
Appeal Decision

Site visit made on 28 March 2017

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 2 May 2017

Appeal Ref: APP/U4230/W/16/3166088
159 Monton Road, Eccles M30 9GS

- 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 Stanley Reeves, S & D Leisure Limited against the decision of Salford City Council.
 - The application Ref 16/68622/FUL, dated 2 August 2016, was refused by notice dated 3 November 2016.
 - The development proposed is Extension to premises and change of use from A1 (shop) and C3 (dwellinghouse) to dual use A3 (restaurant and café) and A4 (drinking establishment).
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Decision

1. The appeal is allowed and planning permission is granted for Extension to premises and change of use from A1 (shop) and C3 (dwellinghouse) to dual use A3 (restaurant and café) and A4 (drinking establishment) at 159 Monton Road, Eccles M30 9GS in accordance with the terms of the application, Ref 16/68622/FUL, dated 2 August 2016, subject to the conditions listed in Annex 1.

Procedural Matter

2. Before the application subject to the appeal was determined the appellant submitted revised plans to the Council. Amongst other matters these confirmed that a previously proposed first floor extension no longer formed part of the proposals. I have determined the appeal on the basis of the revised plans.

Main Issues

3. The main issues are:
 - (a) The effect of the proposed development on the viability and vitality of the Monton neighbourhood centre; and
 - (b) The effect of the proposed development on the living conditions of occupiers of nearby dwellings particularly in respect of noise, disturbance and outlook.
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Reasons

Viability and vitality

4. Paragraph 23 of the National Planning Policy Framework (the 'Framework') establishes that planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres.
5. The appeal site is located within, but close to the south eastern end of, the Monton neighbourhood centre as defined in the City of Salford Unitary Development Plan (CSUDP) 2004. Policy S3 of the CSUDP establishes that within such areas proposals involving a change of use from Class A1 retail use¹ will only be permitted where they would not have an unacceptable impact on the vitality or viability of the centre, either individually or cumulatively. It sets out a number of criteria to guide this assessment.
6. The appeal site forms part of a block of units at 149-175 Monton Road which includes a mix of residential, retail and other commercial uses. I note that food and drink related uses have been approved in recent years at numbers 165, 169, 171 and 175 and that if the appeal is allowed only 4 of the units within the block would remain in Class A1 retail use. The character of this part of the centre therefore appears to be changing to be more reliant on the evening economy.
7. However, given the location of the block at numbers 149-175 on the fringe of Monton neighbourhood centre the clustering of non-Class A1 retail uses within it does not substantially affect the central core of the centre. The proposal would bring a vacant unit back into use and maintain levels of footfall and pedestrian activity in this part of the centre. By having a display frontage with an open seating area it would also contribute visual interest to the street scene in the area. Whilst there is some risk that the proposed uses would not open and could therefore present a dead frontage during shopping hours this is not certain to be the case. Indeed the appellant proposes to open throughout the daytime period on 7 days per week from 0830 onwards.
8. Furthermore, the proposed change of use would not result in a substantial shift in the mix of uses in the centre as a whole. In this context the reference to 'over-concentration' in policy S3(i) could be read as relating to the centre as a whole. According to the appellant's survey information which has not been refuted by the Council², class A1 retail uses would still account for 35% of the units and 37% of the floor space at ground floor level in the centre. Whilst food and drink related uses would between them occupy 28% of the units and 31% of floor space in the centre the proposal would not substantively alter these proportions³.
9. I acknowledge that an appeal was dismissed in 1993 in relation to a proposal for change of use of the appeal premises to a dwelling, for which permission had been refused due to the effects caused by loss of a retail unit. However,

¹ References to Class A1, A3, A4 and A5 in my decision relate to the use classes which are set out in Schedule 1 of the Town and Country Planning (Use Classes) Order 1987 (as amended)

² Appellant's full statement of case, table 4.2

³ These figures are obtained by adding together the figures presented by the appellant for uses in Class A3 (food and drink), A4 (drinking establishments), A5 (hot food takeaways) and premises in a mix of these uses.

that decision substantially pre-dates current local and national policies and carries limited weight.

10. Whilst the Council has recently refused permission for a hot food takeaway use at 153 Monton Road I have limited details of this case before me. I have in any event considered the appeal as I must on its own merits.
11. Having regard to the points set out above I conclude that the proposed development would not cause material harm to the viability and vitality of the Monton neighbourhood centre. Allowing the appeal would not conflict with relevant provisions of policy S3 of the CSUDP or the Framework related to this matter.

Living conditions

12. Paragraph 123 of the Framework establishes that planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development, and mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development.
13. The Planning Practice Guidance (PPG) provides further advice and defines noise which has a significant observed adverse effect in the following terms: *'The noise causes a material change in behaviour and/or attitude, eg avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to change in acoustic character of the area'*⁴.
14. I understand that the first floor of 161 Monton Road which is immediately next to the appeal site has been used as a flat. Whilst the appellant intends to convert this into an office for which planning permission has been granted this had not been implemented at the time of my site visit. Therefore I have assessed the proposal on the basis that this first floor flat could revert to this use. Although the appeal property is in a mainly commercial frontage, those to the rear off Belmont Street are houses in an established residential area and there are dwellings at Princes Court (across Monton Road from the appeal site) and elsewhere in the same frontage.
15. The appellant's Noise Assessment Report indicates, and I agree, that the existing noise levels are substantially lower at the rear of the property than at the front. The dwellings off Belmont Street are therefore likely to have a quiet environment at present.
16. Although the proposed use would require plant and machinery such as condensing units and extraction equipment, the Noise Assessment Report concludes that noise from these could be satisfactorily controlled by the use of appropriate acoustic enclosure and silencing equipment. There is no technical information before me to justify coming to a different view. Whilst the ground floor kitchen would be immediately adjacent to the rear gardens of the neighbouring dwellings on Belmont Street, the design of the building, which includes no openings in the party wall facing these dwellings, would effectively limit noise from being generated in this direction from it.

⁴ Paragraph: 005 Reference ID: 30-005-20140306

17. I note the concerns which have been raised about potential noise from the use of the proposed first floor external balcony and from inside the building when the bi-fold doors are open. The balcony would, according to the Council, be just 4.7 metres from the boundary abutting the rear gardens of 5 and 7 Belmont Street. It would also be very close to the rear façade wall of the flat at number 161 Monton Road. I agree that, without suitable mitigation, noise, for example from customers socialising, would be likely to lead to disturbance at neighbouring dwellings. However, the Noise Assessment Report identifies that these issues can be addressed by constructing an acoustic fence/barrier between the balcony and the nearest dwellings. There is no substantive evidence before me to demonstrate that, providing this is done, any residual noise from this source would have a significant effect.
18. Whilst the details of the acoustic fence provided to date include a door opening, which would enable access for maintenance purposes to part of the premises, there is no reason why this would need to be kept open when the balcony is in use. A condition could also be imposed to ensure the balcony is vacated earlier in the evening than the internal areas.
19. I also do not consider that the proposed use would give rise to significant levels of noise for nearby dwellings alongside Monton Road, including the flats at Princes Court, given the higher background noise levels which exist at the front of the property. A condition can also be imposed to prevent amplified music from being played outside the premises. Whilst customers may make some noise as they approach or leave the premises, including late in the evening, this is unlikely or be to a level which is harmful given the partly commercial nature of the area.
20. The Noise Report findings relate substantially to the effects of the proposed uses on the flat above number 161 Monton Road. However, given that other dwellings are more distant from the potential noise sources its conclusions regarding the acceptability of the proposal would hold true for these as well particularly given the mitigation measures which are proposed. Although the Council has raised some concerns about the potential reflection of noise from building facades there is little firm evidence before me to substantiate these concerns.
21. The proposed acoustic barrier fence would be 2.5 metres in height and be sited above the rear single storey outrigger which is itself at a higher ground level than the nearby dwellings to the rear of the site on Belmont Street. It would, according to the Council, only be about 12 metres from the nearest of these dwellings and would be seen extending across the appeal premises, particularly in views from numbers 3, 5 and 7 Belmont Street. The proposed fume extraction flue would extend above eaves height. However, both the fence and flue would be set back from the lip of the roof on which they would be sited and below the main ridge line of the existing building within the appeal site. I do not consider that they would have an unacceptable impact on the outlook from these nearby dwellings or their gardens.
22. The noise attenuation fence referred to earlier would also effectively prevent occupiers of nearby dwellings from suffering any material loss of privacy as a result of the usage of the rear outdoor seating area. The fencing and other alterations would not, having regard to their height and position, lead to any

substantial loss of light for occupiers of any neighbouring dwelling. A condition can also be imposed to ensure that odours would be adequately controlled.

23. In conclusion, I consider that the proposed development would not cause material harm to the living conditions of occupiers of nearby dwellings. It would not conflict with relevant provisions in policies DES7 or EN17 of the CSUDP, the 'Shaping Salford' Supplementary Planning Document 2008 or the Framework related to this matter.

Other Considerations

24. Whilst the proposed use would, like other facilities in the centre, lack any on-site car parking provision, the Council has acknowledged that public car parking and good public transport links are available in the area. The Council's charging policy for use of public parking in the area is not a matter to which I can give substantive weight.
25. Although the proposal would lead to the loss of one dwelling this was vacant at the time of my visit and there is no assurance that, even if the appeal is dismissed this would be brought back into use as a dwelling. The extension proposed would not be of sufficient scale to cause over-development of the site.
26. There is no substantive evidence before me to show that the proposal would lead to an increase in anti-social behaviour or litter in the area and no obligation on the appellant to demonstrate a need for the proposed uses. The question of whether the appellant has a right of access to an alleyway to the rear of the property is a private land ownership issue and is therefore not for me to consider.

Conditions

27. My list of conditions is based upon the draft list submitted by the Council albeit with some revisions to ensure the conditions meet the tests set out in paragraph 206 of the Framework.
28. My condition 1 sets the standard time limit within which development must commence. My condition 2 identifies the approved plans in the interests of certainty. My condition 3 covering the colour treatment of the kitchen extract flue is required in the interests of ensuring a satisfactory appearance. My conditions 4 to 10 inclusive covering hours of use of the premises and the external balcony, noise limits, implementation of noise mitigation measures, control of amplified noise and fume extraction equipment are all needed to protect the living conditions of occupiers of nearby dwellings.
29. I have excluded the Council's suggested condition 4, which sought to prevent the use from commencing until the residential use of the first floor flat at number 161 has ceased. This is because it is not clear that the appellant has full ownership control over this flat which is outside the application site, as a result of which it is not clear that this suggested condition is reasonable or enforceable.

Conclusions

30. I have found that the proposed development would not cause material harm to the viability or vitality of the Monton neighbourhood centre. I have also found

that, subject to appropriate conditions being imposed, it would not cause unacceptable effects on the living conditions of occupiers of nearby dwellings. It would accord with the development plan and constitute sustainable development in the terms of the Framework.

31. For the reasons given above I conclude that the appeal should be allowed.

Jonathan Clarke

INSPECTOR

ANNEX 1

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 approved plans listed in schedule A.
- 3) The proposed kitchen extract flue shown on the approved plans shall be powder coated black, or an alternative colour to be agreed in writing beforehand by the local planning authority, before being erected and shall remain in this form thereafter.
- 4) The uses hereby permitted shall only take place during the period from 0830 until midnight on any day.
- 5) Notwithstanding condition 4, the external rear balcony area shown on the approved plans shall only be used during the period from 1200 (midday) until 2100 on any day.
- 6) The rating level (LAeq,T) from all fixed plant and machinery associated with the development, when operating simultaneously, shall not exceed the background noise level (LA90,T) by more than -5 dB at any time when measured at any boundary of the nearest noise sensitive premises. Noise measurements and assessments shall be carried out according to BS 4142:2014 'Methods for rating and assessing industrial and commercial sound'. 'T' refers to any 1 hour period between 0700 and midnight and any 15 minute period between 2300 and midnight.
- 7) The proposed development shall not be brought into use until the mitigation measures identified in the 'Proposed Bar & Restaurant 159 Monton Road, Salford - Noise Assessment Report for S&D Leisure Ltd August 2016' have been implemented in full and a site completion report has been submitted to and approved in writing by the local planning authority. The site completion report must demonstrate that the works have been completed in accordance with details previously agreed by the local planning authority. The approved mitigation measures shall thereafter be retained in full.
- 8) No amplified music shall be played outside the building premises at any time.
- 9) The uses hereby permitted shall not commence until an acoustic fence has been constructed along the boundaries of the proposed rear balcony in accordance with details which have previously been submitted to and approved in writing by the local planning authority. The acoustic fencing shall thereafter be retained in its approved form at all times that the balcony is in use.
- 10) The uses hereby permitted shall not commence until equipment to control the emission of fumes and smell from the premises has been installed in accordance with a scheme which has been previously submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and

maintained in accordance with that approval and retained for as long as the use continues.

SCHEDULE A – LIST OF APPROVED PLANS REFERRED TO IN CONDITION 2

1. Site Location Plan (ref: 3645-5000-B)
2. Site Plan (ref: 3645-5001-B)
3. Existing Floor Plans and Elevations (ref: 3645-0001-F)
4. Proposed Ground Floor and Basement Plan (ref: 3645-2000-H)
5. Proposed First Floor Plan (ref: 3645-2001-H)
6. Proposed Front Elevation (ref: 3645-3000-H)
7. Proposed Rear and Gable Elevations (ref: 3645-3001-C)
8. Proposed Gable Elevation B (ref: 3645-3002-A)
9. Proposed Section A-A (ref: 3645-4000-J)
10. Proposed Section B-B and C-C (ref: 3645-4001-J)