



Appeal Decision

Site visit made on 26 January 2021

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2021

Appeal Ref: APP/P4415/W/20/3261923

93 Fitzwilliam Road, Eastwood, Rotherham S65 1PS

- 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 Maki Chai Ltd. against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref RB2020/0810, dated 5 June 2020, was refused by notice dated 10 August 2020.
 - The development proposed is the erection of a container unit for use as a takeaway.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address of the site and description of development in the banner heading above were taken from the planning application form. However, 93 Fitzwilliam Road is a neighbouring residential property which lies outside of the appeal site. The Council's decision notice more accurately provides the address as 'land at car park adjacent 93 Fitzwilliam Road Eastwood Rotherham' and the description as the 'Siting of a container unit for use as a takeaway (Use Class A5)'. It does not change the development for which planning is sought.
3. For the purposes of the appeal, the Council advertised the proposed development using the revised description and address. The appellant also used it on their appeal form. Consequently, I am satisfied that no party will be prejudiced by my use of it. I have proceeded on this basis.
4. At the time of my site inspection the container had been positioned on the land, I shall therefore deal with the proposal as one under s73A of the Act for development already carried out.
5. Following the decision of the Council, the appellant has submitted additional information in regard to the availability, or otherwise, of other commercial premises in the nearby Fitzwilliam Road Local Centre. They suggest that this additional information should be considered in the appeal decision.
6. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals and is clear that amendments intended to overcome reasons for refusal should normally be tested through a fresh application. I have had regard to the Wheatcroft Principles and the degree of engagement of all parties with respect to the additional information. In the interests of fairness and the absence of further comment from the Council or ability for owners of the assessed properties to respond through

formal consultation, I have determined the appeal on the basis of the information that was before the Council when it made its decision and on which parties were consulted.

Main Issues

7. The main issues are whether or not the site is a suitable location for a hot food takeaway and the effect of the proposed use of the site on the living conditions of nearby residents.

Reasons

Locations

8. The site lies on a busy radial route (A630) extending roughly north-eastwards from the nearby main town centre. The area is predominantly housing but some commercial properties lie amongst residential properties fronting both sides of the road in the vicinity of the site. On the northern side of the road are small independent shops and businesses in addition to a service station and a supermarket. The southern side of the road is less built up and features car parks, hand car wash sites, a vehicle dealership, shop and an electrical store.
9. The site benefits from a permission for a car sales area and car wash. It appears as an open car park set behind a fenced grass strip and includes some containers and a canopy structure. It borders residential properties on Fitzwilliam Road and Rawson Road. The school grounds of St Ann's Junior and Infant School lie behind a screen fence to the rear of the site.
10. At the time of my site inspection, the container subject of the appeal was positioned at the north-eastern end of the site in close proximity to the blank side gable of 93 Fitzwilliam Road. The unit was adapted to incorporate serving hatches in the long side elevation facing the adjacent car park area. A litter bin and bench were sited alongside, and commercial waste storage containers were glimpsed to the rear.
11. The commercial properties on the northern side of the road are designated as within the Fitzwilliam Road Local Centre. Although the site would lie 'out of centre' in relation to the main town centre, there is no dispute between the main parties that the site lies in an 'edge of centre' location to the Local Centre. At the time of my visit, albeit when closures might be imposed due to the pandemic lockdown, none of the commercial premises appeared vacant and none were signposted for sale/let. In the context of its incorporation into an existing commercial site, I find there is little basis to anticipate that the proposal would not contribute to the vitality and viability of the Local Centre function.
12. However, the large site is located immediately adjacent to a school and a short walk from one of its entrances. In the interests of protecting public health, including in relation to increasing levels of child obesity, the Council has recently adopted the Equal and Healthy Communities Supplementary Planning Document [2020] (SPD). This provides added detail to complement the aims of Policy CS27 of the Rotherham Local Plan Core Strategy [2014] (CS) and Policies SP11 and SP55 of the Rotherham Local Plan Sites and Policies Document [2018] (RSP) as they seek to encourage and facilitate healthy lifestyles. It states that planning permission for hot food takeaways within 800m of a school will not be granted unless within an identified local centre.

13. The close siting of the site to the school premises and accessibility along unimpeded local pedestrian routes would provide easy access. Both the side entrance on Cottenham Road and main entrance off St Leonard's Road would lie within the exclusion distance specified in the SPD. Whilst I acknowledge that other takeaways exist in the locality and children attending the school would be of an age when they are unlikely to be allowed off premises at lunch times unaccompanied, these matters do not provide justification to increase the takeaway offer in an area identified for policy constraint.
14. In this regard, the appellant directs me to an academic study of the correlation between the siting of fast-food takeaways and child obesity. In finding little direct association, it acknowledges that definitive conclusions could not be drawn until a higher quality evidence base is developed. As a general study with no reference to the particular circumstances of the case, I do not find this a compelling reason to set aside national and local planning policies which seek to protect standards of health in local communities.
15. In support of the proposed location, the appellant draws my attention to the ability of the site to offer customer and staff parking, including for meal collection and to facilitate delivery services that could not be achieved in the Local Centre on account of parking restrictions on the main road. Additionally, it is submitted that the offer could be enhanced by app and/or telephone orders to facilitate Covid-safe working and service. However, I am not persuaded that such aspects of the proposal weigh favourably in the context of national and local policy aims to reduce the need to travel by private vehicle and which encourage sustainable means of travel. The ability to provide safe working practices would not be exclusive to the use of a container unit and could equally be provided elsewhere.
16. For the above reasons, whilst I have found that the proposed siting of the development is unlikely to cause harm to the vitality or viability of the Local Centre, its close proximity to a school would be contrary to the Council's Health and Equalities SPD which reflects the identified policies in the CS and RSP and the National Planning Policy Framework (the Framework) as they seek to promote health and wellbeing.

Living conditions

17. The site access and container lie immediately adjacent to a residential property at 93 Fitzwilliam Road. The exit is close to a residential property at 6 Rawson Road. The format of the takeaway seeks to serve directly to people attending the site in person, those arriving in vehicles and could provide a delivery service.
18. Although the outdoor congregation of people and vehicle use within the site during normal daytime business hours might generate noise and activity which compares to existing levels in the locality, the extension of concentrated activity into late evening hours would have a high propensity to result in noise disturbance to nearby residential occupiers. Alongside the potential for raised voices between groups or individuals, the arrival and departure of vehicles with attendant engine noise, slamming of vehicle doors and more occasional loud car radios focussed close to no93 would give rise to significant potential for noise disturbance. Some limited disturbance from vehicles leaving the site into a quiet side road would also be experienced by occupiers of 6 Rawson Road. In the late evening, these activities would be at times when background noise is

reduced on account of lower levels of traffic on the main road and be of a nature and sufficient volume to disrupt residents at times when they might expect to enjoy undisturbed sleep or rest.

19. I acknowledge that the appellant has indicated a willingness to reduce the proposed hours of opening since the original submission. I also recognise proposals to install CCTV with lighting. Nevertheless, I find the proposed opening hours and scale of the site, taken with the limited ability to mitigate such sources of noise, would give rise to significant potential for noise disturbance.
20. The preparation of hot food and drinks has potential to cause odours which, in themselves, or through the noise of extraction or filter units, could give rise to adverse impacts on the living conditions of neighbouring residential occupiers. I note that the Council's Environmental Health advisors did not object on the specific details of the proposal before them, which included the sale of products aimed at a specific sector of the market, and where fresh cooking would be substantially limited to chips and pancakes. However, an unconstrained A5 use has wide scope to change the nature of its offer or significantly intensify. This is particularly so given the large area of the appeal site and that there is no proposition to restrict the development in that regard.
21. Although restrictions on menu content or details of measures to mitigate fumes and odours might typically be left to agreement through planning condition/s, there is little before me to demonstrate whether any such limitation on the food offer or necessary apparatus could be reasonably applied in a facility of the nature, size and location of that proposed without undue prejudice to the business. Although such requirements might pass the majority of the tests set for planning conditions, they may, in the circumstances of the case, impose an unrealistic or disproportionately burdensome and, therefore, unreasonable requirement upon the development such that it would nullify the benefit of any permission it was attached to. This would be contrary to the tests set out in Paragraph 55 of the Framework. In the absence of any other legitimate mechanism to control those aspects of an A5 use, I find that potential additional harm on neighbouring occupiers is likely from an otherwise unconstrained A5 use of the site.
22. For those reasons, the proposed development would have potential to cause significant harm to the living conditions of nearby residential occupiers through noise disturbance late into the evening and unmitigated odour nuisance. It would thereby conflict with Policies SP11, SP22 and SP52 of the RSP as they seek to protect residential amenity.

Other Matters

23. The proposed unit could be implemented without significant expense and generate some local employment opportunities. These are benefits of the development to which I attach moderate weight.
24. I note the concerns of nearby service station operators in respect to the position of the access directly opposite the exit point of the garage forecourt. The A5 use of the site could generate a moderate amount of traffic in addition to that using the hand wash facility. This would inevitably include traffic approaching from the west and potentially require right-turning drivers to wait

within the carriageway in a location directly opposite the exit and in close proximity to a road junction.

25. The location benefits from good forward visibility along the straight main road and suitable visibility splays exist at the garage and nearby road junctions. Taken with the presence of a central refuge between the main carriageway lanes which would aid waiting, I consider that the revised views of the Council's highway advisor in relation to highway safety matters were not unwarranted in the circumstances of the case.

Conclusion

26. Although I have found in favour of the appellant in regard to siting where it would support the Local Centre function and would offer limited employment opportunities, I conclude that these matters do not outweigh the harm identified in relation to the living conditions of nearby residents and location of the facility in close proximity to a school where health and wellbeing aims would be undermined. For the above reasons, I conclude the appeal should be dismissed.

R Hitchcock

INSPECTOR