



Appeal Decision

Site visit made on 23 March 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2021

Appeal Ref: APP/B4215/W/20/3261720

147 Greenbrow Road, Manchester M23 2DB

- 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 Jaffar Pervaiz of Dixy Chicken Wythenshawe against the decision of Manchester City Council.
 - The application Ref 127019/FO/2020, dated 27 May 2020, was refused by notice dated 24 July 2020.
 - The development is for the change of use cafe (A3)¹ conversion into hot food takeaway (A5).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of cafe (A3) conversion into hot food takeaway (A5) at 147 Greenbrow Road, Manchester M23 2DB in accordance with the terms of the application, Ref 127019/FO/2020, dated 27 May 2020 subject to the conditions in the attached schedule.

Procedural Matter

2. The wider evidence and my site visit indicate that works to the site have already commenced, albeit the appellant asserts that the change of use has not commenced. I have dealt with the appeal on this basis.

Main Issues

3. The main issues are the effect of the development on:
 - i. the living conditions of neighbouring residential occupiers, particularly through noise and disturbance; and,
 - ii. the character and appearance of the appeal site and surrounding area, including the function of the shopping parade (the parade).

Reasons

Background

4. The appeal site consists of a single unit within a parade of modern single storey commercial premises. The parade comprises of a local convenience store and post office, open 7 days a week from 07:00hrs to 22:00hrs, which is a double unit; a bookmaker and the appeal site. Outside the parade is a bus stop and a

¹ Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO)

short stay parking bay for a number of vehicles. In proximity to the site is a post box, a series of bicycle stands and a pedestrian crossing.

Living conditions

5. Either side and to the rear of the parade are residential properties, whilst on the opposite side of the road to the parade is a bus stop, a pharmacy, which adjoins 'The Maples Medical Centre'. Beyond this is a day nursery and on the opposite side of Scout Drive is the Newall Green public house (PH), which is close, but sited at an oblique angle to the site. Given the location of the site, the closest residential properties are the terrace of houses on Shadowbrook Avenue to the rear of the site and No 161 Greenbrow Road, which is located off the side elevation of the site by a reasonable distance, which is set back appreciably from the road by an intervening open grassed area.
6. Saved Policy DC10 of the Unitary Development Plan for the City of Manchester, 1995 (UDP) states that planning applications for food and drink uses shall have regard to the general location of the proposed development, including the effect on the amenity of neighbouring residents, amongst other things. UDP Policy DC26 states that consideration of the effect of new development which are likely to be generators of noise and will consider measures, such as engineering solutions and administrative steps to satisfactorily deal with potentially unacceptable levels of noise.
7. Policy SP1 of Manchester's Local Development Framework Core Strategy Development Plan Document 2012 (CS) considers the spatial principles, including making a positive contribution to health safety and well being of all residents. CS Policy C10 considers the evening economy and the cumulative impact, residential amenity and the overall balance. CS Policy DM1 has regard to various matters, including the effect on amenity.
8. Given the location of the parade when compared to the neighbouring residential units, I do not consider that the existing occupiers will receive harmful effects from increased pedestrian or vehicular activity in the immediate or surrounding area. This is primarily due to the location of the dwellings in relation to the site, the parking bay outside the parade and the unrestricted parking available on surrounding roads. In this respect I note that no objections have been received from either Highways Services or Environmental Health, where the latter suggests a number of conditions, which collectively seek to protect the amenity currently afforded by existing residential occupiers. I agree, in this instance that the imposition of a number of the suggested conditions would be necessary to ensure no harmful effects are encountered by existing residents.
9. Whilst, there are likely to be differences between an A5 and A3 uses, I also find that there are likely to be some similarities, which Highway Services highlight as unlikely to be dissimilar, whilst also pointing out the sustainable location of the site and it being easily accessible on foot. I have taken into consideration the distance of the site from the PH, which would be a compatible use. I have also noted the comments surrounding Newall Green High School (NGHS), including its planned closure later this year. Nonetheless, whilst the proposal would introduce an extra hour of activity in the evening to 23:00hrs as the local convenience store shuts at 22:00hrs, I do not find that this would be detrimental to the living conditions of the occupiers of neighbouring residential properties. On this matter, I note the absence of objections to the scheme from

Environmental Health or local residents and whilst not determinative, they are material considerations of significant weight.

10. For the reasons given above, I conclude that the development would not have a harmful impact on the living conditions of neighbouring residential occupiers, particularly through noise and disturbance. Consequently, the development accords with the amenity aims of Saved UDP Policies DC10, DC26, CS Policies SP1, C10, DM1 and the Council's Hot Food Takeaway Supplementary Planning Document 2017 (the SPD). Furthermore, the development would accord with the requirements of the National Planning Policy Framework (the Framework).

Character and appearance

11. The SPD states that a proposal will be considered to be harmful to the vitality and viability of a centre if, amongst other things, it increases the concentration of hot food takeaway ground floor frontages in a centre to more than 10%. Appendix 2 of the SPD identifies all of the district and 24no. local centres in Manchester, but acknowledges that locations not identified in the policy but which perform the same function in terms of scale and meeting local needs will also be considered to be local centres.
12. I note the concerns of the Council surrounding the potential for the hot food take away to undermine the daytime function of the parade. However, the proposed operating hours would be from 11:00hrs Monday to Saturday and from 13:00hrs on Sundays and Bank Holidays. Thus, the site would positively contribute to the function of the parade for a large part of the daytime. Whilst the Council suggest that the weekday operating hours should be no earlier than 17:30hrs during the week, due to the proximity of NGHS, I consider that as this school is closing in August 2021, it would be unreasonable to impose such a restriction that would only be justified for a matter of months. The long-term aspirations for the NGHS site have not been provided and I accept may not be yet known. However, given that the closure of NGHS will not have been taken lightly, I consider at this present time, that it is highly unlikely that another school would occupy the NGHS site at any time soon.
13. I acknowledge the changes that occurred in the UCO that came into effect on 1 September 2020 to facilitate greater flexibility to the change of uses within town centres, particularly through the introduction of the new Class E. However, in the case of this appeal, I find that whilst there are minor conflicts with some of the guidance contained in the SPD, the development complies with its overall objectives. Additionally, there will be no cumulative impact, or any adverse issues surrounding living conditions, as confirmed on the previous main issue. Furthermore, the balance of uses within the parade would be maintained, supporting the day-time and evening/night-time economies, where the local convenience store would still be the anchor property with the appeal site and the existing bookmakers remaining supplementary to the primary shopping function of the parade.
14. Concerns have been raised surrounding the design and appearance of the existing external flue that is located on the side elevation of the host property, set within an area enclosed by galvanised palisade fencing. I also note that that the appearance of this flue differs from that proposed on the submitted drawing. Whilst, I appreciate the sentiment from the appellant to relocate the flue to the rear of the host property, that is not something that I could consider on this appeal. In any event, whilst accepting the visual impact of the flue

currently on the appeal site and surrounding area, I do consider that it has a moderately harmful effect. Nonetheless, I note the offer from the appellant to colour coat the flue, which I consider would significantly improve its appearance.

15. I appreciate that there is little detail on the existing flue and that it may fall short of the dimensions required by Environmental Health to terminate at least 1m above the eaves level. However, I am convinced that this could be addressed through the imposition of a suitably worded condition and would not result in an excessive addition to the existing flue and therefore still within the scope of the application subject of this appeal. I am also confident in this particular instance that a suitably worded condition could still be imposed in such circumstances, to ensure that otherwise unacceptable development could be made acceptable.
16. For the reasons given above, I conclude that the development would not have a harmful impact on the character and appearance of the appeal site and surrounding area or the function of the parade. Consequently, the development accords with the design, character and appearance aims of Saved UDP Policy DC10, CS Policies SP1, DM1 and the SPD. Furthermore, the development would accord with the requirements of the Framework.

Conditions

17. The Council has suggested conditions which I have considered, making amendments and minor corrections, where necessary, to ensure clarity and compliance with the tests contained within Paragraph 55 of the Framework and the Planning Practice Guidance. In this instance a condition relating to the time limit for implementation is not required as the development has commenced.
18. A condition surrounding the approved plans is required for certainty. Conditions relating to opening hours/delivery times and that the flue or any other wall mounted ancillary equipment is operating correctly, are all necessary to ensure satisfactory living conditions of occupiers in neighbouring dwellings. A condition is reasonable and necessary to require that the waste management facilities are implemented to ensure the provision of satisfactory arrangements for the collection and storage of segregated waste. Finally, I also consider that it is necessary to include a condition to colour coat the flue black to improve the appearance of the flue.

Conclusion

19. Taking all matters into consideration, I conclude that the appeal should succeed.

W Johnson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: NA-PO1
- 2) The premises shall not be open outside the following hours: Monday to Saturday 11:00hrs to 23.00hrs; and Sunday and Bank Holidays 13:00hrs to 23:00hrs.
- 3) Deliveries, servicing and collections, including waste collections shall not take place outside the hours of 07:30hrs to 20:00hrs Monday to Saturday. No deliveries or collections on Sundays and Bank holidays.
- 4) Prior to first use and occupation of the development hereby approved and notwithstanding the flue shown on the approved drawing, a scheme for the extraction of any fumes, vapours and odours from the premises hereby approved shall be submitted to, and approved in writing by, the City Council as Local Planning Authority. The approved scheme shall be fully implemented prior to occupancy and shall be maintained and retained for the life of the development.
- 5) Prior to first use and occupation of the development hereby approved, a scheme for the storage (including segregated waste recycling and disposal of food waste) and disposal of refuse shall be submitted to and approved in writing by the City Council as Local Planning Authority. The details of the approved scheme shall be fully implemented prior to occupancy and shall be maintained and retained for the life of the development.
- 6) Any externally mounted ancillary plant or equipment shall be selected and/or acoustically insulated in accordance with a scheme designed so as to achieve a rating noise level of 5dB (LAeq) below the existing background (LA90) at the nearest noise sensitive location. The scheme should be submitted to and approved in writing by the City Council as Local Planning Authority in order to secure a reduction in the level of noise emanating from the site prior to installation of any plant. The approved scheme shall be fully implemented prior to occupancy and shall be maintained and retained for the life of the development.
- 7) Within 6 months from the date of this decision, the external surface of the flue hereby approved shall be colour coated black (RAL 9005) and shall be maintained and retained for the life of the development.

End of Schedule