



Appeal Decision

Site Visit made on 29 June 2021

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th July 2021

Appeal Ref: APP/P4415/W/21/3271666

240 Bawtry Road, Wickersley, Rotherham S66 1AA

- 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 JDRG Ltd against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref RB2020/1795, dated 4 November 2020, was refused by notice dated 19 January 2021.
 - The development proposed is the change of use of the unit to a hot food takeaway alongside external alterations.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on the character and vitality and viability of the Wickersley District Centre with particular regard to its primary shopping frontage and the health of local residents, in particular that of children.

Reasons

Effect on the District Centre

3. The appeal property is a former charity shop located in the Tanyard shopping centre. The shopping centre is within the Wickersley District Centre and forms the majority of its primary shopping frontage as defined in the Rotherham Local Plan Sites and Policies 2018 (the RLPSP). It comprises a supermarket, a row of smaller units and a car park between the units and the road. Uses in the shopping centre include a range of shops, services such as estate agents and a bank, 2 restaurants, one of which appears to offer a takeaway service and 2 hot food takeaways. There are a number of shops, services and commercial uses on the opposite side of Bawtry Road and in what appears to be a newer block of commercial and residential uses just to the east of the appeal property.
4. Policies SP 19 and SP 20 of the RLPSP set out the approach to development within town, district and local centres. The appellant states that Policies SP 19 and SP 20 should be considered out of date as they are at odds with the Government's aspirations for revitalising town centres and both refer to the now revoked Class A of the Use Classes Order.
5. The National Planning Policy Framework (the Framework) makes it clear that policies should not be considered out of date simply because they were

- adopted prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework.
6. The Framework requires planning policies to define a network and hierarchy of town centres and promote their long-term vitality and viability, by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters. The Framework also requires planning policies to define the extent of town centres and primary shopping areas and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre.
 7. The RLPSP defines a network and hierarchy of centres and establishes their role and suitable uses, with a focus on their vitality and viability. The RLPSP identifies primary shopping frontages together with secondary shopping frontages where defined as the Main Shopping Areas. Policies SP 19 and SP 20 establish that Main Shopping Areas are the areas within Rotherham's centres where retail development is concentrated and are the primary locations for new shopping developments. In general terms, these policies seek to ensure the vitality and viability of the town, district and local centres by protecting and enhancing the concentration of shops within the Main Shopping Areas and enabling them to be supported but not dominated by certain complimentary town centre uses.
 8. To this end Policy SP 20 supports proposals for A2 financial and professional services and A3 restaurants and cafés uses at ground floor level within primary shopping frontages provided that certain criteria are met. Policy SP 19 identifies a number of other uses, including hot food takeaways, as being acceptable within town, district and local centres but outside of Main Shopping Areas, subject to satisfying other relevant policies.
 9. My view is that Policies SP 19 and SP 20 provide the positive approach and flexibility towards town centres that the Framework is seeking. On this basis I find that they are consistent with the Framework and therefore can be given substantial weight.
 10. I acknowledge that these policies include references to Classes that are no longer in place following the changes to the Use Classes Order that came into effect on 1 September 2020¹, and that these changes mean that a broader range of uses would be possible at the appeal property than those defined in Policy SP 20. However, the changes to the Use Classes Order did not include hot food takeaways within the new Class E. Such uses are therefore not considered necessarily to be an appropriate way of helping to retain the vitality and viability of shopping areas.
 11. The appellant states that the unit has been vacant since March 2020 and the proposed development would bring it back into use. No evidence has been submitted to demonstrate whether any marketing of the unit has been carried out for retail purposes or that would demonstrate that the unit is not likely to be occupied for retail uses. There appears to be 2 other units within the Tanyard shopping centre that are vacant out of an approximate 26 units. At the time of my site visit, on a weekday morning, the Tanyard shopping centre was busy with only a limited number of spaces available within the car park. There

¹ Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

was a regular turnover of cars and a regular footfall within the shops. Furthermore, my attention has been drawn to a planning permission granted by the Council in April 2021 for a change of use of the appeal property to a beauty salon.

12. These factors indicate that the Tanyard shopping centre is trading relatively well and that there is interest in it as a location for uses that would maintain the daytime liveliness of the primary shopping frontage. As such, whilst acknowledging that the proposed development would bring a vacant unit back into use, this benefit carries only limited weight, as there is no substantive evidence that the shopping centre is in decline or in danger of going into decline.
13. I have had regard to the appellant's proposed operating model whereby the vast majority of food would be ordered and delivered without customers entering the premises at any point. Therefore, any additional footfall, which does not guarantee linked trips, would be limited. For the same reasons, whilst the proposal may contribute more to the vitality and viability of the District Centre than a non-retail Class E use such as offices and light industrial uses, my view is that it would be to a lesser extent than the appellant contends. Furthermore, there is no evidence before me to suggest that there is interest in developing such uses in this location. I therefore give limited weight to these points.
14. The creation of up to 8 jobs would represent a benefit in terms of creating local employment. This has moderate weight in favour of the proposed development.
15. The Council has referred to Policy SP 22 of the RLPSP in its reason for refusal on its decision notice. However, the officer report states that the requirements of Policy SP 22 are not relevant. The appellant's view is that Policy SP 22 is relevant and that the proposed development accords with the relevant requirements of this policy. My view is that Policy SP 22 is not relevant as the appeal property is within a primary shopping frontage and Policy SP 22 sets out criteria to assess the acceptability of proposals for hot food takeaways in locations that do not include primary shopping frontages. However, this does not alter my findings on the proposed development.
16. There would be some economic benefits from the proposed development. However, these are not sufficient to outweigh my concerns about the suitability of the appeal property for a hot food takeaway, having regard to the harm that it would cause to the vitality and viability of the Wickersley District Centre, in particular the character of its primary shopping frontage. The proposed development would therefore conflict with Policies SP 19 and SP 20 of the RLPSP, the aims of which I have explained above.

Health of Local Residents

17. The Rotherham Local Plan Supplementary Planning Document No. 5 Equal and Healthy Communities 2020 (the SPD) sets out how the Council will manage hot food takeaways close to schools and colleges.
18. The SPD states that planning permission will not be granted for any new hot food takeaway (Use Class A5) or hybrid uses incorporating A5 uses, where proposals are located within 800m of a primary school, secondary school, special school or tertiary college. From the evidence submitted and my own

observations, there are 2 primary schools and a secondary school within 800m of the appeal property. The SPD guidance does allow an exception to this restriction where proposals also fall within a town, district or local centre (as defined in the Local Plan) and satisfy relevant planning policies. As set out above, I have found that the proposed development would conflict with Policies SP 19 and SP 20 of the RLPSP given that it is not one of the uses that these policies identify as being acceptable within a primary shopping frontage. It therefore does not satisfy relevant planning policies and so would not benefit from the exception in the SPD.

19. The information contained within the SPD indicates that childhood obesity rates are high in Rotherham and that the number of takeaways per 100,000 population is higher than the average in England and this differential has been increasing. Controlling the proliferation of hot food takeaways near to schools and colleges is part of the Council's overall strategy to reduce growing levels of obesity. Increasing the availability of hot food takeaways in proximity to a number of schools would work against this. Consequently, the proposed development would conflict with the guidance in the SPD and would not be a suitable location for a hot food takeaway, having regard to the potential harm that may be caused to the health of local residents, in particular children.

Other Matters

20. The appellant states that the proposed development would not negatively impact on the amenity of surrounding businesses or residents. The Council has not raised concerns about harmful effects on neighbouring premises subject to conditions, or anti-social behaviour. Based on the evidence before me, I find no reason to conclude otherwise. However, an absence of harm is a neutral factor and does not outweigh the harm that I have identified.

Conclusion

21. For the reasons given above, the proposed development would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

F Wilkinson

INSPECTOR