



Appeal Decision

Site visit made on 21 July 2020

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2020

Appeal Ref: APP/P4225/W/20/3250739

144 Whitworth Road, Rochdale OL12 0JG

- 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 Ms Zara Kabeer of Zara's Kitchen Ltd against the decision of Rochdale Metropolitan Borough Council.
 - The application Ref 19/01378/FUL, dated 16 November 2019, was refused by notice dated 12 March 2020.
 - The development proposed is for the change of use from A1 to A5 including installation of extraction system and flue.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of ground floor from retail (Class A1) to Hot food takeaway (Class A5) including installation of extraction system and flue to rear at 144 Whitworth Road, Rochdale, OL12 0JG in accordance with application Ref 19/01378/FUL, dated 16 November 2019, subject to the conditions listed in the attached schedule.

Procedural Matters

2. For clarity, I have taken the name of the appellant in the banner heading above from the appeal form as it is more precise.
3. The description of the development in the banner heading above is taken from the application form. However, in my decision, I have taken the description of the development from the Council's decision notice and appeal form, omitting unnecessary text, since this more accurately describes the proposal.
4. At the time of my site visit, I saw that the development, including the rear extraction flue (the flue) and alterations to the shop front including new signage had been installed and the works were substantially complete. Additionally, during my findings on the site visit indicate to me that 'Zara's Kitchen' is in operation and the change of use has commenced. I have dealt with the appeal on this basis.
5. Additionally, whilst the Council has referenced the proposed development having the potential to adversely affect neighbouring occupiers through noise and general disturbance, this has not been cited on the Council's decision notice as part of its reason for refusal. However, as both main parties have had regard to these comments and those expressed by the Council's Environmental Health Specialist Lead, I will not prejudice any party in taking this matter into consideration in the determination of this appeal.

6. The appellant has confirmed in her statement that she would now like to operate until 22:00hrs. However, this request has been submitted with the appeal after the decision by the Council was made. I have not taken this into consideration as it has not benefitted from a full consultation exercise undertaken by the Council. Furthermore, the additional hours of operation differ significantly from those proposed on the refused scheme. In determining this appeal, I have therefore only considered the hours of operation that formed the basis of the planning application that the Council refused.

Main Issues

7. The main issues of this appeal are the effect of the proposed development on:
- the living conditions of local residents, particularly those located above the host property and at the adjoining residential premises at first-floor; and,
 - the character and appearance of the appeal site and surrounding area.

Reasons

Living conditions

8. The appeal site is located on the east side of Whitworth Road within the ground floor of a 2 storey mid-terraced property. The appeal premises forms part of a parade which features a variety of commercial uses at ground floor level. The upper floors of the building are in residential use and there are other residential properties nearby.
9. Whitworth Road is a classified road and a bus route and is well used by vehicular traffic with associated noise. There are some evening uses in the surrounding area, including various restaurants and hot food takeaways, and a 24 hour petrol station in proximity to the site. I acknowledge that noise would result from customers arriving at and departing from the appeal premises, talking and possibly congregating in groups on the footway outside, although this would be limited due to the width of the pavement.
10. In addition, noise would arise from staff legitimately engaged in activities such as clearing away and locking up the premises at closing time. Such noise would likely occur directly beneath the windows of the first-floor residential accommodation and in close proximity to neighbouring residential properties. However, in the context of the comings and goings at other local premises, I do not find that this would necessarily be more intrusive in the case of the host property, especially due to the hours of use proposed on the planning application, which I find to be reasonable in this instance. Thus, with particular regard to noise and general disturbance, I do not consider that neighbouring occupiers would receive any significant harmful effects from the operation of the appeal scheme and the comings and goings of its customers.
11. The flue is sited on the left side of the host property when viewing the premises from the rear lane. The closest first floor window to the flue, is an obscure glazed window situated above the host property. On the evidence before me, I consider this window is likely to serve a bathroom, which is a non-habitable room. Additionally, whilst the host property has residential properties either side of it, I have noted the position of the first-floor windows on the rear elevations of both No's 138 and 142 Whitworth Road (the adjoining properties). All of the first-floor windows on the rear elevations of the adjoining properties

are sited a reasonable distance away from the flue and all of the first-floor windows on the adjoining properties have steel security bars fitted in front of them.

12. Overall, I find that the security features present on the first-floor windows of the adjoining properties would hinder the ability to open these windows to a large extent. In any event, due to the height of the flue above the eaves of the property, I am satisfied that the first-floor windows on the adjoining properties would not receive any significant harmful odours from the flue. The Council has referenced the effect of the flue on neighbouring rooflights. I accept that neighbouring rooflights are sited above the flue. However, in this particular case, I find the distance of the rooflights from the flue to be notable, thus providing sufficient mitigation to overcome any significant harm.
13. Furthermore, given the distance of the flue from the neighbouring first-floor windows and its method of fixing, I do not consider that the occupiers of the adjoining properties would experience any significant harmful effects regarding excessive noise or vibrations. Overall, and in this particular instance given the site-specific circumstances, I consider the potential harmful issues of odour, noise and vibration could be further controlled by the imposition of a suitably worded condition.
14. For all of these reasons, I therefore conclude that the flue does not cause significant harm to the living conditions of local residents, particularly those located above the host property and at the adjoining residential properties at first-floor. This would accord with the living condition aims of Policy DM1 and G9 of the Rochdale Adopted Core Strategy 2016 (CS), Guidelines & Standards for Hot Food Takeaway Uses Supplementary Planning Document 2015 (updated 2017) (SPD) and the requirements of the National Planning Policy Framework (the Framework).

Character and appearance

15. It is common ground between the main parties that the flue is not readily visible when viewing the front of the host property from Whitworth Road. However, it was evident from my visit that glimpses of the flue are possible from Jarvis Street. It is from Jarvis Street where the rear lane behind the host property has its only access, due to the presence of a brick wall on the shared boundary with the car park of the public house at the opposite end of the rear lane. Additionally, this rear lane is gated, thus further restricting access. Overall, whilst I find that the flue would form a prominent feature from the rear lane when travelling away from the boundary wall with the public house car park, it does not form a prominent feature in the public realm, mainly due to the presence of the 2-storey rear outrigger at No 142.
16. Although, I accept the flue would be clearly visible from the rear elevations of a number of houses located on David Street and to some extent from the adjoining first-floor residential properties. I do not find the flue would significantly harm the visual amenities to their occupiers, due to the mix of commercial and residential uses in the surrounding area. However, I do consider that the appearance of the flue could be improved through painting it black, as suggested by both main parties. During my visit, I also noted on the rear elevation of the adjacent block of terraced properties on No's 118 to 130 (even) Whitworth Road that numerous flues are present of various designs.

These flues are a prominent feature, which are clearly visible, especially when viewing the properties from Jarvis Street.

17. For all of these reasons, I therefore conclude that the flue does not cause significant harm to the character and appearance of the appeal site and surrounding area. This would accord with the design, character and appearance aims of CS Policy DM1, the SPD, and the requirements of the Framework.
18. CS Policy G9 - Reducing the impact of pollution, contamination and land instability has been cited by the Council in its decision notice. However, whilst this policy is relevant on the previous main issue, it is clear from the Officer Report that CS Policy G9 is not directly applicable to character and appearance.

Conditions

19. The Council has suggested conditions which it considers would be appropriate in its submission. I have reviewed these in accordance with the tests set out in the Planning Practice Guidance (PPG) and have amended the wording where necessary in the interests of clarity and simplicity.
20. As the development is retrospective, a commencement condition is unnecessary. It is necessary to impose a condition relating to the approved plans in the interests of certainty. Additionally, it is necessary to attach operating hours and to ensure that the flue is operating correctly and maintained and retained for the life of the development to protect the living conditions of neighbouring residential occupiers. I also consider that it is necessary to include a condition to paint the flue black to improve the appearance of the flue

Conclusion

21. Taking all matters into consideration, I conclude that the appeal should be allowed.

W Johnson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: - Location Plan, Scale 1:1250 - Drawing no: SLW/ZK/02-A5 - Existing and proposed elevations - Drawing no: SLW/ZK/01-A5 - Floor Plans.
- 2) The premises shall only be open between the hours of:
 - 08:00hrs to 18:00hrs Monday to Saturday; and,
 - 09:00hrs to 18:00hrs Sundays (including Bank Holidays).
- 3) The extraction system hereby permitted shall be operated at all times when cooking is carried out at the premises. The extraction system hereby permitted, shall be maintained and retained in accordance with the details

submitted in the "Extraction System" document, including all filters and associated equipment. Within 6 months of the date of this decision, a verification report shall be submitted to the Local Authority showing that the odour and noise levels detailed in the submitted "Extraction System" document have been achieved.

4) Within 6 months from the date of this decision, the metalwork of the flue hereby approved shall be colour treated black RAL 9005 and shall be maintained and retained as such for the duration of the development.

End of Schedule.