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# Appeal Decision

Site Visit made on 9 June 2021

**by R Morgan BSc (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 2 July 2021**

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**Appeal Ref: APP/H4315/W/21/3270869**

**278 Mill Lane, Sutton Leach, ST. HELENS, WA9 4ET**

- 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 DPSK Limited against the decision of St Helens Metropolitan Borough Council.
  - The application Ref P/2020/0815/FUL, dated 3 November 2020, was refused by notice dated 2 February 2021.
  - The development proposed is change of use from former convenience store (Class E) to hot food takeaway (sui generis) at ground floor and 1 no. three-bedroom flat (Class C3) at first floor; installation of plant and external alterations.
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## Decision

1. The appeal is allowed and planning permission is granted for change of use from former convenience store (Class E) to hot food takeaway (sui generis) at ground floor and 1 no. three-bedroom flat (Class C3) at first floor; installation of plant and external alterations at 278 Mill Lane, Sutton Leach, St. Helens, WA9 4ET, in accordance with the terms of the application, Ref P/2020/0815/FUL, dated 3 November 2020, subject to the conditions in the attached schedule.

## Main Issue

2. The main issue is whether the site is a suitable location for the proposed use as a hot food takeaway, having particular regard to the health and well-being of local school children.

## Reasons

3. The appeal site is a vacant shop unit fronting onto Mill Lane (B5204), in an area containing a mix of commercial and residential uses. The unit was previously used as a convenience store and so has a lawful use under Class E of the Use Classes Order 2020.
4. Policy RET4 of the St Helens Unitary Development Plan (UDP) allows for the change of use of establishments to provide hot food for consumption on or off the premises, subject to a number of criteria. Further guidance is provided in the Supplementary Planning Document – Hot Food Takeaways 2011 (SPD).
5. The SPD forms part of a broader strategy to address health issues in St Helens, which is identified as having a greater proportion of people with poor health than many areas of the country. Diet is highlighted as being a key determinant of general health and obesity levels, and hot food takeaways are identified as a source of cheap but energy dense and nutrient poor foods. Given the link

- between childhood obesity and poor health in later life, the proximity of fast-food takeaways to schools is identified in the SPD as a particular cause for concern.
6. To address this issue, Implementation Point 1 of the SPD establishes locational criteria for hot food takeaways, including a 400 metre exclusion zone around any primary or secondary school or sixth form college. The appeal site is within 400m of both Sherdley Primary School and Sutton Academy, so the proposal fails to comply with SPD Implementation Point 1.
  7. The reasons for establishing the exclusion zones are understandable and I note the various research documents and strategies referred to by the Council, which highlight the need to promote healthier lifestyles. However, the approach set out in SPD Implementation Point 1 goes beyond the provisions of UDP Policy RET4, and there is no clear development plan support for restricting development in this way.
  8. I note that the exclusion zones set out in Implementation Point 1 have been incorporated within a policy in the emerging Local Plan, but this plan is currently under examination, and the relevant policy is subject to outstanding objections. Having regard to the status of the SPD and the current stage of the emerging Local Plan, I therefore give limited weight to the conflict between the proposed development and the exclusion zone contained within SPD Implementation Point 1.
  9. Notwithstanding that, Paragraph 91 of the National Planning Policy Framework (the Framework) encourages planning decisions which enable and support healthy lifestyles, especially where this would address identified local health and well-being needs. Given the concerns expressed by the Council about the levels of childhood obesity in the area, the potential effect of the proposal on the health and well-being of children is a relevant consideration in this appeal.
  10. I acknowledge that the types of food sold in hot food takeaways may contribute to poor nutritional choices by children. However, other types of food outlets also sell food of low nutritional value which appeals to children. The appeal site was previously a convenience store and has a lawful use under Class E of the Use Classes Order, so could be used as a shop, café or restaurant without the need for planning permission. Cafes and restaurants could sell similar food to the proposed hot food takeaway for consumption on or off the premises. Convenience stores typically sell sweets, biscuits, crisps and sugary drinks, which are often attractive to children, and may be cheaper and therefore more accessible than pizza from the proposed takeaway.
  11. Furthermore, I note the steps being taken by the operator of the proposed takeaway chain to include nutritional information on menus and encourage healthier choices, and that such measures are also encouraged as part of the Healthier Options St Helens (HOST) initiative, aimed at takeaway providers in the borough.
  12. Having regard to the above considerations, there is no clear evidence that the type of food sold at the proposed takeaway would be of lower nutritional value, or any more harmful to children's health, than that which could be purchased at the appeal site if it were to reopen as another use within Class E.

13. The appeal site is located within walking distance of two schools but is on a different road to both, and the site is not particularly prominent in relation to either school. Although it is likely to be passed by a proportion of children travelling to and from school, many will use a different route altogether.
14. Given the type and cost of the food which would be sold at the proposed takeaway, it is unlikely that primary age children would, on their own, buy food from the proposed outlet. However, older children attending Sutton Academy may do so. Secondary school children may venture out during their lunch break, but their time is likely to be limited. The combination of the walk to reach the site, which involves crossing a major road, and the need to pre-order or wait for food to be prepared, is likely to put pupils off visiting the proposed takeaway at lunchtime on a regular basis. Older children may visit the outlet on their way home from school, but the relatively expensive food sold at the proposed takeaway would make it more likely to be purchased as a treat or to share, rather than on a frequent or individual basis.
15. Having regard to the above considerations, although the proposal does not comply with SPD Implementation Point 1, there is no convincing evidence to suggest that it would cause harm to the health and well-being of local school children, when compared with the lawful use of the site under Class E. As such, there is no clear reason why the site should not be a suitable location for the proposed use as a hot food takeaway. Furthermore, there is no significant conflict with the objectives of Framework paragraph 91.

## **Other Matters**

### *Provision for parking*

16. A total of 8 car parking spaces would be provided in the car park area between the appeal unit and the adjacent care home. One of these spaces would serve the proposed flat, with the remaining 7 for the takeaway. Whilst the parking arrangements are the same as for the previous use as a shop, the level of provision falls below the Council's adopted parking standard in the 'Ensuring a Choice of Travel' Supplementary Planning Document. The parking requirements are higher for a hot food takeaway than for other types of shop, and for a takeaway of the size proposed, the maximum requirement would be 25 car parking spaces.
17. The appellant has confirmed that around 60% of orders are expected to be delivered to customers, and a significant proportion of those to be collected in person are likely to be have been pre-ordered. This will affect the number of likely vehicle trips to the unit, as well as the typical length of stay. Having regard to the nature of the business model, I agree with the Council's comments that trip levels associated with the proposal are unlikely to be significantly different than for the previous use of the site as a shop, and that a lower level of parking provision is acceptable in this case. I further note that there is a small public car park across the road which could be used by customers of the proposed takeaway.
18. Notwithstanding that, the proposal may result in pressure for vehicles to park on street, outside the unit. Even if there is space available in the car park, customers may choose to stop outside anyway, to quickly pick up an order. The site is very close to the roundabout junction, and I note concerns raised by

the Council's transport consultant that on-street parking in this location would impact on highway safety and the through flow of traffic on Mill Lane.

19. In order to address this, the Council has suggested that double yellow lines be provided outside the unit, which I agree would be desirable given the proximity to the junction. However, this would require a Traffic Regulation Order (TRO), which is a separate legal process involving consultation. The Council's has suggested a condition requiring that, no less than 3 months prior to the takeaway being brought into use, an application be made for the implementation of a TRO. However, even if a TRO were to be applied for, there is no guarantee that it would be successful. Therefore, the suggested condition cannot be relied upon to deliver the parking restrictions, and if the TRO was unsuccessful there would be nothing to prevent the takeaway being brought into use anyway. As such, the suggested condition does not meet the tests of reasonableness.
20. It is therefore necessary to consider whether the proposed use would be acceptable without the imposition of parking restrictions along the frontage. The site has a lawful use under Class E so could be brought into use as a shop, café or restaurant, which could result demand for on-street parking. Such uses would not require planning permission and would make use of the current parking arrangements, without the suggested restrictions.
21. The previous use of the building will have generated vehicle trips, some of which are likely to have involved on-street parking. Accident data for the past 21 years does not include any reports of collisions attributed to parked vehicles on Mill Lane. Although the data does not include any damage only collisions, I have been provided with no evidence to suggest that significant problems have arisen due to on-street parking in this location.
22. I note that a scheme for upgrading access to nearby Lea Green Station has been granted funding and has been subject to public consultation. Whilst I acknowledge that the scheme may change, the current access improvement proposals would involve the upgrading the nearby roundabout and the realignment of Mill Lane on the approach to the new junction. Double yellow lines would be provided across the frontage of the appeal site as part of this scheme. The suggested parking restrictions may, therefore, be provided in any case.
23. Given the above considerations, I conclude that the proposed parking arrangements are acceptable, and do not warrant a refusal of planning permission on highway safety grounds.
24. The submitted plans show how provision will be made for appropriate cycle parking for the proposed takeaway and flat.

#### *Other considerations*

25. A number of other concerns have been expressed by interested parties, including the potential for activities associated with the proposal to adversely affect the well-being of residents of the adjacent Sherdley Manor Care Home. I appreciate that additional vehicles using the car park could cause disturbance, particularly in the evening, but the opening hours would be similar to those of the convenience store which previously operated at the site, and which also

made use of the car park. Any noise and disturbance associated with the proposed pizza place are unlikely to be significantly different to those which would be associated with a shop or other use under Class E, which could operate from the appeal site without the need for planning permission.

26. Given the established use of the unit, there is no clear reason to resist the proposal on the grounds of noise or disturbance, and I have no evidence to suggest that the proposed use would attract anti-social behaviour.

### **Conditions**

27. The Council has suggested a number of conditions which I have reviewed in light of advice contained in the Planning Practice Guidance. I have combined some of the conditions to make them more concise and have made minor wording changes in places to improve clarity and enforceability.
28. In addition to the standard time and plans conditions, a condition restricting the hours of construction work is reasonable given the close proximity of the site to a care home, where residents may be particularly sensitive to disturbance. Similarly, a condition restricting opening hours is required to protect the living conditions of neighbouring occupiers.
29. There is potential for noise and vibration from extraction systems and air conditioning units to cause disturbance to neighbouring occupiers, in particular future occupiers of the upstairs flat. Conditions requiring implementation of the measures set out in the submitted Acoustic Report, and subsequent verification of acceptable noise output levels, are necessary to safeguard the living conditions of nearby residents. For similar reasons, I have imposed conditions restricting the hours of use of the ventilation extraction system, and requiring written agreement for the installation of additional external plant or openings in the elevations or roof of the building.
30. In order to protect the privacy of neighbouring occupiers at 51 Severn Close, the Council has suggested that windows on the eastern elevation of the upstairs flat be obscure glazed. I note that the plans show that some of the external walls on this elevation are proposed to be lined out to reduce the amount of glazing, but that would not involve all of the windows. Given the proximity of the appeal site to this neighbouring occupier, and the position and orientation of the lounge windows, I agree that this is necessary and have imposed a suitable condition.

### **Conclusion**

31. For the reasons set out, the appeal is allowed subject to the conditions below.

*R. Morgan*

INSPECTOR

## **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: C5246-A5-03A (Plans as Proposed), C5246-A5-04A (Elevations as Proposed), and C5246-A5-06B (Block Site Plan).
- 3) Construction works shall take place only between 08:00–18:00 on Monday to Friday and between 08:00-13:00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 4) The use hereby permitted shall only take place between the hours of 10:00-23:00 on any day.
- 5) Prior to the hot food takeaway being brought into use, the noise and vibration reduction treatments detailed in Sections 5.1 and 5.2.3 of the Acoustic Report October 2020 (ref 20094-002, Philip Acoustics Ltd) shall be installed and fully operational. The systems shall be retained throughout the lifetime of the permitted use and shall be maintained and operated in accordance with manufacturers' instructions.
- 6) Within one month of commencement of the use hereby permitted, a noise output verification assessment report shall be submitted to the local planning authority for written approval. Should the verification report reveal noise levels in excess of those detailed in Table 3 of the submitted Acoustic Report (Philip Acoustics Ltd), a scheme of additional mitigation measures shall be provided as part of the verification report. Any additional mitigation shall be installed in accordance with a timetable to be agreed by the local planning authority, and retained thereafter.
- 7) The ventilation extraction system shall only be operated between the hours of 07:00 and 23:00 hours on any day.
- 8) No external plant shall be installed nor any additional openings be formed in the elevations or roof of the building which directly ventilate the building, or which discharge from any internal plant or equipment, without the prior written permission of the local planning authority.
- 9) The first floor flat hereby permitted shall not be occupied until the lounge windows on the eastern elevation have been fitted with obscured glazing to a degree sufficient to conceal or hide the features of all physical objects from view (level 4), and no part of those windows that are less than 1.7 metres above the lounge floor shall be capable of being opened. Once installed the level 4 obscure glazing shall be retained thereafter.