
Appeal Decision

Site visit made on 11 March 2025

by **S Burch BSc MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 April 2025

Appeal Ref: APP/P4225/W/24/3352971

296 Yorkshire Street, Rochdale, OL16 2DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Amber Ditta against the decision of Rochdale Metropolitan Borough Council.
 - The application Ref is 23/01260/FUL.
 - The development proposed is for the change of use to retail unit at ground floor with first floor residential space.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. There have been changes to the National Planning Policy Framework (the Framework) since the determination of the planning application. Having reviewed them, I am satisfied that as far as their substance relates to the main issue in the appeal, further consultation with the main parties would not be necessary since they have not materially affected or prejudiced the cases of the parties. I have proceeded on this basis, with reference to the 2024 version of the Framework.
3. In relation to the description of development, I have omitted wording which references previous submissions for reasons of clarity.

Main Issue

4. The main issue is whether the appeal site is in a suitable location for the proposed development, having regard to the requirements of the development plan and the effect on the vitality and viability of nearby local centres.

Reasons

5. The appeal site relates to a two-storey mid terrace residential property located in Rochdale. The site is situated just outside of the Yorkshire Street Local Centre. Surrounding development comprises of a mix of uses, however as you travel out of the Local Centre towards the site, residential development becomes more prevalent, with less retail uses. The site is located on a public transport corridor and is within walking distance of the town centre.
6. The appeal would result in the change of use of a residential property to a retail unit at ground floor. The appellant has stated that the unit would likely come forward for convenience retail however no occupier has been identified. The proposed use would be considered a main town centre use under the definition provided in the Framework.

7. Policy E1 of the Rochdale Adopted Core Strategy (CS) (2016) requires the application of a sequential approach for main town centre uses where the application site is not within an existing centre, to ensure the long-term vitality and viability of town centres. Paragraph 91 of the Framework also outlines how Council's should apply a sequential test to planning application for main town centre uses which are not in an existing centre, then in edge of centre locations and only if suitable sites are not available should out of centre sites be located. Paragraph 92 of the Framework also explains how applicants and Councils should demonstrate flexibility on issues such as format and scale.
8. A sequential test has been provided with the application. However, this is the same sequential test that was provided under a previous application (reference: 22/00901/FUL), which was refused on 10th February 2023. Whilst the provided sequential test is not dated, it is clear from this that it is at least two years old. The Council have also advised it is based upon a version from December 2022. It is therefore reasonable to consider the information contained within this assessment to be out of date. Since its submission, it is very likely that the availability of units within Local Centres would have changed. No further updated assessment has been provided. For this reason, I consider the assessment to be unacceptable for its intended purpose. Nonetheless, I have considered the appellant's site selection process below.
9. The appellant has set out its requirements which include an existing building capable of comfort conversion, a small parking area and refuse storage located on an accessible road with footfall traffic, and provision of between 45-55 square meters (sqm) of ground floor retail space.
10. Firstly, it is unclear why an existing building is required as this would preclude any vacant land within local centres which would be capable of accommodating a unit. 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 fact that a retail store may be more economically beneficial to the owner is not relevant to whether the sequential test has been complied with.
11. It is also unclear why car parking is required. It is likely that numerous units within town centre and local centre locations would not benefit from dedicated onsite parking spaces, and this would rule out numerous units. Furthermore, it is entirely typical of similar scale convenience stores to successfully operate within local centres without allocated parking spaces. The appellant then goes on to state in paragraph 6.28 of their Statement of Case that most customers are likely to travel on foot yet considers this as justification to not provide flexibility on the requirement for parking.
12. With regards to the size of the unit required, the flexibility of the scale presented allows for a range of 10 sqm. The submitted plans however show less than half the ground floor used as the shop area, with the remainder used as a store and kitchen. In addition, the unit is not for any identified occupier. Limited information as to why similar sites of slightly smaller or larger floor spaces cannot be considered has been provided. It is therefore clear that the size requirement is overly rigid and lacks flexibility, as required by the Framework.

13. The appellant 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. They assert that this is supported by LIDL UK GmbH v Scottish Minister (2006) (accessed via link provided by the appellant) whereby Lord Glennie states *“The question remains whether an alternative site is suitable for the proposed development, not whether the proposed development can be altered or reduced so that it can be made to fit an alternative site.”* This opinion is however referring to how 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. It is therefore not directly comparable to this appeal.
14. Aldergate Properties Ltd v Mansfield District Council and Regal Sherwood Oaks Ltd (2016) is also referenced by the appellant with regards to the identity of the occupier not being relevant the sequential test. Whilst I acknowledge the identity of the occupier is not required to carry out a sequential test, the lack of a known occupier is however relevant in identifying the degree of flexibility in the format and scale of the proposal. The lack of known occupiers therefore questions why a large area is required for a kitchen and store and further emphasises the lack of flexibility in the appellants requirements.
15. Consequently, I am not satisfied that the sequential test has addressed all sequentially preferable locations before edge of centre and out of centre locations have been considered. The proposal is based on an out-of-date assessment that is flawed in its methodology. On my site visit, which was undertaken on a weekday late morning, there were several commercial properties closed in Yorkshire Street Local Centre. Whilst this represents a snapshot in time, and there may be other reasons as to why these businesses were not open and may not necessarily be vacant, this does provide some evidence that there are vacant units within the Local Centre. The case officer report similarly mentions vacant units within the Local Centre. Therefore, there is some evidence to suggest there are several vacant units within the Local Centre.
16. The appellant provides commentary on the health of local centres and Rochdale town centre to demonstrate that the proposal would not have a significant adverse impact on the viability and vitality of town centres. They go on to state that the requirement to demonstrate that a sequential test is satisfied is therefore disproportionate in relation to the scale of the development. Both the CS and the Framework are however clear on the requirement to pass the Sequential Test for such development.
17. The appellant goes on to highlight that the nearest convenience store is approximately 100 m away within the Yorkshire Street Local Centre and therefore the scheme would not compete with comparable uses. They further outline how a significant proportion of the premises in Yorkshire Street and Halifax Road are comparison retailers of a type which would not be in direct competition. However it seems extremely likely that given the close proximity of similar uses, the proposed development would result in competition and could draw customers away from the Local Centre. In addition, as previously noted, the appeal site is close to increasing numbers of residential properties as you leave the centre. It is therefore likely that nearby residents may choose to instead utilise the convenience store at the appeal site, rather than the Local Centre which is greater distance away. Indeed, the appellant states in paragraph 6.66 of their Statement of Case that the appeal site is surrounded by residential areas and is geared up to attract local trade. It is

therefore likely that the proposal would impact the vitality and viability of the Local Centre by drawing trade away from it.

18. Low vacancy rates within Rochdale Town Centre are cited in support of the appeal. However, the Council allowed the appellant to exclude Rochdale Town Centre from its Sequential Test. I therefore do not afford significant weight to this point because the Council's concern is regarding the impact of the use on the local centre as opposed to the town centre.
19. For the reasons outlined above, I conclude that the proposal has not satisfied the sequential test for new retail development having regard to local planning policies. I am not persuaded that the scheme would not have an adverse effect on the vitality and viability of nearby local centres. The scheme is contrary to policy E1 of the CS. It would also conflict with the aims and objectives of the Framework in this regard.

Other Matters

20. I acknowledge the appellant's concerns over the Council's handling of the application. However, this is not a matter that I can consider under a Section 78 planning appeal and does not alter my findings, in which I have had regard solely to the planning merits of the proposal.
21. A number of other appeals are referred to within the appellant's statement of case. Regarding, APP/Y2003/W/22/3299625, the Inspector found that the Sequential Test had been satisfied. In APP/A2525/W/17/3171261 there was no dispute between the main parties relating to the sequential test. Turning to APP/P1750/W/21/3267182, this appeal relates to a proposal within a rural area. Paragraph 93 of the Framework confirms that the sequential approach should not be applied to applications for small scale rural offices or other small scale rural development. For the reasons above, I am unable to draw any meaningful comparison between these appeals and the appeal before me.
22. The appellant also references particular wording from APP/G2815/V/12/2190175. The specific wording is however referring to the scale of the proposal in comparison to the centre. The Council have not raised any concerns regarding the proposal being 'too big' or 'too small' for any of the centres. In APP/V2004/W/17/3171115 and APP/A1530/W/16/3147039 disaggregation is discussed. The appellant outlines how they are not required to disaggregate the proposal in order to try find a site and states that this is highlighted by the fact that the scheme is smaller than the developments of appeals in which disaggregation was found to be appropriate. It has however not been suggested that the appellant should disaggregate the proposal, instead concerns have been raised over the lack of flexibility in the size of the unit required.
23. Reference to Tesco Stores Limited v Dundee City Council is also cited in support of the appeal. However, this decision outlines how application of the sequential approach requires flexibility. As outlined above, I consider that the size requirement lacks flexibility. APP/P0119/V/17/3170627 relates to a scheme which was determined in a different local authority area, under a different local plan. The considerations would therefore have been different to this appeal. In addition, this was a large mixed used scheme and is therefore not directly comparable to this scheme. For the reasons given, reference to these appeals and decisions has therefore not altered my findings in relation to the proposed scheme.

24. The appellant states that there are other shops, hairdressers, cafes, restaurants and other similar uses not located within the local centre in the area and has provided a number of images of such uses. I have not been provided with any further information regarding these developments and in any event the fact that similar developments have evidently occurred over the years is not a reason on its own to allow unacceptable development. I do not know the circumstances under which they were development or their status with regard to planning permission and therefore cannot draw any direct comparison with the proposal that would weigh in its favour. The presence of these does not overcome the harm that I have otherwise found.
25. It is outlined how the site has stood vacant for a number of years. However, no marketing or other information has been forwarded to explain why the property has been vacant. In any instance, this does not justify the schemes noncompliance with the sequential test.
26. Whilst the Framework outlines how planning decisions should allow businesses to invest, expand and adapt, this does not justify the creation of businesses in inappropriate locations.
27. The proposal would not deliver a net gain in housing units. The proposal would make effective use of a vacant building. Whilst the site is in an accessible location, it is an inappropriate location for retail use. There would be some temporary and ongoing economic benefits arising from the development. The development would provide additional consumer choice and have some minor social benefits, however given the proximity of similar uses this would be limited. Overall, given the modest scale of the development I attribute minor weight to these benefits. These benefits do not outweigh the harm that I have identified.

Conclusion

28. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be determined other than in accordance with it. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

S Burch

INSPECTOR