



Appeal Decision

Site Visit made on 1 June 2021

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th June 2021

Appeal Ref: APP/B4215/W/21/3269395

370 Kingsway, Manchester M19 1PL

- 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 Umair Shabir against the decision of Manchester City Council.
 - The application Ref 128564/FO/2020, dated 11 November 2020, was refused by notice dated 8 February 2021.
 - The development proposed is for use of part of the site for the siting of a double-decker catering bus to form hot food take-away for a temporary period of 24 months.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the interests of clarity and brevity, I have used the description of development from the Council's decision notice.

Main Issues

3. The main issues are the effect of the proposal on the living conditions of occupiers of neighbouring properties with regards to noise; and whether the proposal is in an appropriate location.

Reasons

Living conditions

4. The proposal would be sited within close proximity to residential properties to the west of the appeal site. There are a number of windows in these residential properties to the west which would directly overlook the proposal including garden areas that directly abut the appeal site.
5. The opening hours proposed would be between 1100hrs and 2300hrs every day and this could lead to comings and goings at the appeal site creating noise at unsociable times of the day that would be disruptive to residents of nearby properties.
6. The appeal site is located adjacent to the Kingsway A34 dual carriageway which is a main arterial road for vehicular traffic including buses. There is a bus stop close to the site which has frequent service up till midnight. On the opposite side of the A34 from the appeal site is a 24 hour petrol station and retail units including an existing hot food takeaway. Part of the appeal site also has an existing sui generis use as a car wash. The proposal however, would be situated closer to the residential properties immediately to the west than these matters described.

7. I note the appellants operating schedule which includes measures to reduce noise by installing a low noise odour and fume extraction fan, providing detailed waste management scheme, having a service plan and operating considerations, and adhering to a strict traffic flow system. Nevertheless, insufficient evidence has been provided that convinces me that the noises resulting from the proposed unit would not adversely compromise the residential environment currently enjoyed by neighbouring residents.
8. Due to the location and nature of the proposal, its positioning with regards to neighbouring residential properties, as well as the proposed opening times, the proposal would have a detrimental effect on the living conditions of neighbouring occupiers in terms of noise.
9. Accordingly, the proposal would have a harmful effect on the living conditions of occupiers of neighbouring properties with regards to noise. The proposal would be contrary to Policy DM1 of the Manchester's Local Development Framework Core Strategy Development Plan Document 2012 (DPD) and saved Policies DC10 and DC26 of the Unitary Development Plan for the City of Manchester 1995 (UDP) which seeks development to have regard to effects on amenity of neighbouring residents including noise.
10. A Qualitative Odour Risk Assessment has been submitted which concludes that the odour emissions associated with the operation of the catering establishment are not considered to result in significant loss of local amenity and consequently the resulting risk of potential odour complaints is low. There would also be the use of eco-friendly recyclable food packaging. These matters however would not outweigh the harm identified above with regards to noise.

Location

11. The appeal site does not lie within a District and Local Shopping Centre area with the two nearest local centres being on Fog Lane and Lane End/Burnage Lane. Proposals for hot food takeaways are usually directed towards city centre locations, industrial and commercial areas, as well as shopping centres. The appeal site is currently in a commercial use and there is no evidence to suggest that the proposal would have an adverse effect on the vitality and viability of nearby shopping areas.
12. Nevertheless, this matter does not alter my findings above with regards to the harm to living conditions of neighbouring occupiers in terms of noise and the conflict with the DPD and UDP, as well as conflicting with the aims of the Manchester City Council Hot Food Takeaway Supplementary Planning Document March 2017 which seeks to encourage centres and neighbourhoods which are vibrant and which contribute to the Council's objective of improving the health of people living in Manchester.

Other Matters

13. I have had regard to the appellants statement of case which indicates that the catering bus is a successful franchise that will bring a new concept and design to the area and will benefit the local area by providing hot food for site users and local residents. The proposal would bring employment opportunities to the benefit of the local community and it is noted that the proposal is not permanent and can be removed with land reinstated on or before the 24 month temporary period. The appellant has also followed advice from the Local

Planning Authority to avoid being an over dominant and visually obtrusive feature and it has been sympathetically designed and specifically located to avoid detrimental impact to the appearance, the character of the site and the surrounding area. Access to the site would also be compliant with Approved Document Part M and the Disability Discrimination Act. I have also had regard to email correspondence including emails received on 12 and 24 November 2020.

14. These matters and benefits, given the type of unit proposed, would only amount to minimal weight and would not outweigh the significant harm to the living conditions of neighbouring occupiers with regards to noise.

Conclusion

15. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the National Planning Policy Framework, which outweigh this finding.
16. Therefore, for the reasons given above, the appeal should be dismissed.

Chris Baxter

INSPECTOR