
Appeal Decision

Site visit made on 22 May 2017

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 13 June 2017

Appeal Ref: APP/B4215/W/17/3171718
296 Portway, Manchester M22 1TE

- 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 Ms Keeley-Marie Wright against the decision of Manchester City Council.
 - The application Ref 113401/FO/2016, dated 15 July 2016, was refused by notice dated 19 December 2016.
 - The development proposed is the change of use from shop (A1) to hot food takeaway (A5), new shop front, extract flue.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The *Hot Food Takeaways Supplementary Planning Document* (SPD) was adopted in March 2017, after the determination of the planning application. In the light of this I have sought the views of the appellant regarding this. I have determined the appeal on the basis of the national and local policies as adopted at the present time.
3. The appellant has raised concerns regarding the Council's handling of the case, and in particular what were considered to be inefficiencies in the decision making process. This is a matter that would need to be taken up with the Council in the first instance, and in determining the appeal I have only had regard to the planning merits of the case.

Main Issue

4. The main issue in the appeal is the effect of the proposed development on the vitality and viability of the centre.

Reasons

5. The appeal property is a vacant retail unit in a small centre of 7 modern purpose built commercial units. It is one of a number of similar small centres along Portway which provide for the day to day needs of the residents of the surrounding area.
 6. Policy C10 of the *Manchester Core Strategy Development Plan Document* (adopted July 2012) (MCS) indicates new developments that support the evening economy should contribute to the vitality of the centre and that in small centres proposals for commercial uses which are busy in the evening
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need to ensure the character and amenity of the surrounding area is protected. Policy DC10 of the *Unitary Development Plan for the City of Manchester (adopted July 1995)* (UDP) directs development for the sale of food and drink towards the City Centre, industrial and commercial areas, in shopping centres and, at ground floor level, in local shopping parades of more than 8 shops or offices.

7. More detailed guidance on hot food takeaways is provided in the SPD. Policy 1 of this indicates that in order to protect the vitality and viability of a centre, and the health of the population, applications will not normally be allowed if the proposal would lead to the proportion of hot food takeaway frontages being more than 10% of non-residential ground floor frontages. However, in centres of less than 20 units, where the vacancy levels are more than 25%, and there is evidence of no demand for other town centre uses, then proposals for hot food takeaways may be considered favourably even if this would increase the proportion of such uses to above 10% of ground floor frontages.
8. At present the other 6 units in the centre are all occupied, and 2 of the 7 units are hot food takeaways. The proposal would mean that 43% of the units would be in an A5 use. As such the proposal would be contrary to the requirements of this policy. As a consequence the appeal scheme would contribute to an over provision of takeaways in the centre, which would be detrimental to the overall balance of uses and the vitality and viability of the centre, as well as being contrary to the aim of moving towards a healthier city.
9. The appellant has argued that as it is proposed that the unit would be open during the day it would contribute to the day time economy of the centre and would not be detrimental to the visual amenity of the centre. Be that as it may, whilst that may be the intention in the short term, I consider that a condition ensuring day time opening of the unit would not be reasonable, and so this cannot be guaranteed, especially if the operator were to change.
10. It has been suggested that as the previous retail use in the unit failed, it is likely that if the appeal is dismissed, the unit will remain empty. However, I have not been provided with any evidence regarding how long the unit has been empty, and observed that vacancy levels in the various small centres in the area was generally low. Moreover, the centre appeared well frequented. Therefore, at this stage, I am not persuaded that this is the only viable use of the premises.
11. Consequently, I consider the proposal would have an adverse impact on the vitality and viability of the centre. It would therefore conflict with Policy C10 of the MCS and Policy DC26 of the UDP outlined above. It would also be contrary to Policies SP1, and DM1 of the MCS, which, amongst other things, seek to ensure that developments make a positive contribution to neighbourhoods of choice, and have regard to health.
12. In support of the appeal my attention has been drawn to the appeal¹ on the adjacent premises in which the Inspector concluded that the proposal would not materially conflict with policies in the MCS or UDP. However, this decision predated the adoption of the SPD, which in support of these policies, provided more detailed guidance on how proposals for hot food takeaways are to be assessed. It has also been highlighted that some of the other local centres

¹ Appeal Reference APP/B4215/A/13/2203926

have as many as 3 hot food takeaways. I do not know the circumstances that led to any of these being approved, but observed that as these uses are already operating they predate the adoption of the SPD, which alters the basis for decision making.

Other Matters

13. The Council have not raised any objection to the proposed new shop front, with the extraction flue at the rear, or with regard to parking, or the waste management strategy. Nothing I have seen or read, leads me to consider that in these regards the proposal would be detrimental to the character and appearance of the area, residential amenity, or highway safety. Moreover, a condition to control opening hours would be able to prevent unacceptable harm by way of additional noise and disturbance. However, an absence of harm in respect of these matters is a neutral factor.
14. The appeal scheme would have benefit the local economy and would create a small number employment opportunities. These are matters that favour the scheme but they do not outweigh the harm I have identified.
15. It has been highlighted that changes in permitted development rights allow retail units to be changed to various uses which may impact on the vitality and viability of a centre without the need for planning permission. Be that as it may, these rights do not apply to the appeal scheme.

Conclusion

16. For the reasons set out above, I conclude the appeal should be dismissed.

Alison Partington

INSPCETOR