
Appeal Decision

Site visit made on 12 November 2019

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2019

Appeal Ref: APP/B2355/W/19/3236825

34 Bank Street, Rawtenstall, Rossendale BB4 8DY

- 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 Basharat Hussain against the decision of Rossendale Borough Council.
 - The application Ref 2019/0293, dated 3 July 2019, was refused by notice dated 30 August 2019.
 - The development proposed is the change of use from A1¹ retail to sui generis taxi office.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. For clarity, I have taken the name of the appellant from the appeal form as it is more precise.

Main Issues

3. The main issues are the effect of the proposed change of use on:
 - the vitality and viability of Rawtenstall town centre, with particular regard to the Primary Shopping Area (PSA) and Primary Shopping Frontage (PSF);
 - the character and appearance of the appeal site and surrounding Rawtenstall Conservation Area (RCA) and on the setting of the National Westminster Bank (NWB), which is Grade II Listed;
 - the living conditions of existing neighbouring occupiers, with particular regard to noise and disturbance; and,
 - the effect of the development on highway safety, with particular regard to car parking.

Reasons

Vitality and viability

4. The appeal premises comprises the ground floor of a traditional 2-storey building that forms the end property in a small terrace. This terrace consists of 3no. properties, which in addition to the host property, is formed by a betting office and the NWB. On the opposite side of the host property to the betting

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

office is the Rawtenstall Unitarian Church, which is set back appreciably from the road.

5. Policy 11 of the Rossendale Core Strategy Development Plan Document (2011-2026) (November 2011) (CS) seeks to focus town centre uses in the defined town and local centres. Rawtenstall is set at the top of the retail hierarchy for the Borough. Additionally, for Rawtenstall town centre CS Policy 11 defines its boundary and identifies a PSA and a PSF.
6. Paragraph 85 of the National Planning Policy Framework (the Framework) advises that planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Planning policies should define the extent of town centres and primary shopping areas and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre. CS Policy 11 states that retail proposals will be directed to the PSA. Proposals for non-retail uses appropriate to town centres will be considered favourably within the town centre boundary, which encompasses but extends beyond the PSA.
7. On the balance of the evidence provided, given the *suis generis* use of the taxi office, I am not satisfied that the proposed use would safeguard the vitality and viability of Rawtenstall town centre. Whilst the proposed taxi office would be an acceptable use in the town centre, I am not convinced that the long-term viability of the PSA and PSF would not be compromised by the loss of this retail unit as proposed. The appellant has provided a list of properties in the vicinity of the site with non-retail uses. However, the fact that non-retail properties may exist is not a reason, on its own, to allow otherwise unacceptable development. I find that the proposal would adversely affect the Council's vision of achieving a quality retail development in Rawtenstall.
8. In conclusion, I find that the vitality and viability of the retail function of Rawtenstall town centre with particular regard to the PSA and PSF would not be maintained. The proposed development would therefore fail to comply with the strategic retail aims of CS Policy 11 and the Framework.

Character and appearance of the RCA and the setting of the NWB

9. The host property is located within the RCA and is in proximity of the NWB. The host property occupies a prominent position in the street. I note that the Council's Conservation Officer (CO) raises concerns regarding the existing shop front, which I too consider detracts from the visual qualities of the RCA. Additionally, the CO asserts that there is a high level of activity around the existing taxi bay and that the proposal would likely result in further intensification of the area and potential cause for street clutter.
10. Nevertheless, the scheme before me does not seek to alter the shop front, neither does it seek any form advertisement consent. Therefore, on the evidence before me I find that as the proposal seeks to utilise the existing shop front, it would as a consequence, have a neutral effect on the appearance of the host building and the RCA. Additionally, I note there is little evidence to demonstrate that there would be a harmful effect on the RCA, should the area outside the host property attract more people and how this would increase clutter. Given the site is located within Rawtenstall town centre, where pedestrian activity is already notable, I am not satisfied that the proposal

would generate unacceptable levels of activity and clutter to the detriment of the character and appearance of the RCA.

11. Having regard to the above, I conclude that the proposed change of use would therefore, comply with the statutory duty under Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) concerning the desirability of preserving or enhancing the character or appearance of the conservation area.
12. Turning to the effect on the setting of the listed building, the listing of NWB identifies the property as a bank dating from 1880, constructed of Ashlar stone, with a hipped slate roof with ridge chimneys. The NWB has an L-shaped footprint occupying a corner site. It comprises 2-storeys, with a corner turret, in Renaissance style. I find that the host building falls within the setting of the NWB, due to its proximity and the visibility of the site from its principal elevation. However, the alterations to the existing building would be limited and for similar reasons listed above I am not satisfied that any other harm would occur through the proposed change of use.
13. I also have a statutory duty under Section 66 (1) of the Act which requires me to have special regard to the desirability of preserving or enhancing a listed building or its setting or any features of special architectural or historic interest which it possesses. I consider the proposed development would accord with this duty.
14. In conclusion, I find that the proposal would not harm the significance of the RCA and it would preserve the setting of the NWB. Accordingly, it would comply with the heritage and conservation aims of CS Policy 16 and not conflict with national policy contained within Section 16 of the Framework, where it advocates great weight should be given to the conservation of heritage assets. It would not cause harm to the significance of the designated heritage assets for the purposes of the Framework. Hence, there is no requirement for me to consider public benefits to be weighed in a balancing exercise.

Living conditions

15. The proposed taxi office would be in operation between the hours of 07:00hrs and 04:00hrs, 7 days a week. I am sure that the appellant intends to provide a well-managed business, which is likely to be computer based. Additionally, I note that it is not envisaged to take bookings at the site and that there is an existing taxi rank outside the host property that is currently in operation from 20:00hrs to 03:00hrs.
16. Nevertheless, I find that in a ground floor terraced property with residential flats above, such as in the case before me, the relationship between the host property to its neighbours, particularly No 34a and 34b Bank Street is very close. Even with the best intentions, I consider it highly likely that the neighbouring occupiers of No 34a and No 34b would experience unacceptable noise and disturbance caused by the operation of the taxi office and any comings and goings that may be associated with its use.
17. I note that the Council's Environmental Health Officer has raised concerns surrounding whether a noise assessment has been completed and the likely impact of the proposal on nearby noise sensitive premises. Additionally, I note the assertion from the appellant that the ceiling in the host property is

suspended and that the noise insulation would be upgraded to at least the standard required by Building Regulations. In this instance and in the absence of a detailed scheme for additional sound insulation, I cannot be certain that the living conditions of the occupiers of No's 34a and 34b would not be harmed by the proposal.

18. I accept that there are likely to be a number of elements of uncontrollable noise in this area, including that from the existing taxi rank. The taxi rank is sited directly outside the host property and thus, I find it highly likely that members of the public would be attracted to the proposed taxi office, especially if no 'hackney cabs' were available in the taxi rank. In the present case, insufficient evidence to demonstrate that this proposal would not be harmful to the occupiers of nearby dwellings in terms of additional noise and disturbance has been presented. Consequently, given my findings on the details before me, I do not consider that otherwise unacceptable development could be made acceptable through the use of planning conditions in this instance.
19. In conclusion, the proposed development would likely significantly harm the living conditions of existing occupiers of neighbouring dwellings, with particular regard to noise and disturbance. Therefore, the development would not accord with the amenity aims of CS Policy 1 and 24 and the Framework.

Highway safety

20. The host property does not presently have any off-street parking of its own, nor does it have the ability to create any such facility. CS Policy 8 confirms that car parking management in Rawtenstall town centre will be undertaken as part of an overall policy of maintaining business vitality, integrated transport access and creation of attractive places. Additionally, the Council's car parking standards are located in Appendix One of the CS, which stipulates for a taxi booking office, a requirement of one parking space per 1.5 cars within 100 metres of the office.
21. The appellant has provided details of an approved application². However, relatively little detail has been provided regarding the particular planning backgrounds to this scheme. Consequently, I cannot be sure that this application is entirely representative of the circumstances in the appeal before me. In any event all appeals are judged on their own individual merits. Accordingly, that is how I have assessed this appeal scheme.
22. There is little information surrounding the number of vehicles that the proposed taxi office would serve. However, this is not a determining factor as there is still a requirement to provide the specified number of parking spaces stipulated in Appendix One of the CS. Whilst the appellant suggests that cars will be on the road and away from the office at all times, they will need to park during the course of the day, which may include areas near to the host property, where parking is limited due to existing restrictions.
23. Overall, there is insufficient evidence to demonstrate that vehicles associated with the proposed taxi office would not be parked on the surrounding streets near to the site. In such circumstances, I find it highly likely that the vehicles associated with the taxi office would create potential obstructions to highway users in the vicinity of the site, including road users and also pedestrians.

² 2016/0142

Additionally, as the overall number of vehicles associated with the taxi office is unknown, I cannot be certain that the proposal would not result in harmful matters of highway safety arising.

24. In conclusion, in the absence of any satisfactory off-street parking, the effect of the proposed taxi office results in conditions harmful to highway safety. Accordingly, the development is contrary to the highway safety aims of CS Policy 8 and Appendix One: Parking Standards, and the Framework.

Planning Balance and Conclusion

25. Whilst the proposal would not have a detrimental impact on the character and appearance of the RCA and the setting of the NWB, this is a matter of neutral consequence in the overall planning balance. The proposal would lead to some social, economic and environmental benefits, including the creation of employment opportunities, but these would be relatively limited in extent, and would not significantly and demonstrably outweigh the clear and substantial harm that would be caused to the vitality and viability of the Rawtenstall town centre, including the PSA and PSF, the living conditions of neighbouring occupiers or on highway safety.
26. For the reasons given above, on balance I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR