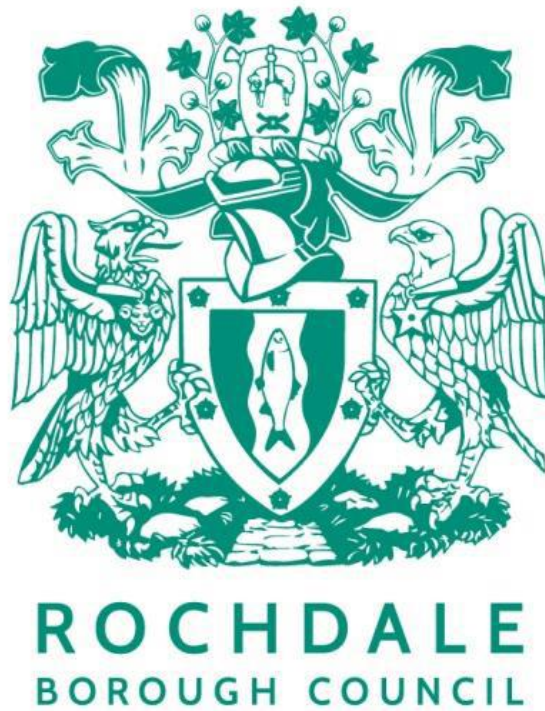


ROCHDALE BOROUGH COUNCIL
TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78



APPEAL BY ARI BROTHERS LIMITED
APPEAL SITE: 11 SOUTH PARADE, ROCHDALE, OL16 1LR
STATEMENT OF THE LOCAL PLANNING AUTHORITY

LPA REFERENCE: 25/00013/FUL
PINS REFERENCE: APP/P4225/W/25/3369111

1. INTRODUCTION AND BACKGROUND

- 1.1 This appeal is against the Local Planning Authority's refusal to issue Planning Permission under Section 78 of the Town and Country Planning Act 1990 under application reference 25/00013/FUL for the 'Retrospective application for the change of use of first and second floors into two self-contained flats above existing takeaway together with the provision of bin and cycle storage to rear' which was refused by notice dated 12th June 2025 for the following reason:
- 1.2 *'The proposed development is not acceptable in principle as it would not effectively integrate with the existing neighbouring businesses and night-time economy. When considered in the context of the well-established agent of change principle, the proposed development cannot be adequately mitigated for and it would lead to significant adverse noise impacts on occupiers of the proposed development as well as forcing and creating unreasonable restrictions on existing businesses and facilities. For the above reasons it is considered that the proposal would be detrimental to both the residential and neighbouring amenity which would be contrary to the requirements of Core Strategy Policies DM1 and G9 and Paragraphs 198 and 200 of the NPPF'.*
- 1.3 The Decision Notice accompanies this statement as Appendix 1.

2. SITE AND SURROUNDING AREA

- 2.1 The Inspector is referred to the site description included within the Officers Report which accompanies this statement as Appendix 2.

3. POLICY

- 3.1 For the purposes of the appeal, the relevant parts of the Development Plan are: Places for Everyone Joint Development Plan (PfE) which was adopted on 21st March 2024, the Rochdale Core Strategy ('the RCS') which was adopted on the 19th October 2016; and the Rochdale Unitary Development Plan ('the RUDP') which was adopted on 15th June 2006, specifically the policies contained within it and saved by a Direction of the Secretary of State, dated 13th May 2009 and retained upon adoption of the RCS.
- 3.2 The relevant policies contained within the RCS are:
- DM1 General Development Requirements

SO2 To create successful and healthy communities

- C1 Delivering the right amount of housing in the right places.
- C3 Delivering the right types of housing.

SO3 To improve design, image and sense of place

- P1 Improving image.
- P3 Improving design of new development.

SO4 To promote a greener environment

- G8 Managing water resources and flood risk.
- G9 Reducing the impact of pollution, contamination and land instability.

SO5 To improve accessibility and deliver sustainable transport

- T2 Improving access

3.3 The relevant policies contained within PfE are:

- JP-S1 Sustainable Development.
- JP-S4 Flood Risk and the Water Environment.
- JP-H1 Scale, Distribution and Phasing of New Housing Development.
- JP-H3 Type, Size and Design and New Housing.
- JP-H4 Density of New Housing.
- JP-P1 Sustainable Places.
- JP-C6 Walking and Cycling.
- JP-C8 Transport Requirements of New Development.

3.4 The relevant policies contained within the RUDP are:

- G/D/1 Defined Urban Area.

3.5 Other relevant Planning Policy consists of the National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG).

4. THE COUNCIL'S CASE

4.1 The proposal would lead to the provision of two residential apartments in a highly sustainable town centre location.

4.2 The proposed dwellings created would assist the Council in meeting its housing requirements in the defined Urban Area which is a proposal that is fully supported by RCS Policies C1 and C3 and PfE Policies JP-S1 and JP-H2.

4.3 Support is also afforded to the proposed development from NPPF Paragraph 124 of which sets out that *“Planning policies and decisions should promote an effective use*

of land in meeting the need for homes and other uses". Paragraph 125 of the NPPF advises that "Planning policies and decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land". Under sub paragraph (d) of Paragraph 125 of the NPPF, "Planning policies and decisions should promote and support the development of under-utilised land and buildings especially if this would help to meet identified needs for housing."

- 4.4 However, whilst the principle of such development being located in Urban Area's such as this may be supported, it is also material to study all other considerations that are directly related and pertinent to the proposed development to ascertain the overall appropriateness of the development's location.
- 4.5 In this regard, consideration has been afforded to the impact of the development on the residential amenity of future occupiers, heritage impacts, highway impacts and flood risk and drainage impacts.
- 4.6 The primary area of concern in this instance relates to the impact of the development on the residential amenity of future occupiers of the development and the impact of the development on existing neighbouring businesses.
- 4.7 Over 180 public objections were received during the course of the determination of the planning application thereby emphasising the sensitive nature of the proposed development and the impact the application had across the local community.
- 4.8 In reaching the Council's decision, the LPA referred to Paragraph 198 of the NPPF which states that *"Planning policies and decisions should ensure that new development is appropriate for its location, taking into account the likely effects of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so, planning decisions should mitigate and reduce to a minimum, potential adverse impacts resulting from noise from new development and avoid giving rise to significant adverse impacts on health and the quality of life"*.
- 4.9 The LPA also recognised that Paragraph 200 of the NPPF also states that *"Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed"*.
- 4.10 It is understandable that the purpose of this 'agent of change' principle is not just to prevent harm to the living conditions of future occupiers of a development from

noise and disturbance, but to also prevent the future operations of any existing nearby businesses that produces noise from being prejudiced. Particularly if unreasonable restrictions on existing businesses would have to be put in place, which would undermine their ability to operate, for the protection of the future occupiers of the new development in question.

- 4.11 The Council therefore concluded that we acknowledged that ensuring the vitality and vibrancy of the Rochdale Town Centre is a crucial component of the heritage-led regeneration jigsaw in this area which has seen significant investment over recent years. It was also recognised that there is a need for more housing and residential accommodation, especially in sustainable locations such as this, but this must not come at the future expense of existing and well-established businesses.
- 4.12 The Inspector is referred to the full and detailed case of the Council's assessment of the proposed development set out within Appendix 2.

5. THE COUNCIL'S COMMENTS ON THE APPELLANT'S SUBMISSION

- 5.1 The appellant has provided an assessment of the application against the adopted Development Plan Policies and the Council's delegated Officers Report within their Statement of Case.
- 5.2 The Council's assessment against the relevant Development Plan policies is fully set out in Appendix 2 but matters will be addressed in this Statement of Case when relevant in responding to the appellant's Statement of Case.
- 5.3 First and foremost, the Council recognise that an Acoustic Survey and Assessment was prepared by Martin Environmental Solutions and provided in support of the planning application.
- 5.4 Monitoring results were provided with the assessment and these results demonstrated that the existing background levels will result in an adverse impact on the proposed development.
- 5.5 It is noteworthy that the survey was undertaken on February 5th – 7th February 2025.
- 5.6 The survey sets out that two sound level meters were used for monitoring with one placed over 1m from the second-floor front façade overlooking the street to the front of the property. The second meter was placed to the rear façade at second-floor level facing the rear annex and rear neighbouring properties.
- 5.7 The dates of the survey would have meant that the survey would have taken place on Wednesday 5th February 2025 through to Friday 7th February 2025.
- 5.8 The timings and full results of the survey are presented within the submitted Acoustic Survey. In this regard it is noted that both sound level meters commenced

recordings at 13:00pm on Wednesday 5th February and ended their recordings on Friday 7th February 2025 at 11:35am (front meter) and 11:00am (rear meter).

- 5.9 The survey therefore would not have captured any of the weekend (Friday, Saturday and Sunday) nighttime economy which is when this area of the town centre will have typically been at it's busiest period with members of the public visiting the area and therefore at it's loudest.
- 5.10 Accordingly, the submitted Acoustic Survey is in the opinion of the Council, a misrepresentation of the overall noise environment that the proposed development would be subject to. The survey results are disproportionate and an unrealistic sample of the weekly and day by day environment that would affect future occupiers of the proposed development.
- 5.11 In addition, the recommendations of the survey indicated that in order to keep windows closed (to reduce noise levels), ventilation provision must be made for the property and it was suggested that a ventilation system be used to incorporate acoustic trickle ventilators for all windows to habitable rooms.
- 5.12 This suggested mitigation measure was not accepted by the Council's Environmental Health Officer and the Council recognise that a response in rebuttal to our concerns was provided by the applicant.
- 5.13 The Council responded to this rebuttal by email on the 14th May 2025 with justified reasons as set out in the Appellants own Appendix.
- 5.14 The Council retain their position in that whilst the proposed mitigation measures may enable suitable ventilation for the proposed development, future occupiers would still need to keep their windows shut for large parts of both the day and night in order to prevent annoyance and sleep disturbance. It would also be exceptionally unreasonable to impose a condition to prevent future occupiers of the building opening their windows on fine/hot weather days.
- 5.15 Notwithstanding the fact that the submitted Acoustic Survey did not collect results from the weekend which would have taken into account the weekend nighttime economy in this area, with the proposed mitigation measures in place, windows are still likely to want to be opened by future occupiers as is this a natural human behaviour, particularly during warmer weather and to create natural ventilation and allow air to move. In this regard, it is highly unreasonable for future occupiers to expect to be able to open their windows and be subjected to significant levels of noise. Accordingly, the Council consider that a reliance on closed windows and artificial ventilation systems is not a practical or realistic solution in this case within this location.
- 5.16 In addition, given the commercial businesses and noise generating social economy uses in the vicinity, the proposed residential use of the application site could give rise to future statutory nuisances being found and claims being made to the Council. This could place wholly unreasonable restrictions on existing nearby businesses and could

undermine their ability to operate which in turn would impact upon the town centre as a whole.

- 5.17 Moreover, the appeal building is immediately adjacent to the Hoochi Koochi nightclub and bar and the appeal site and this premises have a shared boundary. The appeal site's main windows also face towards the existing high street where members of the public will spill out onto the street when accessing and egressing neighbouring premises.
- 5.18 The Council recognise that planning policies and decisions should support the role that town centres play at the heart of local communities, and it is understood that residential development often plays an important role in ensuring the vitality of centres. But, in the opinion of the Local Planning Authority, residential development such as this should not be encouraged in this particular location given it is an inappropriate site for such development.

6. CONCLUSION

- 6.1 The Councils position is that when the development is assessed and considered in the context of the well-established agent of change principle, the proposed development is contrary to Paragraph 200 of the NPPF and RCS Policies DM1 and G9.
- 6.2 The Council does not agree with the appellant with regard to paragraph 6.18 of their submitted Statement of Case. The development is not acceptable.
- 6.3 An Acoustic Survey undertaken on 2 days of the week excludes the entire weekend period and this is an unrealistic and wholly unrepresentative sample of the noise environment in this location.
- 6.4 The same survey found that future occupiers would need to keep their windows closed at all times and it would be unreasonable to impose a condition to prevent future occupiers of the building opening their windows on fine/hot weather days.
- 6.5 Neighbouring businesses could be subject to claims of statutory nuisances from future occupiers and such businesses could have unreasonable restrictions placed on them.
- 6.6 As a whole, the development would provide inadequate living conditions for future occupiers with regard to noise and disturbance and would prejudice the operations of existing businesses. It would therefore be contrary to the Development Plan which seeks to ensure that new development does not contribute to, or suffer from, adverse impacts arising from noise.
- 6.7 The Inspector is therefore respectfully requested to dismiss this appeal.

7. CONDITIONS

- 7.1 Should the Inspector be minded to allow the appeal, the LPA would agree to include the following planning condition:

1. This permission relates to the following plans:

- Location Plan
- Proposed Ground Floor Plan Drawing No 2238/2
- Proposed First and Second Floor Plans Drawing No 2238/3
- Existing and Proposed Elevations Drawing No 2238/4

and the development shall be carried out in accordance with these details hereby approved unless otherwise required by the conditions below.

Reason: For the avoidance of doubt and to ensure a satisfactory standard of development in accordance with the policies contained within the adopted Rochdale Core Strategy, the saved Rochdale Unitary Development Plan and the National Planning Policy Framework.

2. The development hereby approved shall not be occupied until a mechanical ventilation scheme has been first submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until such time as a verification report has been submitted to and approved in writing by the Local Planning Authority to confirm that the approved mechanical ventilation measures have been implemented in full to achieve the required ventilation requirements.

Reason: To safeguard the amenities of residents in order to comply with the requirements of Policies G9 and DM1 of the adopted Rochdale Core Strategy, Policy JP-P1 of the adopted Places for Everyone Joint Development Plan and the National Planning Policy Framework.

3. The development hereby approved shall not be occupied until full product specifications for acoustic glazing to be inserted into all window openings, including large scale elevations and sections at a scale of not less than 1:50 have been submitted to and approved in writing by the Local Planning Authority.

The works shall be carried out in accordance with the approved details thereafter.

Reason: To safeguard the amenities of residents in order to comply with the requirements of Policies G9 and DM1 of the adopted Rochdale Core Strategy, Policy JP-P1 of the adopted Places for Everyone Joint Development Plan and the National Planning Policy Framework.