

Appeal Decision

Site visit made on 15 December 2020

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2021

Appeal Ref: APP/P4225/W/20/3258888

188-190 Spotland Road, Rochdale OL12 7AF

- 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 Mohammed Khalid against the decision of Rochdale Metropolitan Borough Council.
 - The application Ref 19/00880/FUL, dated 22 July 2019, was refused by notice dated 24 July 2020.
 - The development proposed is the change of use and subdivision of premises to form one dwellinghouse, and a hot food takeaway at ground floor and apartments (2no.) at first and second floors.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. For clarity, I have taken the description of development in the banner heading above from the Council's decision notice and appeal form, as they more accurately and succinctly describe the proposed development.

Main Issues

3. The main issues of this appeal are the effect of the proposed development on:
 - i. the effect on the lifestyles of local schoolchildren; and,
 - ii. the effect on the living conditions of future occupiers, particularly through noise, disturbance and odours.

Reasons

Background

4. The host property used to be a public house and now comprises 3no. terraced properties, which the proposed development would occupy 2no. units. The remaining unit (No 186) is in separate ownership with a Chinese takeaway located on the ground floor. This outlet was closed at the time of my visit. Spotland Road is a fairly busy road that is well utilised by motorists. Outside the site are double yellow lines, but whilst these continue from some distance past the gable end of the host property, they terminate shortly after the gable end of No 186. I am informed the last use of the site was as a House in Multiple Occupation.

Lifestyles of Schoolchildren

5. Policy C6 of the Council's Adopted Core Strategy 2016 (CS) seeks to improve health and well being. Whilst the Council have confirmed that there will not be an over concentration of takeaways resulting from the proposed development, CS Policy C6 is still relevant in the determination of this appeal as it promotes and supports healthy lifestyles. The Council's Guidelines & Standards for Hot Food Takeaway Uses Supplementary Planning Document Adopted April 2015, Updated February 2017 (SPD) also resists new hot food takeaways where they fall within 400m of the boundary of a secondary school. It is common ground between the main appeal parties that the site is located within 400m of the boundary of Falinge Park High School (the school).
6. However, the appellant argues that the gates to the school are located approximately 630m away. Nonetheless, the proposed development would not comply with the SPD in this regard. The rationale for the SPD's approach is on the basis that the Council is committed to reducing pupils' access to unhealthy food options thereby improving the health of its residents and reducing childhood obesity. In the absence of any substantive evidence to the contrary, I consider the evidence used to formulate the SPD justifies the approach taken.
7. On the evidence before me, I have no details of the type of hot food takeaway that would occupy the site, nor have I any proposed opening hours. Thus, I cannot be certain when the takeaway would be in operation or what type of food it would be selling. In any event, I recognise that a change to a takeaway selling other types of hot food could not be controlled if planning permission was granted for an A5 use. I note the assertion from the appellant that a condition could be used to control the operating hours to avoid any conflict with the school and its pupils. However, the suggested opening hours provided by the Council would not achieve the desired outcome. Consequently, in the absence of any suitable suggested conditions and given the issues raised on the next main issue, I do not consider that a suitably worded condition could be imposed in this instance, to ensure that otherwise unacceptable development could be made acceptable.
8. The appellant has brought to my attention an appeal decision¹ (the appeal decision) and 3no. studies². However, I am not sure what evidence was placed before the Inspector for the appeal decision, and the appeal decision and 3no. studies relate to other areas of the country and not Rochdale, as in the case before me. Therefore, I can only give the documents referenced little weight in the determination of this appeal. Furthermore, I note the other outlets that sell a variety of hot/cold food and other refreshments in the locality. However, the fact that these other units may exist, even if there are similarities to the appeal scheme, is not a reason, on its own, to allow otherwise unacceptable development. Whilst the appellant considers that it is unlikely that there would be little demand for similar foods within the proposed unit, to those already present in the locality, I cannot be certain that this would be the case.

¹ APP/E5900/A/10/2141935

² Fraser LK, Edwards KL. The association between the geography of fast food outlets and childhood obesity rates in Leeds, UK. Health Place. 2010; Green MA, Radley D, Lomax N, Morris MA, Griffiths C. Is adolescent body mass index and waist circumference associated with the food environments surrounding schools and homes? A longitudinal analysis. BMC Public Health. 2018 and Hot-food takeaways near schools; An impact study on takeaways near secondary schools in Brighton and Hove, 2011.

9. For the above reasons, I therefore conclude that the proposed development would significantly harm the lifestyles of local school children. Thus, the proposed development would conflict with the healthy lifestyle aims of CS Policy C6, the SPD and the requirements of the National Planning Policy Framework (the Framework).

Living conditions

10. The proposed takeaway would be located centrally on the ground floor of the terrace, with the Chinese takeaway to the right and the proposed house to the left, when viewing the property from Spotland Road. Although, no proposed opening hours have been provided, I find that it is highly likely that the A5 unit would operate in the evening, as this is when hot food takeaways typically open.
11. In any event, I find that in a ground floor terraced property with residential accommodation above and adjoining, such as in the case before me, the relationship between the takeaway and its neighbours is very close. I accept that there is already some background noise associated with Spotland Road and the existing commercial activity. However, even with the best intentions, I consider it highly likely that future occupiers of the adjoining residential units would experience unacceptable noise and disturbance caused by customers coming and going, or from customers congregating outside before continuing their journey home.
12. The appellant has referred to a lack of indoor seating, apart from a small waiting area and complementary uses, such as pubs and bars. The appellant also asserts that the majority of orders will have already been placed prior to travelling to the site. However, contrary to the views of the appellant there is no guarantee that customers will not arrive at the site to place the order and wait whilst their food is prepared. I accept that due to the parking controls on the road outside the site, there will be less noise and disturbance from cars, especially if railings/bollards were installed in front of the site as suggested by the Senior Highway Engineer, which would further prevent cars parking directly outside of the site.
13. I note that the Council's Environmental Health Officer has raised concerns surrounding noise and odours. Additionally, I note the assertion from the appellant that a scheme for sound proofing of the ceiling between the proposed hot food takeaway and the apartments to achieve a sound reduction of at least 50dB(A). In this instance and in the absence of a detailed scheme for additional sound insulation, I cannot be certain that the living conditions of future occupiers of either the apartments above or the adjoining house would not be harmed from the operation of the takeaway.
14. I acknowledge that the appellant has designed the proposed flue to have a minimal visual effect on the Spotland Bridge Conservation Area (SBCA). In the case of the apartments, the flue would be sited beneath the lounge window of the first-floor apartment and 2no. rooflights serving the lounge/kitchen area of the second-floor apartment. The appellant considers the proposed location of the flue to be a suitable compromise, as it would also not be sited as close to the roof lights of the second-floor apartment, as suggested in the guidance within the SPD, in addition to its reduced visual impact. Nonetheless, whilst there are merits in this approach, I find that the extraction system as proposed would be insufficient in its location on the flat roof of the single storey section

as it would not be at a height that would ensure that neighbouring residents would not experience excess levels of odour.

15. Although, no details of the extraction system have been provided, I find that a suitably worded condition could be imposed to prevent excessive noise from the extraction system. However, I am not convinced that the issue of odour could be as readily addressed. 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 a planning condition in this instance.
16. For the above reasons, I therefore conclude that the proposed development would significantly harm the living conditions of future occupiers. Thus, the proposed development would conflict with the amenity aims of CS Policies DM1, G9, the SPD and the requirements of the Framework.

Other Matters

17. There is agreement between the main appeal parties that the proposed development is not considered to result in any harm to the character and appearance of the SBCA or the significance of the host property as a non-designated heritage asset. In accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. On the evidence before me I have little reason to disagree with the Council's observations and find that the proposed development would accord with this duty and conserve the heritage assets in a manner appropriate to their significance in line with the Framework.
18. I acknowledge that the proposed development would bring a building within the SBCA back into use, and the social and economic benefits that would arise from the construction phase and the occupation of the development. However, these factors do not outweigh my assessment of the main issues. I have considered this appeal proposal on its own merits and concluded that it would cause harm for the reasons set out above.

Planning Balance and Conclusion

19. Whilst I accept the absence of other harm arising from the appeal scheme, the proposed development would conflict with the development plan when taken as a whole, and there are no other material considerations that indicate otherwise. It would also be at odds with the requirements of the Framework, conflicting with the social objectives set out in paragraph 8. Thus, the proposal does not constitute sustainable development.
20. Taking all matters into consideration, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR