The Planning Inspectorate

Appeal Decision

Site visit made on 3 December 2021

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2022

Appeal Ref: APP/P4225/W/21/3277231
1 Halifax Road, Littleborough, Rochdale, Lancashire OL15 0HL

- 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 Hayat Mahmud Sabbir against the decision of Rochdale Metropolitan Borough Council.
- The application Ref 21/00277/FUL, dated 22 February 2021, was refused by notice dated 1 June 2021.
- The development is: change of use from sandwich shop (Class E) to restaurant and hot food takeaway (Sui Generis) including erection of flue to rear elevation.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description from the appeal form and the decision notice as this more accurately describes the development. In doing so I have removed the word retrospective as it is not an act of development.

3. The application is at least partly retrospective in that the flue is already in place. Whilst not operating at the time of my site visit, the Council has advised that the use has also commenced.

4. Since the refusal of the application an Enforcement Notice has been served requiring the use to be ceased and the flue and other works to be removed. On the information before me, the Notice has not been complied with or appealed. Nonetheless, my focus is on the acceptability of the development and there is an appeal before me.

Main Issues

5. The main issues are whether the appeal site is a suitable location for the development, having regard to the vitality and viability of the Littleborough town centre, and the effect of the development on the living conditions of the occupiers of neighbouring properties.

Reasons

Location

6. The appeal site is a small ground floor unit that was previously in use as a sandwich shop. The unit is now being used as a restaurant and hot food takeaway for which permission is being sought. The site lies just outside of the

town centre of Littleborough and is a short walk from its edge as defined by the Rochdale Unitary Development Plan Map (2006) (UDP).

7. Policy E1 of the Rochdale Core Strategy (2016) (the RCS) aims to direct retail, leisure, cultural, office, residential and other development to town centres in order maintain the viability and vitality of the centres. In considering proposals for new main town centre uses, Policy E1 requires the application of a sequential approach where the site is not in an existing centre and not in accordance with an up-to-date development plan. In this regard the policy states that out of centre development will only be acceptable when there are no suitable sites in, or on the edge, or well connected to, the town centre, district centres or local centres and the proposal would cause no significant overall impact on the existing centre's vitality and viability.

8. This approach is broadly in line with Paragraph 87 of the National Planning Policy Framework (the Framework) which states that main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.

9. The appellant has not provided a sequential test. It is therefore not clear whether or not there are sequentially preferable sites available for the use within the defined Littleborough Town Centre. Nevertheless, there are specific circumstances here which lead me to the view that, in terms of location relative to the town centre, the use would not be unacceptable. Firstly, the unit is accessible and well connected to the town centre, being within easy walking distance of it.

10. Furthermore, the previous use of the building was a main town centre use (now falling within Use Class E[1]). As this main town centre use is already established, it is unlikely that the change to another main town centre use, a restaurant[2], would draw significant business or footfall away from the town centre or result in significant harm to its vitality or viability. Moreover, I note that certain changes of use to a restaurant would be a permitted change under the Town and Country Planning (Use Classes) Order 1987 (as amended) and planning permission would not normally be required.

11. I accept that hot food takeaways are not expressly defined as main town centre uses within the Framework. There is little information before me detailing the functional relationship between restaurant and takeaway elements of the use, although I note that one is not necessarily incidental or secondary to the other on the basis of floorspace alone. However, at least in part, the development would be for a main town centre use. In my view there are also parallels with takeaways, in that these are commonly located in town centres on account of trade draw. In this respect, my reasoning above that the site is accessible and would not necessarily divert trade away from the town centre holds true for either use.

12. I therefore conclude that the appeal site is a suitable location for the restaurant and hot food takeaway use having regard to the vitality and viability of the Littleborough town centre. I therefore find no conflict with the aims of Policy E1 of the RCS. There would also be compliance with Policy E2 of the RCS which

[1] Town and Country Planning (Use Classes) Order 1987 (as amended)
[2] As defined in the Glossary at Annex 2 of the Framework

supports the creation and retention of businesses and increasing the number and quality of jobs. There would be support from the Framework which encourages a positive approach to the growth, management and adaption of town centres.

Living Conditions

13. The appeal site fronts the pavement and adjoins an existing dwelling, No 3 Halifax Road, which includes a first floor bedroom extending above the unit. A further terrace of dwellings is located beyond No 3, along this side of Halifax Road. Whilst the area is predominantly residential in character, the occupiers of the nearby dwellings are likely to experience a degree of background noise from the railway and busy road, although this is likely to decrease into the evening.

14. The use would operate between 1300 and 2100 hours every day with the exception of Friday when it would operate between 1430 and 2100 hours. It is understood the previous use as a sandwich shop did not generally operate outside of daytime working hours. Furthermore, as a restaurant or hot food takeaway it is reasonable to assume that the operation would intensify into the evening hours proposed. Given the proximity of No 3 to the unit, the noise from cooking, extraction, or customers collecting takeaway into the evening would result in a significant level of disturbance to the occupiers of that property at a time when background noise in this area is likely to be lower.

15. Furthermore, given the close relationship between No 3 and the appeal site, smells from cooking and the extract ventilation system would be likely to result in further disturbance to the occupiers of the neighbouring property. Noise and smells into the evening are also likely to be experienced, to a lesser degree, by other neighbouring residents along Halifax Road. Effects in that regard would, in my view, be localised and incongruous given the prevailing character of the area (notwithstanding my reasoning in paragraph 9 regarding location).

16. Although permission is also sought for the flue serving the unit, I accept that the change of use to a restaurant alone could occur without planning permission. Nonetheless, the scale and intensity of such an enterprise, and the associated smells and noise from cooking, without a takeaway element, would be severely limited by the small scale of the unit. In this regard, the area forward of the counter shown as 'takeaway' on the floor plans would extend to just six square metres, placing a significant constraint on the number of customers capable of dining at any one time. On the other hand, a takeaway use, which would not be subject to these constraints would be able to serve vastly greater numbers of customers, resulting in considerably greater noise and smells arising from cooking to the detriment of the living conditions of the occupiers of the adjacent property.

17. I therefore conclude that the development is likely to cause significant harm to the living conditions of the occupiers of neighbouring properties, particularly No 3 Halifax Road. As such the proposal would conflict with Policies G9 and DM1 of the RCS and the provisions of the Framework, which amongst other things, seek to ensure developments preserve living conditions and do not lead to unacceptable noise or other pollution.

Conclusion

18. For the reasons given, having considered the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Paul Martinson

INSPECTOR