The Planning Inspectorate

Appeal Decision

Site visit made on 23 September 2020

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2020

Appeal Ref: APP/V2004/W/20/3254161
236 Spring Bank, Hull HU3 1LU

- 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 Ahmed Al-Janabi against the decision of Kingston-upon-Hull City Council.
- The application Ref 19/01272/FULL, dated 18 October 2019, was refused by notice dated 16 December 2019.
- The development proposed is change of use from A1 (Bakery Shop) to A5 Hot food takeaway – in respect of the ground floor of the building only.

Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the postcode for the appeal site from the appeal form as it appears to be incorrect on the planning application form.

3. The site is located within the Spring Bank Conservation Area (CA). Therefore, the statutory duty under section 72(1) of the planning (Listed building and Conservation Areas) Act 1990 that special attention be paid to the desirability of preserving or enhancing the character or appearance of the CA is engaged. The Council consider that the development would preserve the character of the CA. Based on the evidence before me and my site visit, I would agree with this conclusion.

4. Since the appeal was submitted, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) came into force on 1 September 2020 and these amend the Town and Country Planning (Use Classes) Order 1987 (the Order). Retail units previously categorised as being in A1 use now fall under a new Use Class E (Commercial Business and Service Uses). I have provided the parties with the opportunity to comment on the amendments to the Order. Neither party has raised any additional comments on this matter.

5. I saw at my site visit that the premises are no longer vacant and, although not open, appeared to be a takeaway. Notwithstanding this, I have considered the appeal on the basis of the proposal as described within the appeal documentation and determined the appeal in accordance with these.

Main Issues

6. The main issues are:

   - whether the appeal site is a suitable location for an A5 takeaway use with particular regard to health; and,
   - The effect of the development on flood risk.

Reasons

7. The proposal seeks to change the use of a former bakery to a hot food take away. It is located within the Spring Bank Local Centre within a frontage of shops adjacent to a busy road.

Location

8. Policy 12 of the Hull Local Plan 2016 to 2032 (the Local Plan) does not normally support development to accommodate hot food takeaway (A5) use within 400m of a secondary school or sixth form college or playing fields. It cites concerns in relation to the impact of hot food takeaway shops on older schoolchildren, where they are allowed to leave school premises at lunchtime, or all children on journeys to and from school.

9. The Council refers to the proximity of the site to Hymer College playing fields and the young person's supports facilities to the north of Alexandra Street. The appellant questions whether the site at Alexandra Street would be classed as playing fields and whether this site is within 400 metres of the appeal site. Be that as it may, there is no disagreement that the appeal site is within 400 metres of Hymer College playing fields. Thus, the proximity of the proposed development to playing fields would conflict with the locational requirements of Policy 12 of the Local Plan.

10. The appellant indicates that the takeaway would only be open in the evenings and therefore would not provide a facility for older children at lunch times or in fact be open during the school day.

11. The application form indicates that the takeaway would be open from 4 pm. Although the school day can finish before this time, many schools use their playing fields for after school sporting events and have extended learning after normal school hours and evening sporting events. I have no evidence before me to confirm that there would be no overlap between the opening of the takeaway and the use of the playing fields.

12. I saw at my site visit that there are other take away facilities within the area further along Spring Bank. However, there is no evidence before me that the proposed takeaway would only be used by existing customers that already use takeaway services within the area. The purpose of the business would be to generate custom, and this could be by encouraging new customers to the site. In any case, I observed at my site visit that the location of the takeaway is closer to the playing fields than other takeaways along Spring Bank and is a convenient walk from the school.

13. As the appellant indicates I do not have enough evidence to be clear about the status of the facilities at Alexander Street in relation to Policy 12 and the Council have not provided any clarification.

14. However, overall, I conclude that the appeal site would not be a suitable location for an A5 takeaway use with particular regard to health and the proposal would conflict with the requirements of Policy 12 of the Local Plan.

Flood risk

15. From the current Environment Agency flood risk designations, the appeal site lies within Flood Zone 3a ' high probability'. The Hull Strategic Flood Risk Assessment (SFRA) splits zone 3a into four categories (i) to (iv) with (i) being low and(iv) being high. The appeal site is located within flood zone 3ai. The National Planning Practice Guidance (PPG) indicates that the Sequential Test does not need to be applied to applications for changes of use, this is confirmed in the Flood Risk Standing Advice for Hull. However, the PPG[1] confirms that a change of use may involve an increase in flood risk if the vulnerability classification of the development is changed. In this case both the last use and the Hot food takeaway fall into the 'less vulnerable' classification. Nevertheless, a Flood Risk Assessment (FRA) was submitted with the planning application.

16. The Council says that as information about road and site levels has not been provided, the FRA does not identify sufficient flood proofing, so that flood proofing resilience measures should be incorporated to a minimum of 600mm. A place of safety above 5 metres AOD should also have been provided.

17. However, I acknowledge the appellants view that as an existing building located in a terrace row of buildings raising floor levels would not be practical. I note that the appellant's FRA proposes flood resilience measures related to voids and electrical fittings. Further, a place of safety is identified, and the basis of an evacuation procedure set out in the event of imminent flood.

18. Taking into account that the existing and proposed uses are both 'less vulnerable' uses, I consider that the FRA has sufficiently demonstrated appropriate mitigation and flood resilience measures could be undertaken. Such measures could be secured by planning condition. Consequently, I consider that the FRA provides appropriate mitigation and flood risk resilience for the proposed development in accordance with Policy 40 of the Local Plan.

Conclusion

19. I have found that the proposed development could be adequately conditioned in relation to flood risk. However, the location of the proposal would conflict with the Council's policy approach. Therefore, the appeal is dismissed.

Diane Cragg

INSPECTOR

[1] Paragraph: 048 Reference ID: 7-048-20140306