



Appeal Decision

Site visit made on 25 July 2017

by V Lucas-Gosnold LLB MCD MRTPI

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

Decision date: 18th August 2017

Appeal Ref: APP/M2372/W/17/3175349

432 Preston Old Road, Blackburn, BB2 5LP

- 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 Desai against the decision of Blackburn with Darwen Borough Council.
 - The application Ref 10/16/1245, dated 14 November 2016, was refused by notice dated 7 April 2017.
 - The development proposed is change of use of the residential dwelling (C3) to Hot food takeaway (A5).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposal on the vitality and viability of the Mill Hill District Centre; and
 - The effect of the proposal on the living conditions of neighbouring occupants, with particular regard to disturbance.

Reasons

Vitality and viability of Mill Hill

3. Policy 29 of the Council's Local Plan Part 2 Site Allocations and Development Management Policies (Adopted December 2015) (LP) seeks to ensure that town centres remain the focus for new retail growth and main town centre uses. Part 2 ii) of the policy requires proposals to demonstrate that no sequentially preferable site is available or likely to become so within a reasonable timescale; and that in discounting any sequentially preferable sites applicants have applied a sufficiently flexible approach. For the purposes of the Development Plan, the appeal site is outside of the Mill Hill District Centre.
4. A Sequential Assessment Report was submitted with the original application. The report identifies that the appeal property is situated within a row of terraced buildings, twelve of which are in commercial use. No. 432 was for sale for 18 months prior to be purchased by the appellant. Mill Hill centre is approximately 1 mile from the appeal property.

5. The report identifies three properties for sale and two to let within the centre. The report concludes that these properties are unsuitable for reasons including large accommodation and excessive competition, the lease may contain covenants for A1 use only, flue would adversely affect streetscene, adjacent to a chippy and unsuitable for A5 due to smells.
6. However other than the brief reasons given, no detailed analysis indicates how these conclusions were reached. As a consequence, the assessment is not entirely convincing. For example whilst a lease 'may' contain a covenant for A1 use only there is nothing to indicate whether or not discussions have taken place with the owner of the property concerned to verify this fact. It is also not clear whether the conclusion that a flue would adversely affect the streetscene was reached following discussions with the Council or indeed whether an alternative design or location for the flue could overcome the concern. Therefore whilst I appreciate that the appellant owns the appeal building, it may be the case that upon more detailed consideration, other more sequentially preferable sites may prove suitable for the business. This is particularly so as the wording of policy 29 of the LP requires a flexible approach to be applied when considering sequentially preferable sites.
7. The report also refers to a number of small shopping parades within Cherry Tree/Feniscliffe and Cherry Tree/Feniscowles. There were no available units at the time the report was undertaken.
8. Policy 30 of the LP sets out the approach to managing specific uses within town centres and part i) is permissive of hot food takeaways; only exceptionally in locations including on the main radial approach to Blackburn. However, the appeal site is approximately 2.5 miles from Blackburn. The appellant has also referred to other development plan policies. These include policy CS12 of the Council's Core Strategy (Adopted April 2010) which defines the retail hierarchy and includes small parades of shops within the urban area. Part 4 of the policy does state that retail development outside Town Centres or Neighbourhood Centres will be permitted where it is of a scale and kind which meets local needs only. However the policy goes on to state that this will be where it is demonstrated that there will be no unacceptable impact on existing centres.
9. Whilst I appreciate that the appellant is the owner of No. 432, there is little information before me to demonstrate specific reasons as to why the proposed development should be permitted in this location. Although the appeal proposal is small scale in nature, allowing the development of new retail units outside of designated centres when there may be more sequentially preferable sites available would undermine the Council's overall strategy to ensure that designated centres remain the focus for new retail growth.
10. The submitted Sequential Assessment Report does not consider the effect of the proposal on the vitality and viability of Mill Hill in detail. However, the availability of five units within the centre at the time the report was undertaken indicates a decline in the health of the centre. Observations that I undertook during the site visit whilst walking around Mill Hill would support that. Hot food takeaways by their nature tend to draw in customers from the local area and in the case of the appeal proposal there is the risk that this would be to the detriment of the vitality and viability of the Mill Hill District Centre.
11. Whilst I acknowledge that there are existing businesses operating from the neighbouring properties, including hot food takeaways, there is little information before me as to the planning history for these businesses. Given that the LP was

adopted relevantly recently it is likely that the local policy framework has changed since permission for those businesses was granted and I must determine this appeal with regard to the up to date policies.

12. Accordingly, I conclude on this main issue that the development proposed would be harmful to the vitality and viability of the Mill Hill District Centre. The proposal would therefore conflict with policies 29 and 30 of the Council's LP (as set out above).

Living conditions

13. The appeal property is situated on a busy road and is the only remaining building within residential use in the existing row of commercial units. The proposal would result in three hot food takeaways within the parade, as there are two existing businesses operating there already. The Council have expressed concerns that this would leave to an over concentration of such uses. There are currently twelve commercial units within the parade in total. I have not been made aware of a specific definition of 'over concentration' in policy terms. However, it seems to me that three hot food takeaways units would be a small enough percentage of the overall total that they would be unlikely to dominate the area such that it would have a harmful affect overall. The other units are also in a variety of uses such that sufficient diversity and consumer choice would remain if the appeal were to succeed.
14. Given the busy nature of the road, the fact that there are already two hot food takeaways operating and the existing commercial units within the parade, I consider it unlikely that future customers visiting the proposed use would generate additional activity over and above the existing situation such that it would be significantly harmful to the living conditions of neighbouring occupants. As acknowledged in the Council officer's report, concerns as to odour or cooking smells could be adequately dealt with via conditions to ensure appropriate equipment and ventilation systems are installed.
15. Accordingly, I conclude on this main issue that the proposal would not be harmful to the living conditions of neighbouring occupants, with particular regard to disturbance. The proposal would therefore not conflict with policy 9 of the LP which seeks to ensure that new development secures a satisfactory level of amenity.

Other Matters

16. Based on the information before me and subject to relevant conditions, the proposal would not be harmful in terms of design, highways or health. However these are neutral matters that do not way in favour of the proposal.

Conclusion

17. Whilst I have found that the proposal would not be harmful to the living conditions of neighbouring occupants this is a neutral matter that does not outweigh the harm that I have identified that would occur to the vitality and viability of the Mill Hill District Centre as a consequence of the proposal.
18. For the reasons given above, I conclude that the appeal should be dismissed.

V Lucas-Gosnold

INSPECTOR