



Appeal Decision

Site visit made on 15 October 2019

by A McCormack BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd October 2019

Appeal Ref: APP/N4720/W/19/3232376

12 Harrogate Road, Rawdon, Leeds LS19 6HJ

- 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 Gary Holmes against the decision of Leeds City Council.
 - The application Ref 19/02485/FU, dated 22 April 2019, was refused by notice dated 18 June 2019.
 - The development proposed is change of use of ground floor from retail to drinking establishment and erection of smoking shelter.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. During the appeal process, and in response to the Council's refusal of planning permission, the appellant has indicated that they wish to withdraw the proposed smoking shelter from the appeal scheme. Furthermore, the appellant states that this could be achieved by a planning condition attached to any planning approval. Notwithstanding this, in the interests of fairness, openness and transparency, I have assessed this appeal in relation to the proposal originally submitted to the Council and I have reached my decision on that basis.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the living conditions of neighbouring occupiers with regard to noise and disturbance; and
 - preserving or enhancing the character and appearance of the surrounding area, including the Rawdon Littlemoor Conservation Area.

Reasons

Living conditions

4. The proposed change of use would take place within a local centre where such uses are, in principle, considered to be reasonable. However, in this case, the site and building is located very close to residential properties and 10 Harrogate Road (No.10) in particular which is adjacent to it. In my view, the change of use from A1 retail to A4 drinking establishment would result in a significant change in the potential impact on residential amenity for neighbouring occupiers.

5. The appellant argues that a retail use could operate into the evening, stating that some could be lawfully undertaken through permitted development rights. In my view, it is unlikely that this would result in the same adverse impact on nearby residents relating to noise and disturbance which would occur with the proposed use. The nature and use of the premises for retail would predominantly contain customers within the building, with associated comings and goings also taking place. Whilst it is proposed, and argued, that patrons of the proposed use would also be contained within the building for most of the time, with an A4 use I find that people would visit the premises for a longer period and would be more likely to congregate and socialise outside at some stage during their visit.
6. Moreover, in my view, given the nature of the change of use, there is a greater potential for groups of people outside to be louder in general conversation and interaction with each other than normal. Such activity and disturbance would be in addition to the comings and goings of patrons, either by vehicle or on foot.
7. The appellant's request to withdraw the smoking shelter from the proposed scheme in response to the Council's reason for refusal is noted. Notwithstanding that I have determined the proposal based on its submission to the Council, I find that even if this were to be the case, patrons wishing to step outside to smoke would have to do so at the front of the building on the forecourt area. This would only exacerbate the impact of noise and disturbance on nearby residents, particularly at No.10 where only a low stone wall separates the property from the forecourt area.
8. Amongst other properties, the appellant refers to a nearby restaurant at the other end of the parade on Harrogate Road and a nearby convenience store opposite. It is argued that the impact of the proposal on the amenity of residents would be no more or less than exists in relation to those other premises which have similar opening times into the evening as those proposed. Notwithstanding this, I find that it is the proximity of the proposed use to residential properties, the associated activity and the significant adverse impact on residential amenity in terms of noise and disturbance which would result in this case which weighs substantially against the proposed change of use.
9. It is suggested that conditions could be attached to an approval in order to control outdoor activity at the property and provide a level of noise attenuation within the premises. Whilst such measures may result in a level of mitigation, having taken account of the evidence before me, I find that conditions would not sufficiently address the concerns raised regarding the adverse impact of the proposal on the amenity of nearby residents.
10. Consequently, I conclude that the proposed change of use would have a significant detrimental effect on the living conditions of neighbouring occupiers with regard to noise and disturbance. Therefore, it would be contrary to Policy GP5 of the Leeds Unitary Development Plan Review 2006 which, amongst other matters, seeks to protect occupiers of neighbouring properties from environmental intrusion resulting from development.

Impact on the conservation area

11. The proposed scheme is within the Rawdon Littlemoor Conservation Area (CA). Therefore, in accordance with Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) and in relation to the potential impact of the proposal before me, I have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA, as a designated heritage asset. In doing so, I note that the proposal does not seek to substantively alter the external appearance of the appeal property. Indeed, the only external

change would be the introduction of the smoking shelter at the rear of the property which would be in a secluded position out of public view. As a result, I find that the proposal would have no substantive adverse impact on the visual amenity of the surrounding area or be detrimental in terms of preserving or enhancing the character or appearance of the CA.

12. Furthermore, in support of my assessment of this matter, the Council has raised no concerns or objections in relation to heritage matters or its impact on the CA. The Council has also acknowledged that the proposal would be in keeping with the wider aims of the development plan and other relevant development plan policies.
13. Therefore, based on the evidence before me and from my observations at the site, I conclude that the proposed change of use would not lead to any material harm to the character or appearance of its surroundings. It would also not be contrary to preserving or enhancing the character or appearance of the CA as a designated heritage asset and therefore would be in accordance with the Act.

The Planning Balance

14. The proposed change of use would have benefits such as bringing a presently disused unit within a local centre back into use and making positive contributions to the local economy and the local environment by adding an active frontage to the parade of premises on that side of Harrogate Road. It would also have no material harmful effect on the character and appearance of the area, including the CA. Notwithstanding this, having carefully considered all matters before me, I find that on balance the cumulative effect of these benefits is clearly outweighed by the substantive harm to residential amenity in terms of noise and disturbance.

Other Matters

15. The appellant refers to the possibility of changing the use of the unit to A3 for a temporary period of two years under permitted development rights. In doing so, it is argued that the comings and goings from the premises would be similar to that relating to this proposal which is described as a 'small scale micro pub' and would not be subject to any restriction. I have had due regard to this as a material consideration. Nonetheless, whilst this may be the case, I have assessed the proposal before me on its own merits, as determined by the Council. As such, and in any event, I find that these matters are not of such significance as to alter my assessment of the proposal or my overall determination of the appeal.

Conclusion

16. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A McCormack

INSPECTOR