



Appeal Decision

Site visit made on 17 June 2019

by Gary Deane BSc (Hons) DipTP MRTPI

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

Decision date: 09 July 2019

Appeal Ref: APP/B4215/W/19/3226481

Huntsman Inn, 130 Wilmslow Road, Manchester M14 5AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Saheeb Hussain against the decision of Manchester City Council.
 - The application Ref 120947/FO/2018, dated 4 September 2018, was approved on 17 December 2018 and planning permission was granted subject to conditions.
 - The development permitted is the change of use from public house (Class A1) to restaurant (Class A3) together with the erection of two storey extension to rear and elevational alterations including front canopy.
 - The condition in dispute is No 13, which states that: No part of the premises shall be used for the smoking of shisha at any time and none of the areas outside the building, including to the rear, shall be used as an external seating area or for use by patrons of the premises.
 - The reason given for the condition is: For the avoidance of doubt and to safeguard the amenities of the occupiers of nearby properties, pursuant to saved policies DC10 and DC26 of the Unitary Development Plan and policies SP1 and DM1 of the Core Strategy.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The name of the appellant is given as Mrs Saheeb Hussain on the planning appeal form whereas the name that appears on the application form is Mr Saheeb Hussain. As the right of appeal rests solely with the original applicant, I have proceeded on the basis that Mr Saheeb Hussain is the appellant.

Background

3. The Council has recently granted planning permission to alter, extend and convert the Huntsman Inn to a restaurant. Condition 13 of that permission prohibits the smoking of shisha and the use of the space outside the building as an external seating area or for patrons of the premises. The appellant seeks to delete this condition. Although the material to be smoked in a pipe is variously described in the submitted evidence as sisha, sheesha and shisha, I shall refer to it as shisha, as it appears in condition No 13.

Main Issue

4. The main issue is the effect of removing the disputed condition on the living conditions of the occupiers of nearby residential properties with particular regard to smells and potential noise and general disturbance.

Reasons

Smoking of shisha

5. Removing the disputed condition would allow the smoking of shisha on the appeal premises in planning terms, which the appellant states is a material factor to the operation of the business. Given the nature of the activity, which would necessitate the use of an open or semi-open area, and the layout of the approved scheme, the smoking of shisha would most likely take place towards the rearmost part of the site, as the appellant suggests.
6. In this position, some smells from the smoking of shisha could drift towards nearby residential properties, the nearest of which include the terrace houses on Claremont Road just a short distance to the northwest. During summer months, the effects of odour could be even more pronounced, as the windows of these and other dwellings are more likely to be open to allow ventilation. While the windows of the Claremont Road properties do not directly face the site, the smells could still be regarded as unpleasant to some occupiers. Having regard to the close proximity of these residential properties to the site, I consider that the smoking of shisha from the appeal premises would materially harm local residents' reasonable enjoyment of their homes.
7. The appellant states that the supporting Extraction Assessment would allow for the careful control of any odours. However, the appellant's Assessment appears to be directed mainly towards the extraction of any fumes, vapours and odours from within the premises that would typically be associated with the preparation and cooking of food. Few details have been provided to clearly show exactly how the odours from smoking shisha in an open or semi-open area would be dealt with.
8. The appellant notes that the Council's Environmental Health Section did not raise concern about the smoking of shisha. However, the description of development makes no explicit reference to this activity nor is it made clear on the plans or in the accompanying details. Therefore, it is not surprising that the consultation reply from the Council's Environmental Health Section was silent on this matter.
9. It may be that shisha bars and the smoking of shisha as an ancillary activity to restaurants and cafes takes place elsewhere in the local area. However, I am unaware of the details of these examples, some of which the Council states operate from unauthorised premises and are ill suited for this use. That the smoking of shisha occurs within the wider area does not persuade me that the proposal should therefore be regarded as acceptable.
10. On this first matter, I conclude that the implementation of the approved scheme without condition 13 would materially harm the living conditions of the occupiers of nearby residential properties.

Use of the outdoor space

11. From my inspection of the plans, there would sufficient space within the site just beyond the enlarged building for people to gather outside and for chairs and tables to be introduced that would provide an external seating area. While the drawings do not illustrate or denote either of these possibilities, the outside area could be used for these purposes especially if the rear doors of the

enlarged building were left open and given that chairs and tables can be easily moveable items.

12. Either option would increase the potential for people to congregate outside the building and cause additional noise and general disturbance to local residents by, for instance, talking loudly or shouting. Given the close proximity of residential properties along Claremont Road in particular, it seems likely to me that, whatever the efforts of the appellant, there is a reasonable prospect of a significant nuisance arising from the noise and general activity of people gathered outside of the extended building.
13. I recognise that the site is within Rusholme District Centre, which is a popular destination especially for eating and drinking. Along Wilmslow Road, which is a busy highway, there are several parades of retail, commercial, retail and food and drink outlets many of which I saw have opening hours that extend into the late evening. People that choose to reside in busy urban locations such as this must expect that they will be exposed to at least some noise and a certain amount of disturbance from the activities of others. Even so, residential occupiers are still entitled to a reasonable standard of amenity especially later in the evening when they are more likely to be at home and reasonably expect quieter conditions within which to relax and sleep.
14. The question then arises whether a balance can be struck that would limit the use of the space outside the building by, for instance, restricting the number of people using this area or the hours in which they may do so. However, noise and disturbance through inconsiderate behaviour could still occur. It might also be difficult to enforce these restrictions if the outdoor area is not readily visible from beyond the site. Reducing the opening hours of the approved restaurant as specified in condition 5 of the planning permission could be regarded as unreasonable because it might unduly hinder the business operation. Condition 10 of the planning permission requires details of sound proofing to be provided although these relate to the acoustic treatment of the building itself. Such measures are unlikely to provide adequate mitigation if the source of significant noise and disturbance is from outside the building. I also note that the appellant's Noise Impact Assessment appears to be directed towards sounds generated from within rather than outside of the building.

Conclusion

15. Overall, I consider that the disputed condition meets the tests set out in the Framework in that it is relevant to planning and to the development permitted. It is also enforceable, precise and reasonable in all other respects. Its removal, as proposed, would cause material harm to the living conditions of the occupiers of nearby residential properties. As such, the appeal scheme conflicts with saved Policies DC10 and DC26 of the Unitary Development Plan for the City of Manchester and Policies SP 1 and DM 1 of the Council's Core Strategy insofar as they aim to safeguard residential amenity and wellbeing.
16. For the reasons set out above, I conclude that the appeal should be dismissed.

Gary Deane

INSPECTOR