



Appeal Decision

Site visit made on 17 June 2019

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2019

Appeal Ref: APP/H4315/W/19/3225883

1-3 Bridge Street, Newton le Willows, St Helens WA12 9BE

- 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 Delovan Salah against the decision of St Helens Metropolitan Borough Council.
 - The application Ref P/2018/0718/FUL, dated 13 September 2018, was refused by notice dated 9 January 2019.
 - The development proposed is described as the change of use from A1 (misc) to A3 (fast food) (with some elements of A5).
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Procedural matters

1. An application for costs has been made by Mr Delovan Salah against the Council. This application will be the subject of a separate decision.
2. Notwithstanding the description of development set out above, which is taken from the application form lodged with the Council, it is clear from the plans and accompanying details that the development sought comprises the change of use from a shop (Class A1) to a hot food takeaway (Class A5) along with the installation of an external flue and elevational changes to the host building. The Council dealt with the proposal on that basis and so shall I.

Decision

3. The appeal is allowed and planning permission is granted for the change of use from a shop (Class A1) to a hot food takeaway (Class A5) along with the installation of an external flue and elevational changes at 1-3 Bridge Street, Newton le Willows, St Helens WA12 9BE in accordance with the terms of the application Ref P/2018/0718/FUL, dated 13 September 2018, subject to the conditions set out in the schedule to this decision.

Main issues

4. The main issues are the effect of the proposed development firstly, on the character, appearance and vitality of Earlestown Town Centre; and secondly, on the living conditions of the occupiers of residential accommodation close to the site with particular regard to potential noise and general disturbance.

Reasons

5. The site comprises a vacant shop unit within Earlestown Town Centre that has frontages to both Market Street and Bridge Street within Earlestown Town Centre (ETC). It occupies a prominent position adjacent to a busy junction around which are a range of uses that include two hot food takeaways, a public

house, a barbers and, in the case of Nos 1-3, residential accommodation above ground floor level. The proposal is primarily to change the use of the appeal premises from a shop to a hot food takeaway.

Character, appearance and vitality of Earlestown Town Centre

6. If the proposal were to proceed, the proportion of hot food takeaways would comfortably exceed the maximum 5% of all units within ETC that is identified in Implementation Point 1 of the Council's Supplementary Planning Document, *Hot Food Takeaways* (SPD). That finding reflects the survey results of the health check of the ETC that was carried out in 2016 as part of a wider Retail and Leisure Study. The appellant's updated assessment undertaken more recently equally shows that the 5% threshold is already exceeded. According to the Council, the proportion of Class A1 (shops) uses in a primary retail frontage would also fall below the minimum threshold of 75% that is identified in the Council's SPD, which the appellant strongly contests. Either way, it is necessary to consider the effects of the proposal on the character, appearance and the health of ETC.
7. My overall impression of ETC from the early to mid afternoon site visit was of a reasonably busy place with a reasonable mix of non-food and food shops, with a large TESCO store and a small number of national operators alongside local retailers, notably grouped along Market Street and Bridge Street. There was also a good range of non-retail uses, including banks, cafes, an estate agent and accountants. While I saw a number of vacant units, these were generally spread out across the town centre. Pedestrian flows along Market Street and Bridge Street were steady with some car parks and on street parking well used. Given the extensive road links, ETC is highly accessible by car and I observed that several bus services operate to and from the centre. There is also a railway station within convenient walking distance of the site and the central area of Earlestown. While obviously a very limited snapshot, ETC appeared to me to be in reasonably good health and it seemed to operate well.
8. These findings are broadly consistent with the health check appraisal of ETC in 2016, which records a wide range of shops and services in the centre that were well used by shoppers and visitors. While that assessment acknowledges a relatively high proportion of hot food takeaways in the town centre, no specific problems for the town centre are identified as a result.
9. The impact of the appeal scheme would be particularly pronounced given that 2 other hot food takeaways and a public house are clustered around the same junction as Nos 1-3. This arrangement would accentuate the presence of food and drink outlets within the local street scene and in this part of ETC. The SPD warns that such clusters can lead to dead frontages during daytime hours. However, the opening hours sought would be from 1130 or 1200 and the proposed alterations to the shop front would, to my mind, improve the overall appearance of the building. The Council's Conservation and Design Officer raises no objection to the proposal subject to some details of the new entrance door, which could be covered by a condition.
10. By bringing back into active use a vacant unit, the proposal would avoid the potentially damaging effects of maintaining a dead frontage in a gateway location in the ETC. The appeal scheme would also create jobs and offer the opportunity of secondary spending by customers in other nearby shops as well as boosting footfall. Taken together, I consider that these aspects of the

proposal would positively contribute to the character and appearance of the Earlestown Conservation Area (CA) within which the site falls. As such, the mixed character and appearance of the CA would be preserved.

11. I have noted the concerns of several interested parties regarding the number of hot food takeaways within ETC. However, on the evidence before me and from my own observations, I am unable to conclude that the restrictions on the number and proportion of such uses and a breach of the 5% and 75% thresholds identified in the Council's SPD are sufficient in themselves to justify withholding planning permission. I acknowledge that change to the character and feel of a town centre can result incrementally from small-scale decisions consistently taken over time. However, allowing the proposal would not significantly alter the mixed character of the town centre and there would be no significant change to the range of services available to the local community or to the centre's retail function.
12. The Council has also referred to a conflict with Policy E2 of the St Helens Unitary Development Plan (UDP), which states that non-retail uses will not normally be allowed within the defined Prime Shopping Area (PSA). Even if the appeal premises were to be regarded as part of the PSA, which is contested by the appellant, the inclusion of 'normally' in this policy indicates that exceptions can be justified. Given my findings set out above, that particular circumstance would apply here.
13. On the first main issue, I conclude that the proposal would not detract from the character, appearance or vitality of ETC. Accordingly, it does not materially conflict with Policy CP 1 of the St Helens Local Plan Core Strategy (CS) or the Council's SPD. ^[13] These policies aim to ensure that development maintains or enhances the overall character and appearance of the local environment. In reaching this conclusion, I have taken into account the appellant's view that the Council's SPD is dated and that parts are inconsistent with the National Planning Policy Framework.

Living conditions

14. The new use would operate until 2330 hours on most days. Consequently, it is likely to generate some noise and activity, mainly from customers and their vehicles, at a time when most people are likely to be at home and can reasonably expect quieter conditions within which to relax and enjoy their properties. In this case, the residents most likely to be affected are those within the rooms above the appeal premises that the main parties say are part of a House in Multiple Occupation. Other buildings close to the site may also include residential accommodation.
15. Concerns have been expressed about noise that might be generated by the operation of the proposed use. However, the Council's Scientific Officer states that no additional sound insulation is required to protect the amenity of the residents above the premises. It is, however, also possible that, whatever the efforts of the appellant, customers might gather outside the appeal premises and shout or talk loudly or park their vehicles in ways that cause a nuisance to others. As the area around the site is pedestrianised and some nearby on-street parking is restricted these concerns are not unfounded.
16. However, the Nos 1-3 stand next to a busy road junction and among a range of uses with some extending well into the late evening if not longer. It is inevitable that the sounds associated with town centre activities and passing

traffic would therefore be a normal experience for many local residents. As there are hot food takeaways and a pub near to the site, the problems of noise and disturbance could occur in any event. Furthermore, the use of the appeal premises as a shop would, if recommenced, would generate some activity such as the general coming and going of customers, staff and service deliveries. While I sympathise with the concerns of objectors, I am not persuaded that the proposal would cause or exacerbate the problems to which they refer.

17. On the second main issue, I conclude that the proposed development would not cause significant harm to the living conditions of the occupiers of nearby residential accommodation. As such, it does not conflict with CS Policy CP 1, saved UDP Policy RET4 or the Council's SPD insofar as they aim to safeguard residential amenity.

Other matters

18. With regard to odour, the appellant has submitted details of the proposed extraction system, which the Council's Environmental Health Division finds acceptable. There is no firm evidence to suggest that the proposed extraction system that is operated and maintained in accordance with the manufacturer's instructions would not be sufficient to control odour. An appropriately worded condition would provide an adequate safeguard in this case.
19. For those customers that do arrive by car, the local area appears to be well served by parking, albeit on-street parking is restricted on some streets close to the site. Even so, there are parking bays in the vicinity of the site for delivery and service vehicles. There is nothing before me to indicate consistently high levels of parking would result from the proposal or that visitors would park their vehicles inconsiderately or illegally to the extent that highway safety or traffic flows would be prejudiced. In addition, the Council's Senior Transport Officer does not object to the proposal. I have taken into account all other matters raised including the effects of the proposal on health and well being although none are sufficient to justify refusing permission.

Conditions

20. In addition to the standard time limit condition, it is necessary to impose a condition that requires the development to be carried out in accordance with the approved plans for certainty. To safeguard the living conditions of occupiers of nearby residential properties a condition is imposed to restrict the opening hours of the hot food takeaway to those sought by the appellant. For the same reason, a condition is attached to require that the fume extraction equipment is installed with anti-vibration mountings and is in place before the use commences. To ensure that the appearance of the finished building is satisfactory, it is necessary to require details relating to the colour of the new door facing Bridge Street. A condition to this effect is therefore imposed. Where appropriate, I have amended the Council's suggested conditions for clarity and to more closely reflect national guidance.

Conditions

21. For the reasons set out above, I conclude that the appeal should be allowed.

Gary Deane

INSPECTOR

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Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: refs P 13362 Sht 1, P 13362 Sht 2, P 13362 Sht 3 and P 13362, which shows the site edged red.
- 3) The use hereby permitted shall not be open for customers outside the hours of 1130 to 2330, Monday to Saturday, and 1200 to 2200 on Sundays, Bank Holidays and Public Holidays.
- 4) Prior to the first use of the development hereby permitted, the air extraction and filtration system as described in the scheme set out in the Mechanical Fume Extraction Specification with associated drawings and diagrams, shall be installed and retained thereafter without variation, unless otherwise agreed in writing by the Local Planning Authority.
- 5) Prior to the extraction system being first brought into use proprietary anti vibration mountings shall be installed to isolate plant from fixed structures to reduce the transmission of vibration to noise sensitive properties located above the approved use. The extract ventilation system shall be installed and operated in lines with manufactures instructions and shall be maintained regularly to control vibration and mechanical noise associated with the use.
- 6) Notwithstanding the details shown on the approved plans, the colour of the door on the elevation facing Bridge Street shall be submitted to and agreed in writing with the local planning authority before that door is installed. The door shall be finished in the agreed colour and retained as such thereafter.