
Appeal Decision

Site visit made on 24 April 2017

by Sarah Colebourne MA, MRTPI

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

Decision date: 24th May 2017

Appeal Ref: APP/P4225/W/16/3161399

40 Nowell Road, Middleton, Rochdale, M24 6FL

- 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 and Mrs Odedra against the decision of Rochdale Metropolitan Borough Council.
 - The application Ref 16/00816/FUL, dated 7 July 2016, was refused by notice dated 1 September 2016.
 - The development proposed is a change of use of vacant former off-licence (Use Class A1) to Hot Food Takeaway (Use Class A5).
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Decision

1. The appeal is dismissed.

Procedural matter

2. I have noted that the appellants have amended the hours of opening to 5pm to 10pm daily and as this does not prejudice the interests of any parties, I have considered the appeal on this basis.

Main Issues

3. The main issues are the effect of the proposed development on:-
 - the vitality and viability of the Nowell Road Local Centre;
 - the living conditions of neighbouring occupiers with regard to noise.

Reasons

Vitality and viability

4. The Council's Core Strategy (CS) was adopted in October 2016 (after the date of the application decision but prior to the submission of the appellant's final comments). Consequently policy in S/10 in the Unitary Development Plan (UDP) is no longer relevant but some other policies are 'saved'.
5. The appeal site is located in the Nowell Road Local Centre as defined in the Rochdale Unitary Development Plan (UDP). Saved Policy S/6 allows a wide range of uses within local centres and supports the use of hot food takeaways of a scale and character appropriate to the size, role and function of the centre. Policy E1 of the CS seeks to support local shopping needs in existing local centres where there is the opportunity for appropriate development. It says

that existing local centres will be retained but that the policy and boundaries will be reviewed in the Allocations DPD.

6. The Council's 'Guidelines & Standards for Hot Food Takeaway Uses Supplementary Planning Document' (SPD) (2015) remains a material consideration in this appeal and is supported by saved policies in the UDP and the new policies in the CS. Whilst it recognises that hot food takeaways offer a popular service to the local community and have a role to play in contributing to the vitality and viability of local centres, its objectives in seeking to ensure that local centres are balanced and promote healthy eating habits accord with the National Planning Policy Framework (the Framework) which, whilst supporting business growth, allows local planning authorities to define their own policies for centres. To achieve this, policy HF3 in the SPD requires that no more than 20% of the total ground floor units within an area of a defined centre are hot food takeaways.
7. I saw at my visit that the centre comprises six units, of which one is already in A5 use (The Hollins Fish Bar). If the appeal were allowed, the units in A5 use would therefore amount to more than 20%. One retail unit is vacant as is the appeal premises. The other retail units are occupied by a hair salon and a convenience store. One of the units (The Hollin Estate Management Board office) is a non-retail use. At the time of my visit during mid-afternoon on a weekday, only the convenience store appeared to be open. It is the appellant's intention to provide premises that will operate longer opening hours than the Fish Bar but those hours would still be considerably less than might be expected from a retail use and would result in lower levels of footfall during the daytime. Given the small size of the centre, the retail offer of the centre would be diminished and it would not be able to offer as wide a range of goods or services for local residents' daily shopping needs.
8. The proposal would increase the range of hot food available locally and is supported by a petition signed by a large number of local residents. I have also taken into account that two new full-time and two part-time jobs would be created. It is also suggested that the proposed use would provide the opportunity for linked trips to other units within the centre. However, I am not persuaded, despite the number of local residents who are in support, that the jobs that would be created, the footfall from this use or the potential for linked trips would be greater than from a retail use. Neither am I persuaded that the additional choice of food that would be offered, which includes pizza, kebabs and Indian food and healthy food options, is of sufficient benefit to outweigh the harm I have identified.
9. The appeal unit has been vacant since December 2015. However, I have no evidence to show that it has been marketed for retail use unsuccessfully or that a retail use would be unviable.
10. Whilst the Council's SPD permits some degree of flexibility, this case differs significantly from the other case referred to by the appellant in that there is not already an over-concentration of such uses in this local centre. In this case, the SPD is a material consideration and there are no other compelling considerations that would justify an exception to be made.
11. I conclude, therefore, that the proposal would result in an unacceptable concentration of takeaway uses which would be harmful to the vitality and viability of the existing retail function in the Nowell Road local centre and would

lead to a reduction in the range of local shopping opportunities. It would conflict with development plan policies E1 in the CS and S/6 in the UDP as well with the Council's SPD and national policy in the Framework.

Living conditions

12. UDP policy S/6 also seeks to ensure that proposals do not harm residential amenity and accords with the Framework in this respect. The Council has raised no objection in terms of noise from potential customers. Given that residents living above a local centre might reasonably expect some degree of noise and disturbance and that the previous off-licence opened until 10pm, I agree that there would not be any significant harm in this respect, subject to a condition restricting opening hours if all other matters were acceptable.
13. The application proposes an extract and ventilation system to deal with cooking odours and fumes. There are residential flats above the appeal unit and other units in the centre. The Council's Environmental Health section is satisfied with the proposed measures for odour control but is concerned that no noise figures have been provided. However, if all other matters were acceptable then a condition could be applied to adequately control such noise that would meet the tests in the Planning Practice Guidance. Therefore, I conclude that the proposed development would accord with UDP policy S/6 in this respect and would not harm the living conditions of neighbouring residents.

Conclusion

14. Notwithstanding my findings regarding living conditions, my findings in regard to vitality and viability are significant and overriding. I conclude then that the proposed development would not accord with the development plan and the Framework as a whole and would not constitute sustainable development. I have taken into account all other matters raised but none is sufficient to alter the outcome of my findings. The appeal should be dismissed.

Sarah Colebourne

Inspector