of the Class B1/B2 planning permission for the premises. The issue therefore focuses on the home delivery of hot food. The delivery area includes Bishops Stortford and villages in the rural area extending as far as the small town of Buntingford, about 15km to the north west. Orders are taken by telephone or online and the business aims to deliver within 45 minutes. Some deliveries are combined in a single round trip, but given the 45 minute delivery time and the large rural area served, the operation must inevitably generate an unusually high mileage by delivery vehicle, compared to a home delivery service based in a population centre.
8. The Council refers to a 2004 appeal decision concerning a similar hot food delivery service operating from converted rural premises in another part of the County. In that case there was no claimed trade business, and the Inspector concluded that that the operation fell within what is now the Class A5 use class for the sale of hot food for consumption off the premises, notwithstanding that few people called at the premises. He concluded that the use resulted in unnecessary traffic generation in the rural area, contrary to the sustainability objectives of the planning policy guidance then in place.
9. In the present case, I also conclude that the home delivery service, on its own, would be a Class A5 use. It is part of a singular use only because of its combination with the restaurant trade business.
10. Planning permission was refused shortly before the National Planning Policy Framework (NPPF) was issued, although sustainable development was a core principle of previous national guidance. Paragraph 14 of the NPPF states that the presumption in favour of sustainable development is at the heart of the planning system. Paragraph 28 supports sustainable growth and expansion of all types of business and enterprise in rural areas. Reducing the need to travel is an important sustainable development objective. The Council's local plan includes policy SD2, which seeks to concentrate development in the main settlements.
11. A nearby resident and the Parish Council cast doubt on the claimed balance between the trade and home delivery elements of the business, and regard it as primarily a Class A5 use. The general set up of the unit, with a customer counter, gives that impression, even though relatively few people collect their orders from the premises. Also, the hours of business are between 16:30 and 22:00 hours on Tuesdays to Sundays, which is when home deliveries are offered. The figures given by the business in support of the application relate to the initial trading period in 2011, and the Council's delegated report

expresses concerns that the business may be developing towards a greater emphasis on the home delivery market.

12. I conclude on the main issue that the home delivery element of the business requires an excessive amount of vehicular use and is not in a sustainable location, contrary to the objectives of the NPPF.

Other Matters

13. Deliveries take place throughout the evenings up to 22:00 hours and on Sundays, contrary to a planning condition on the existing B1/B2/B8 planning permission for the premises. That permission restricts vehicle movements generally to between 07:00 and 20:00 hours with no traffic on Sundays. I understand that other businesses occupying units at Church End Farm are similarly restricted. There are a small number of houses in the hamlet of Church End along the approach road to the farm. The Masala Express business extends activity later into the evenings and on Sundays, when the level of activity is otherwise reduced and this has a small adverse effect on the amenity of nearby residents. This consideration adds some weight to my conclusion on the main issue.
14. The Council considers that the fume extract flues on the building are acceptable in visual terms in the context of the industrial units. One objection refers to unpleasant cooking smells, but given the sparse distribution of houses, that is not a main issue in this case.
15. Having regard to all other matters raised, I conclude that the appeal should fail.

C Whitehouse

INSPECTOR