
Appeal Decision

Site visit made on 15 November 2016

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 28th November 2016

Appeal Ref: APP/B4215/W/16/3155698
75 Wilmslow Road, Manchester M14 5TB

- 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 Mustafa Solicitors against the decision of Manchester City Council.
 - The application Ref: 112166/FO/2016/S1, dated 13 May 2016, was refused by notice dated 19 July 2016.
 - The development proposed is change of use of the ground floor of the premises from an ice cream parlour (Class A1) to a hot food take-away (Class A5) and associated installation of extraction flue to rear of the property.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of the ground floor of the premises from an ice cream parlour (Class A1) to a hot food take-away (Class A5) and associated installation of extraction flue to rear of the property at 75 Wilmslow Road, Manchester M14 5TB in accordance with the terms of the application, Ref: 112166/FO/2016/S1, dated 13 May 2016, subject to the conditions in the attached schedule.

Main Issue

2. The main issue in this appeal is the effect of the development on the living conditions of the occupiers of nearby residential properties, with particular regard to noise and disturbance.

Reasons

3. Policy SP1 of the Manchester Core Strategy 2012 (Core Strategy) sets out general spatial and development principles for the city and has an emphasis on creating neighbourhoods within which new development will be expected to enhance or create character in order to create well designed places that consider the needs of all members of the community, whilst protecting the built environment. The appeal site is located within Rusholme District Centre which Core Strategy Policy C5 recognises has a distinct commercial character and its role in the evening economy is noted in the supporting text to the policy.
 4. Core Strategy Policy C10 and Policy DC10 of The Manchester Plan: The Unitary Development Plan for the City of Manchester 1995 (UDP) are generally supportive of hot food takeaway uses in district centres provided that they do not have an adverse effect on the living conditions of residential occupiers, do
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- not lead to an overconcentration of this type of use and maintain an appropriate balance between the daytime and evening economy.
5. When taken together, Core Strategy Policy DM1 and UDP Saved Policy DC26 seek to ensure that new development that has the potential to generate noise does not adversely affect the living conditions of the occupiers of neighbouring residential properties.
 6. The appeal building is a three storey property on the corner of Wilmslow Road and Dagenham Road. There is a small, currently vacant, commercial unit on the ground floor with two floors of residential accommodation above. It is located within a busy district centre and it was apparent from my site visit that this area is heavily geared towards catering for the evening economy from the number of food premises, both restaurants and hot food takeaways, which are present.
 7. It is common ground between the parties that the appeal building meets the locational requirements of Core Strategy Policy C10 and Saved Policy DC10 of the UDP. In addition, it is not suggested that the proposal would lead to an overconcentration of hot food takeaways or that the balance between the daytime and evening economies would be adversely affected. The Council's principal concern is that noise generated by patrons of the premises would adversely affect the living conditions of residents in Deyne Avenue and Oxney Road which run parallel to Wilmslow Road and are accessed off Dagenham Road.
 8. Due to the district centre location, and the fact that Wilmslow Road is a busy main route, background noise levels are higher than they would be in a purely residential area. Neither party has submitted any technical evidence in respect of noise levels in the area.
 9. Whilst I note the Council's point that groups of patrons may use Dagenham Road as a route to access other areas after visiting the premises, given the nature of the surrounding area, this will already be occurring due to the large number of food premises on Wilmslow Road.
 10. Although a takeaway food premises will have a higher customer throughput than a restaurant use, the other uses in the area will nonetheless currently generate significant pedestrian traffic in the evening. An additional hot food takeaway use, regardless of the corner location, would not necessarily bring additional numbers of people into the area or cause them to use Dagenham Road. Accordingly, I do not consider that the use of the appeal building as a hot food takeaway would significantly add to the footfall on Dagenham Road over and above that which already occurs at present.
 11. Some patrons may arrive at the premises by car. There are a small number of short term parking bays on the south side of Dagenham Road and on Wilmslow Road which will be used by visitors to the area at present. With the exception of the short term parking bays, waiting is otherwise restricted on Dagenham Road by double yellow lines. Parking in the residential streets is unrestricted but is heavily used. At the time of my site visit there were no free spaces on Deyne Avenue or Oxney Road. Due to the density of the residential development, it is unlikely that there would be available spaces on Deyne Avenue in the late evenings that patrons of the proposed takeaway could utilise. In addition, again due to the presence of a large number of takeaways

- and other food premises in the area, a further takeaway would not generate significant additional traffic or parking demand over current levels.
12. The proposed development also includes the installation of an extractor system and flue on the side elevation of the building. I note that the Council have not raised any objections to this aspect of the proposal and I am satisfied that, whilst the flue would be visible from Dagenham Road, it would not be excessively visually intrusive and that if it is operated in accordance with the details submitted with the application, odours will be appropriately controlled.
 13. My attention has been drawn to a proposal to change the use of the appeal building to a hot food takeaway which was refused planning permission in 1991. I do not have full details of this case and so cannot be certain that the circumstances are the same or what policies applied at that time. The appellant states that the character of the area was significantly different at the time of the refusal. This is not gainsaid by the Council and, whilst the protection of the living conditions of neighbouring residents is a factor that must be considered, I have found that within the current context the proposed development would not materially alter the level of pedestrian use of Dagenham Road or the number of vehicle movements in the area, which are the primary concerns of the Council. In the absence of any evidence to the contrary, I do not consider that the proposal would increase noise levels in the area above those that presently exist.
 14. I therefore conclude that the proposed development would not cause harm to the living conditions of the occupiers of nearby residential properties with particular regard to noise and disturbance. It would comply with the relevant requirements of Core Strategy Policies SP1, DM1 and C10; and Saved UDP Policies DC10 and DC26, which seek to locate new commercial developments within existing town and district centres whilst ensuring that the living conditions of the occupiers of nearby residential properties are not adversely affected.

Conditions

15. I have had regard to the list of conditions suggested by the Council. In order to provide certainty as to what has been permitted, I have attached a condition specifying the approved drawings. Although some information has been submitted regarding the extraction system, the precise configuration of the system is not specified and it is therefore necessary to attach a condition requiring the precise specification of this to be approved. As this is an integral part of the development it is, consequently, necessary for this condition to be pre-commencement.
16. There is little information with the proposal in respect of waste storage for the premises and in order to ensure that this is properly managed it is necessary to attach a condition requiring the refuse storage and collection arrangements to be submitted for approval. In order to ensure that the development maintains the current living conditions of nearby residents, it is also necessary to attach conditions restricting the operating hours of the premises and when deliveries can be made to it. For the same reason it is also necessary to attach a condition requiring a scheme to mitigate noise from the premises and associated equipment. I have amalgamated the two conditions suggested by the Council to avoid repetition.

Conclusion

17. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed.

John Dowsett

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Moonlight/001 (New Exhaust Flue Plan) and Moonlight/002 Revision A (Block and Location Plan).
- 3) Before development commences a scheme for the extraction of any fumes, vapours and odours from the premises hereby approved shall be submitted to, and approved in writing by, the local planning authority. The approved scheme shall be implemented prior to occupancy and shall remain operational thereafter.
- 4) The premises shall not be occupied, or the use hereby approved commenced, until a scheme for the storage (including segregated waste recycling) and disposal of refuse has been submitted to and approved in writing by the local planning authority. The details of the approved scheme shall be implemented as part of the development and shall remain in situ whilst the use or development is in operation.
- 5) Before first occupation of the development the building, together with any externally mounted ancillary equipment, shall be acoustically insulated in accordance with a noise study of the premises and a scheme submitted to, and approved in writing by, the local planning authority in order to secure a reduction in the level of noise emanating from the premises and associated equipment.
- 6) The use hereby permitted shall only take place between the hours of 11:30-23:30.
- 7) No loading or unloading shall be carried out on the site outside the hours of 07:30 to 20:00, Monday to Friday, and at no time on Sundays or Bank Holidays.