

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



APPEAL BY: AMBER DITTA
APPEAL SITE: 296 YORKSHIRE STREET, ROCHDALE, OL16 2DR
STATEMENT OF THE LOCAL PLANNING AUTHORITY

LPA REFERENCE: 23/01260/FUL

PINS REFERENCE: APP/P4225/W/24/3352971

Introduction

1.1 The appeal is against the Local Planning Authority's refusal of planning permission for the 'Change of use and conversion of dwelling to retail unit (Use Class E) on ground floor and one self-contained flat (Use Class C3) at first and second floors, including installation of shop front and part single storey part two storey rear extension (Resubmission of 22/00901/FUL)' under application reference 23/01260/FUL which was refused by notice dated 21 June 2024 for the following reasons:

1. The application site is located within an out-of-centre location and the applicant's sequential assessment has failed to demonstrate that there are not any sequentially preferable sites available. The proposed out-of-centre retail use would therefore have a harmful impact on the vitality and viability of the nearby local centres. It would conflict with Policy E1 of Rochdale's Core Strategy, the town centre first approach set out in paragraph 86 of the National Planning Policy Framework and advice contained within the Planning Practice Guidance.

Site Description

2.1 This appeal relates to 296 Yorkshire Street, a two storey mid-terrace dwelling constructed of red brick positioned towards the corner of Yorkshire Street and Edward Street. The property has a two storey outrigger to the rear and a large yard area. Parking for approximately 2 vehicles can be provided on the hardstanding to the rear with access taken off Back Bradshaw Street. The dwelling is positioned outside the local centre of Yorkshire Street to the east.

Planning History

05/D46247 Construction Of Additional Storey To Existing Dwelling Including First And Single Storey Rear Extensions. Erection Of Rear Boundary Wall And Gate Posts To Form Garage. Decision: Refused.

21/00589/FUL Change of use and conversion of dwelling to retail unit on ground floor and two self-contained flats at first and second floors including two storey rear extension and installation of shop front. Decision: Refused.
Reason for refusal:

1. The application site is located outside of a local centre and the applicant has failed to undertake a sequential assessment to demonstrate that there are not any sequentially preferable sites available. The proposed retail use would therefore have a harmful impact on the vitality and viability of the nearby Yorkshire Street local centre. It would conflict with Policy E1 of Rochdale's Core Strategy, the town centre first approach set out in paragraph 86 of the National Planning Policy Framework and advice contained within the Planning Practice Guidance.
2. The proposed residential unit (bedsit) at first floor level would not result in a satisfactory standard of amenity for the future occupiers. The proposed unit would not offer a sufficient standard of amenity for the future occupiers due to the substandard floor space which does not meet the minimum requirements of the 'Technical Housing Standards - Nationally Described Space Standards'. As such the application is considered to be contrary to the relevant parts of Policy DM1 of the Core Strategy, the

Supplementary Planning Document 'Guidelines and Standards for Residential Development (2016) and the requirements of the National Planning Policy Framework.

3. By reason of its siting, size and design, the proposed extension to rear would result in an undue loss of amenity for the neighbouring occupiers of No's 294 and 298 Yorkshire Street due to a loss of light and outlook from the first floor windows and an overbearing impact on the rear outdoor amenity space. As such, the proposed development would fail to accord with policies DM1 and P3 of the adopted Rochdale Core Strategy, the Council's 'Guidelines and Standards for Residential Development' SPD and the National Planning Policy Framework.
4. The applicant has provided no dedicated parking for the proposal. As a result of the inadequate provision of off-street parking, the proposed development would significantly increase the instances of hazardous parking and congestion and be detrimental to both highway safety and the living conditions of nearby residents, contrary to Policies T2 and DM1 of the adopted Rochdale Core Strategy and the National Planning Policy Framework

22/00051/FUL Change of use and conversion of dwelling to retail unit on ground floor and one self contained flat at first and second floors including installation of shop front and two storey/single storey rear extension - Resubmission of 21/00589/FUL. Decision: Refused. Reason for refusal:

1. The application site is located outside of a local centre and the applicant has failed to undertake a suitable sequential assessment to demonstrate that there are not any sequentially preferable sites available. The proposed retail use would therefore have a harmful impact on the vitality and viability of the nearby Yorkshire Street local centre. It would conflict with Policy E1 of Rochdale's Core Strategy, the town centre first approach set out in paragraph 86 of the National Planning Policy Framework and advice contained within the Planning Practice Guidance.

22/00901/FUL Change of use and conversion of dwelling to retail unit (Use Class E) on ground floor and one self-contained flat (Use Class C3) at first and second floors, including installation of shop front and part single storey part two storey rear extension - Resubmission of 21/00589/FUL. Reason for refusal:

1. The application site is located within an out-of-centre location and the applicant's sequential assessment has failed to demonstrate that there are not any sequentially preferable sites available. The proposed out-of-centre retail use would therefore have a harmful impact on the vitality and viability of the nearby local centres. It would conflict with Policy E1 of Rochdale's Core Strategy, the town centre first approach set out in paragraph 86 of the National Planning Policy Framework and advice contained within the Planning Practice Guidance.

Policy Background

4.1 For the purposes of the appeal, the relevant parts of the Development Plan are: Places for Everyone Joint Development Plan Document (PfE) which was adopted 21 March 2024; the

Rochdale Core Strategy ('the RCS') which was adopted on the 19 October 2016; and the Rochdale Unitary Development Plan ('the RUDP') which was adopted on 15 June 2006, specifically the policies contained within saved by a Direction of the Secretary of State, dated 13 May 2009 and retained upon adoption of the RCS.

4.2 The relevant policies contained within the Places for Everyone Joint Development Document (PfE) are:

JP-P1	Sustainable Places
JP-J1	Supporting Long-Term Economic Growth
JP-C8	Transport Requirements of New Development
JP-S1	Sustainable Development
JP-H1	Scale, Distribution and Phasing of New Housing Development
JP-H2	Affordability of New Housing
JP-H3	Type, Size and Design of New Housing
JP-H4	Density of New Housing

4.3 The relevant policies contained within the Rochdale Core Strategy (RCS) are:

DM1	General Development Requirements
P2	Protecting and enhancing character, landscape and heritage
P3	Improving design of new development
E1	Establishing thriving town, district and local centres
C1	Delivering the right amount of housing in the right place
C3	Delivering the Right Type of Housing
G9	Reducing the impact of pollution
T2	Improving Accessibility
Appendix 5	Schedule of Parking Standards

4.4 The relevant saved policies contained within the Rochdale Unitary Development Plan (RUDP) are:

G/D/1	Defined Urban Area
G/S/1	Hierarchy and Role of Centres
S6	District Centre, Local Centres and Linear Commercial Areas

4.5 The relevant Supplementary Planning Documents (SPD) are:

Supplementary Planning Guidance note 'Guidelines and Standards for Residential Development' (June 2016).

4.6 The National Planning Policy Framework ('the NPPF') is also a material consideration in respect of the appeal.

Appellant's Grounds of Appeal and the Case for the Local Planning Authority

5.1 The LPA's justification for the refusal of reason is clearly set out in the supplied officer's report. However, the points raised in the appellant's appeal statement are addressed in this section.

Matters Not Disputed

5.2 The LPA can confirm that the matters identified at the Appellant's Statement of Case paragraph 6.5 are agreed.

Sequential Test

5.3 The appellant goes on to refer to sites within their Sequential Assessment submitted for the appeal application. The application (23/01260/FUL) was originally supported by a different Sequential Assessment submitted in November 2023. However during the course of the application the appellant later advised that the Sequential Assessment which the decision should be taken on was that attached by email on the 17 April 2024. This Assessment had previously been submitted on 2 February 2023 as part of the earlier application (22/00901/FUL). This Assessment was based upon a version from December 2022, updated to clarify flexibility on scale. As such the submission on which officers were asked to determine the application in April 2024 was already over 1 year old and could not be considered to be up to date.

Flexibility

5.4 With regards to flexibility in applying the sequential test, the LPA's position is set out comprehensively in the officer's report. Given the modest scale of the proposal intended to serve a local area for convenience goods, the LPA accepted a limited scope of assessment to nearby local centres. The LPA cannot however accept a number of the key selection criteria used in the appellant's application of the test as they are clearly intended to exclude any site other than the proposal site, and do not comply with key elements of the sequential test.

5.5 Firstly, with regards to flexibility the appellant refers to a number of appeal and case law principles. It is clear from those cases and the wording of PPG that flexibility is expected with regards to format and scale. The Appellant has states that a flexible approach would be unreasonable as the floorspace cannot be sub-divided or adjusted as it would be unviable to do so. The appellant asserts that this is supported by LIDL UK GmbH v Scottish Ministers (2006) by selectively extracting a single sentence. Lord Glennie's opinion in this case is referring to the facts of the matter in that case whereby Lidl were relocating out of centre from

their existing site, and the degree to which they must consider their original site in the sequential test. Their opinion is clearly based on the facts of that case whereby Lidl were proposing a scheme of '*Significantly greater floor area*'. This opinion was to stating that flexibility of scale should not be considered as part of the assessment and it is incorrect for the appellant to infer this from the limited extract.

5.6 The appellant's case and the submitted sequential assessment set out their site search criteria which included having an existing building for conversion, 45-55sqm of ground floor retail space, car parking spaces, and other matters. It is entirely unclear how the sequential test which is focused on suitable sites for a planning land use can be limited only to an '*existing building and capable of comfortable conversion*'. This criterion has clearly been defined as matching the exact property in the appellant's ownership. PPG explicitly sets out that land ownership is not a relevant matter in justifying locational requirements in the sequential test. Requiring a site for '*comfortable conversion*' again refers precisely to the appellant's ideal investment and capability which effectively bases the entire test on the developer requirements, which the appellant recognises through the quoted precedent's as inappropriate.

5.7 The floorspace range is also extremely limited and not provided any further justification as to why similar sites which could accommodate slightly smaller or larger floorspaces would not clearly be meeting the requirement of a local convenience retail opportunity. Further emphasising the rigidity of the appellant's assessment is the fact that the proposed floor plans show that the sales floor area is significantly smaller than the storage, kitchen and WC back of house elements of the building. This is not a remotely standard internal layout or floorspace split for the proposed use and demonstrates further that the retail floorspace could easily show a reasonable degree of flexibility, and that this would be proportionate to the appeal scheme.

5.8 The appellant acknowledges that most customers are likely to travel on foot yet considers this as justification to not provide flexibility on the already limited parking spaces. Clearly if it is acknowledged that a small scale convenience store is accessed by foot, then a site in an accessible local centre should not be excluded for failing to provide 2 parking spaces which are shared with the residential property above.

5.9 The appellant's submission ultimately considers the proposal should not show any flexibility due to financial viability. However, the meaning of viability in this case appears to relate solely to the fact that the appellant has ownership of this particular site. This is not the intention of the sequential test and cannot be accepted as an argument in favour of its case. The appellant has stated that options have been explored to reuse the building for residential use but that the most viable and economically beneficial option is for the creation of a new retail store. The town and local centres within the local area have seen significant demand for residential uses, indeed seeing many conversions of main town centre uses into residential uses. The fact that a retail store would be more economically beneficial to the owner of the property is irrelevant to whether the sequential test has been complied with.

5.10 The appeal scheme is seeking a local convenience retail store, although is currently a speculative proposal without an identified occupier. The identity of the occupier is not required in order to carry out the sequential test which ultimately focuses on land use and is occupier blind in accordance with our planning system. The lack of a known occupier can however be

relevant in identifying the degree of flexibility of format and scale for the proposal, as there is no requirement to accommodate specific operator requirements eg. It is not a retail use with a need for click and collect pod and the access arrangements this would require, or a mixed retail and food and drink use which would require back of house areas for hot food, etc.. The sequential assessment is therefore a relatively straightforward exercise in identifying if any sequentially preferable sites exist which could accommodate the broad type of development by approximate size, type, and range of goods, as referred to in Aldergate Properties Ltd v Mansfield District Council and Regal Sherwood Oaks Ltd. The broad type of development in this case is a local convenience retail store. The officer's report noted the lack of occupier, however this was not the substantive element of the officer's assessment which clearly demonstrated, as reiterated above, that the submitted sequential assessment submitted was not fit for purpose and the test had not been met.

5.11 The appellant sets out a brief consideration of the 3 identified sites within its out of date sequential assessment. For the reasons set out above and in the officer's report, the identification of sites was already so severely limited as to invalidate the findings of the submitted assessment. Nonetheless, the discounting of Site 3 shows a complete disregard for flexibility. The site is an extremely similar and comparable nearby building with directly comparable servicing and car parking opportunities and a small ground floor retail area within the same local area that could clearly accommodate the broad type of development proposed. The appellant refers to inadequate floorspace, without clarifying the size of the unit and despite showing on its own submission plans a floorspace split which has very limited retail floor area and an entirely unusual back of house including a kitchen which is larger than the sales area.

5.12 It is abundantly clear that the appellant's sequential assessment was undertaken entirely on the basis of applying an unreasonably inflexible site selection criteria, under which no site could ever have been found to be sequentially preferable. This fails to meet the test in its entirety.

5.13 The appellant refers to a number of other case law and appeal precedents in this section of the Appeal Statement without providing any notable commentary or explanation of their relevance to the determination of this appeal. The LPA would note that these have extracted limited parts of decisions which are not disputed but are not considered directly relevant in a number of instances. The case at para 6.21 for example relates to the issue of retail need despite having never been raised as an issue in this appeal application. That same case does however make a statement in the following paragraph that forms the central point of consideration, stating *'it is important not to lose sight of what the sequential test is seeking to achieve. It is a key part of the town centre first approach and its purpose is to ensure that town centre uses are directed to central locations if at all possible.'* The LPA do not consider it necessary to comment on these other cases in detail.

5.14 The application failed to meet the requirements as set out in policy E1 of the adopted Core Strategy and the NPPF. Accordingly, as guided in paragraph 95 of the NPPF, *'where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 94, it should be refused.'*

Vitality and Viability

5.15 The appellant goes on to provide commentary as to the health of local centres and Rochdale town centres in order to demonstrate that the proposal would not have a significant adverse impact on the matters at NPPF paragraph 94. This argument is based on the scale of the proposals being too minor to impact on these centres. It is important however that NPPF Paragraph 95 sets out that these criteria are both individually enough to warrant a refusal, i.e. failing the sequential assessment alone is sufficient justification, subject to their being no other material considerations outweighing this. The sequential test is in place in order to protect the long term vitality and viability of town centres which may occur as a result of large scale individual proposals, or through cumulative proposals which may impact town centres over time. In acknowledging this, the sequential test is not limited to proposals of a certain scale in the way that the impact test is within the NPPF. To apply a similar threshold, would allow for repeated piecemeal out of centre developments to impact upon town centres without ever requiring assessment. It is therefore entirely unfounded for the appellant to claim at paragraph 6.54 that the application of the sequential test is disproportionate to their proposal.

5.16 In paragraph 6.57 the appellant's statement, it states that '*the Framework also identifies the importance of retail facilities in relation to meeting a community's ability to meet its day to day needs, and that such facilities are to be retained for the benefit of the community*'. It is unclear whether the appellant is referring to text within Section 6 of NPPF relating to rural economies or to Section 8 in respect of healthy and safe communities. Section 6 is clearly not relevant to the proposal in this case and Section 8 would only serve to strengthen the case that where there are defined local centres serving communities, it is essential that the sequential test is applied to out of centre development. The applicant goes on to highlight that in this case, the nearest convenience property is approximately 100meters away within the Yorkshire Street Local Centre and therefore would not compete with comparable uses in a town centre. It is entirely nonsensical to suggest that a comparable store within 100m of the site would not be in competition with the proposal and this point again supports the LPA's case that the proposal could impact the centre and that there is no justification for failure to comply with the sequential test.

5.17 The appellant refers to vacancy rates within Rochdale Town Centre, citing two sources. It is unclear where the figure from Rochdale BID has been taken from, whilst the other source is based upon a desktop investigation on major online letting services. It is unclear whether any actual town centre health checks have been carried out, identifying vacancies based on a complete 'on the ground assessment' as is typically involved in retail planning. Nonetheless, both of these figures also relate to a centre which the LPA has flexibly allowed the appellant to exclude from its Sequential Assessment as it is the local centres which are considered of greatest importance to determining this scheme.

Benefits

5.18 The appellant states that the proposal would provide socio-economic benefits but incorrectly states the proposal would deliver 2 apartments when it would in fact be a single apartment. There would be no increase in bedrooms and the proposal would result in the loss of the already limited external amenity space for residents. The proposed retail unit would offer very little in the way of additional consumer choice but would be located in an out of centre location without appropriate justification. There would be a very limited benefit of up to 2 FTE

jobs created within the store. Overall the benefits of the proposal are considered negligible and clearly do not outweigh the failure to comply with the sequential test.

Relevant Case Law

5.19 In the appellant's statement, in paragraph 6.83 a number of appeals are identified despite being irrelevant to the proposals. In each case there are distinct differences from this appeal and as such these are not considered to give any weight to the appellant's case.

5.20 Regarding APP/Y2003/W/22/3299625, the inspector found that crucially, the proposals would comply with the sequential test. It is therefore not a relevant or useful comparison.

5.21 The Appeal APP/A2525/W/17/3171261 assessed a scheme whereby the LPA's reason for refusal related to design of the scheme and its impact on the character of the area and on pedestrians. There was no dispute relating to the sequential test and the Inspector referred only briefly to retail matters in response to 3rd party concerns. Again this case is of no relevance to this appeal.

5.22 Finally, the appeal APP/P1750/W/21/3267182 relates to a small scale proposal within a rural area which is the only exception identified within NPPF with regards to the sequential test. It is clearly unreasonable to compare that case with this appeal scheme which is located firmly within the urban area.

Procedural

5.23 The Appellant states at paragraph 6.55 and 6.56 that the LPA changed its mind on the failure of the sequential test and has not worked proactively with the applicant. Whilst unfortunate, it is entirely reasonable that when an officer passes through an initial recommendation for review by managers that a thorough consideration of the recommendation is undertaken and any issues that have not been addressed are identified. The LPA has provided significant advice on multiple occasions on what is required as part of the sequential test, including detailed feedback on previously submitted assessments, and confirmation on what it would consider appropriate as a scope of the assessment. The appellant had not sought pre-application advice to confirm these matter prior to submission and so these have inevitably been picked up through subsequent planning applications. The LPA has even accepted the most recent resubmission of the same application as previously refused, in order to allow the appellant the opportunity to provide a Sequential Assessment that would meet the test. The Appellant has however refused to comply with the requirements and has instead requested the LPA determine the application based upon an incorrect assessment which is entirely out of date.

Conclusion

6.1 The proposals have clearly failed to comply with the sequential test as set out in local and national policy. The Appellant has based the proposal on an out of date assessment that is fundamentally flawed in its methodology which seeks to impose criteria which negate the entire purpose of the assessment to genuinely consider sequentially preferable sites.

The benefits of the proposal are entirely negligible and there are no other material considerations which outweigh the proposal's departure from local and national policy.

6.2 In light of the above, the LPA respectfully request that the appeal be dismissed.

6.3 Should the Inspectorate be minded to allow the appeal, a list of suggested conditions is provided below.

1. The development must be begun not later than three years beginning with the date of this permission.

Reason. Required to be imposed by Section 91 of the Town and Country Planning Act 1990 (as amended).

2. This permission relates to the following plans:

- Site location plan
- Existing & proposed block plans. Drawing number: 20.2343.2B
- Existing details. Drawing number: 20.2343.1A
- Scheme 2. Drawing number: 20.2343.SC3.1A
- Scheme 3 - proposed elevations. Drawing number: 20.2343.SC3.2B

and the development shall be carried out in accordance with these drawings hereby approved.

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

3. The materials used in the construction of the exterior of the development hereby permitted shall match those used in the construction of the exterior of the existing building in colour, form, type, size and texture.

Reason: In order to ensure a satisfactory appearance in the interests of visual amenity in accordance with policies P3 and DM1 of the adopted Rochdale Core Strategy and the National Planning Policy Framework.

4. No development work to the flat shall take place until a Noise Impact Assessment (NIA) has been submitted to, and approved in writing by the Local Planning Authority. For the avoidance of doubt, these shall aim to achieve the following maximum internal noise levels:

- 35 dB(A) Leq (1 hour) in the bedrooms with windows shut and other means of ventilation provided between 7 am and 11pm.
- 30dB(A) Leq 5mins in the bedrooms with windows shut and other means of ventilation provided between 11pm and 7am.
- 35 dB(A) Leq (1 hour) in the living room/s with windows shut and other means of ventilation provided between 7 am and 11pm;
- 40dB(A) Leq (1 hour) in other habitable rooms with windows shut and other means of ventilation provided at all times.

Following the submission and approval of the aforementioned NIA, no part of the flat shall 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 ventilation and acoustic measures have been implemented to achieve the required maximum noise levels. The noise attenuation measures shall be retained as installed thereafter including within any replacement windows.

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 and the National Planning Policy Framework.

5. The development hereby permitted shall provide no more than 55m² of floorspace for use within Use Class E of the Town and Country Planning (Use Classes) Order (as amended). Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (As Amended) Schedule 2 Part 3 (or any equivalent Order following the amendment, re-enactment or revocation thereof) the commercial unit hereby approved shall not be changed to use of another use class outside of Class E except with the prior written approval of the Local Planning Authority.

Reason: In the interests of amenity and in the interests of protecting the vitality and viability of town centres in accordance with Policies DM1, E1 and P3 of the adopted Rochdale Core Strategy and the National Planning Policy Framework.

6. The opening hours of the retail ground floor unit hereby permitted shall be restricted to between the hours of 07.00 and 23.00 on all days.

Reason: To safeguard the living conditions of future residents in accordance with Policy G9 of the Rochdale Core Strategy and the National Planning Policy Framework.