



Appeal Decision

Site visit made on 7 January 2020

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 29th January 2020

Appeal Ref: APP/N4205/W/19/3239123

156-158 Derby Street, Bolton BL3 6JR

- 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 Z Patel (Zytek Ltd) against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 05758/19, dated 23 March 2019, was refused by notice dated 25 July 2019.
 - The development proposed is new restaurant (A3).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council changed the description of the development to 'change of use from sui-generis to a restaurant (Class A3) with ancillary take-away facilities including installation of flue at rear'. However, although the appeal scheme does include ancillary takeaway and flue, the appellant did not agree to the change of description. Therefore, I have adopted the description of the development from the application form. Nevertheless, in determining this appeal I have been mindful of the proposed ancillary takeaway and the flue.

Main Issues

3. The main issues are the effects of the proposed change of use on:
 - i) The living conditions of nearby residential occupiers, with particular regard to noise and disturbance; and
 - ii) The vitality and viability of the Daubhill Local Shopping Centre.

Reasons

Living conditions

4. No 156-158 is a double-fronted 2 storey with basement mid terrace property. Although currently vacant, it is in commercial use. It is part of a row of properties with predominantly ground floor commercial uses and residential accommodation above, including Nos 160 and 162. It is in the Daubhill Local Shopping Centre (the LSC) which extends along Derby Street in both directions. The LSC supports a mix of retail and non-retail uses, including restaurants and takeaways. In addition to the first floor residential flats, there

are also residential properties on the opposite side of the street at this point. There is vehicular bay parking to the front of the property.

5. The proposal is a restaurant, primarily for the consumption of food on the premises although it would offer an ancillary takeaway service. Food would be prepared and stored in the basement and an extraction flue would be installed in the rear elevation. Bin storage would be provided in the rear yard. The hours of opening would be 11:00 to 23:00 every day.
6. There is little information about the proposed capacity of the premises or the scale of the operation. However, the submitted plans illustrate seating for a large number of people over 2 floors. The ancillary takeaway offer would result in additional transient visitors to the premises.
7. The location is accessible by sustainable modes of travel including walking, cycling and public transport. Nevertheless, a proportion of customers would be likely to travel by private vehicle. Therefore, by virtue of the size of the seating area and the takeaway offer, the proposal would generate large numbers of pedestrian and vehicular movements. On the basis that the property is vacant and its previous use gave rise to a low level of activity, there would be a significant increase in activity in and around the premises.
8. Derby Street is a busy through road and the Daubhill LSC is a long and linear commercialised designated centre. Consequently, nearby residential occupiers will be subject to noise and disturbance associated with large volumes of traffic and local centre uses. Although the LSC and the road will be busiest during normal retail hours, half of the premises in the appeal property terrace are in A3/A5 uses. Therefore, the area around the appeal site will also experience higher levels of noise and disturbance in the evenings and late night.
9. While residents in the designated centre could expect a greater degree of noise and disturbance than there would be in residential areas, they could also reasonably expect to be able to enjoy their properties free from significant disturbance for at least some of the time. Therefore, while an increase in activity at the premises during normal retail hours would not give rise to adverse effects on adjacent residential occupiers, increased activity at otherwise quieter times including evenings would result in effects.
10. There is no substantive evidence that the area is currently subject to significant noise and disturbance during the evenings. However, no evidence has been provided in respect of the timing, duration or frequency of activity in proximity to the appeal site. On the basis of the information before me, it appears that the increased activity associated with the proposal would coincide with the times when the adjacent premises are similarly more active, with consequent cumulative increases in evening and late night noise and disturbance.
11. There is no dispute that local centres are appropriate locations for restaurant uses. However, the Location of Restaurants, Public Houses, Bars and Hot Food Takeaways in Urban Areas Supplementary Planning Document Adopted September 2013 (the SPD) also recognises the potential for associated detrimental impacts on residential occupiers, particularly outside of normal retail hours. Accordingly, the SPD advises that where there are residential properties within 50m of a restaurant, opening hours should be limited by condition to avoid impacts particularly during the overnight period.

12. The proposed opening hours would accord with the guidance in the SPD for premises within 50m of residential properties. However, the SPD also sets out that restaurant uses are nevertheless unlikely to be acceptable if there are residential properties adjacent. I accept that adequate mitigation for the effects of the kitchen extractor fan and flue could be secured by planning condition and adjoining residents could be protected from noise generated within the premises. Moreover, the proposed hours of opening would avoid adverse effects during the overnight period. However, there could be no mitigation for the significant and cumulative noise and disturbance resulting from the comings and goings of large numbers of people and vehicles associated with the restaurant and ancillary takeaway particularly during the evenings.
13. My attention has been drawn to schemes elsewhere where a change of use to restaurants, cafes and takeaways was permitted. However, on the basis of the limited evidence before me, they appear to differ from the appeal proposal including in terms of the existing lawful use, the surrounding context, the nature of the proposals including the hours of operation, and the absence of adverse effects in the case of ongoing uses. They do not therefore appear to be directly comparable to the appeal scheme and they do not provide a justification for it.
14. Therefore, I consider that the proposal would result in significant harm to the living conditions of the occupiers of nearby residential properties, with particular reference to noise and disturbance. It would conflict with Policy CG4 of Bolton's Core Strategy Development Plan Document Adopted March 2011 (the CS) which requires development, among other things, to be compatible with surrounding uses and occupiers and to avoid unacceptable effects on amenity through factors including nuisance and noise. It would also conflict with the residential amenity aims in the SPD.

Effects on the Daubhill Local Shopping Centre

15. There are no specific policy targets relating to the balance of uses within the LSC. However, the SPD is clear that a proliferation of the same use within a locality can result in a multiplication of impacts to the detriment of nearby businesses and the character of the area. This is because the viability and vitality of mixed use local centres will necessarily depend on there being a variety of retail and non-retail uses, the balance of which would be adversely affected by an overabundance of any one particular use.
16. The appeal property is currently vacant and the evidence indicates that it has not been in retail use since at least 2005. The proposal would not therefore result in the loss of an existing retail unit. However, it does not automatically follow that any alternative non-retail use would be compatible with the maintenance of a viable mixed use local centre. In this case, while the overall proportion of retail to non-retail units would remain the same, the proportion of non-retail units in A3 and A5 use in the LSC would increase.
17. The evidence indicates that restaurants, cafes and takeaways are already well-represented in this part of the LSC. Furthermore, both parties agree that the proposal would result in the terrace of which the appeal property forms part being dominated by restaurant and takeaway uses. Therefore, the proposal would contribute to the creation of a cluster of premises in the same use and an imbalance in the mix of non-retail uses in the LSC.

18. I accept that the proposal would increase footfall and it could contribute to the diversity of cuisine on offer in the area, thereby increasing customer choice. However, notwithstanding the appellant's intentions in this regard, there would be no control over the type of food on offer in the future. Furthermore, given the large capacity of the premises, and although ancillary, the takeaway offer could give rise to the types of adverse effects frequently associated with hot food takeaways. Over time, the cumulative adverse effects of the overconcentration of restaurants and takeaways would be detrimental to the character and overall function of the LSC.
19. Therefore, the proposed change of use would contribute to an unacceptable concentration of restaurants and takeaways and it would not be compatible with the surrounding area. It would result in detrimental effects on the vitality and viability of the Daubhill LSC. It would conflict with Policies CG3 and CG4 of the CS which require, among other things, that development is compatible with surrounding land uses and occupiers. It would also conflict with the guidance in the SPD relating to a proliferation of uses within a particular locality.

Other Matters

20. The creation of employment for up to 12 full-time employees would be a benefit of the scheme. However, it would not outweigh the harm that I have found. Moreover, it has not been demonstrated that an alternative use of the premises would not deliver substantially the same benefits.
21. While bringing a vacant premises back into a compatible use would be a benefit, I have found that the proposed change of use would not be compatible with the surrounding uses. Furthermore, there is nothing before me to indicate that alternative uses that would be compatible with the area have been explored or would not be viable in this location.
22. My attention has also been drawn to the part of Paragraph 86 of the Framework that states that main town centre uses should be in town centres. However, Paragraph 86 relates to the sequential test for proposals for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Therefore, it is not directly relevant to the appeal proposal.

Conclusions

23. I have found that the proposed change of use would conflict with the development plan and there are no material considerations that would outweigh that harm. Therefore, the appeal should be dismissed.

Sarah Manchester

INSPECTOR