



Appeal Decision

Site visit made on 19 July 2021

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 August 2021

Appeal Ref: APP/Z4718/W/21/3272969

3 Bradbury Street, Ravensthorpe, Dewsbury WF13 3AU

- 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 Liqat Khan against the decision of Kirklees Metropolitan Council.
 - The application Ref 2020/62/93078/E, dated 14 September 2020, was refused by notice dated 11 November 2020.
 - The development proposed is change of use of ground floor of dwelling to hot food take-away and first floor storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the application was determined, a revised version of the National Planning Policy Framework (the 'Framework') has been published. The main parties were given the opportunity to comment on any relevant implications for the appeal and have not therefore been prejudiced. I have had regard to the Council's response and the Framework in reaching my decision.
3. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the plans and accompanying details that the development comprises the 'change of use of dwelling ground floor to hot food takeaway and first floor storage and installation of shop front'. The Council dealt with the proposal on this basis and so shall I.
4. The reason for refusal and officer's report makes reference to Ravensthorpe Town Centre. The Council has confirmed that this is an error and should instead state Ravensthorpe District Centre. I have determined the appeal accordingly.
5. I noted on my site visit that some work had commenced. For the avoidance of doubt, I have assessed the appeal proposal and based my decision on the plans before me.

Main Issues

6. The main issues are the effect of the proposed development on:
 - The character of the surrounding area, including the vitality and viability of the district centre;

- The living conditions of the occupiers of 5 and 7 Bradbury Street, having regard to noise and odour; and
- Public safety.

Reasons

Character

7. 3 Bradbury Street is a two-storey, stone-built terraced residential property. The Council highlight that the appeal site is situated in an edge of centre location. Bradbury Street is characterised primarily by residential properties. There are some non-residential uses within Bradbury Street, but these are not common.
8. The appeal site is located within close proximity to Huddersfield Road. I observed on my site visit that there are a large number of hot food takeaways on Huddersfield Road, close to the appeal site. The appellant considers that the scheme is visually appealing and enhances the character compared to other takeaways in the area.
9. The introduction of a hot food takeaway in this location would harm the character of Bradbury Street because it would result in a use which is not consistent with the established residential character of the street. In addition, given the number of existing hot food takeaways located in close proximity to the appeal site, the proposal would result in a clustering of takeaways in the local area. As a result, this would adversely affect the overall attractiveness of the district centre.
10. However, the scheme would not result in the loss of a retail unit and there is no robust evidence before me to demonstrate that the proposal would undermine the vitality and viability of the district centre. Thus, I do not consider this to be a reason to withhold planning permission.
11. For the reasons given above and based on the evidence submitted, the proposal would significantly harm the character of the surrounding area but would not undermine the vitality and viability of the district centre. Consequently, it would conflict with Policy LP16 of the Kirklees Local Plan: Strategy and Policies (2019) (LP). This Policy seeks, amongst other matters, to ensure proposals for food uses would not harm the character, function, vitality and viability of the centre, either individually or cumulatively. However, it would not conflict with chapter 7 of the Framework which seeks to ensure the vitality of town centres.

Living conditions

12. As the appeal site is located within primarily a residential street, there are dwellings in close proximity. 5 and 7 Bradbury Street form part of the same terrace as the appeal site. The appellant highlights that the occupiers of Nos 5 and 7 have a shared access and right of way which would remain open and unobstructed.
13. I understand that the opening hours of the hot food takeaway would be 15:00-23:00 daily, including bank holidays¹. The noise and odour associated with a hot food takeaway would be substantially increased compared to a residential property. For example, the comings and goings, from primarily customers,

¹ Taken from the application form

would be more than a dwelling. It would also give rise to odour caused by cooking inside the premises.

14. I observed on my site visit that Bradbury Street is quieter than Huddersfield Road as a result of it being a residential road. However, there was some background noise due to primarily the traffic on Huddersfield Road.
15. Given the proximity of Nos 5 and 7, and the residential use of the appeal site, the proposal would harm the living conditions of the occupiers of Nos 5 and 7 in terms of noise and odour. The occupiers of these properties would be sensitive to various sources of noise and disturbance associated with the approved use, including general conversing and loitering outside the unit, opening/closing car doors and car engines running. This noise and general disturbance would be experienced by occupiers of these properties late into the night, on a daily basis, in a primarily residential street where there is less background noise than within the district centre.
16. Details regarding the kitchen extraction system was not submitted with the planning application. The appellant states that they propose a flu vertically through the roof space leading odours away and not towards neighbouring properties. Nevertheless, very limited information has been submitted with regards to the proposed flu. Based on the evidence submitted, I am not convinced that this would adequately address the effect of odour upon neighbouring occupiers nor that it would not be visually intrusive and cause harm to the character and appearance of the area.
17. For the reasons given above, the proposal would significantly harm the living conditions of the occupiers of Nos 5 and 7, having regard to noise and odour. Consequently, the scheme would conflict with Policies LP16, LP24 and LP52 of the LP. These Policies collectively seek, amongst other matters, to ensure new development does not have an unacceptable impact upon neighbouring occupiers.
18. The scheme would also conflict with chapter 12 of the Framework which seeks, amongst other matters, to ensure developments create places with a high standard of amenity for existing and future users.
19. The Council has referred to chapter 15 of the Framework in this regard. However, they have not explained the relevance of this chapter. This chapter relates to the natural environment and therefore, based on the evidence submitted, I do not consider it to be relevant to the appeal.

Public safety

20. I understand that there are existing public order and anti-social behaviour issues within the area, as highlighted by West Yorkshire Police and the Council. Nevertheless, there is no substantive evidence to demonstrate that this is caused by the existing hot food takeaways. There is also no robust evidence to demonstrate that the proposed use would result in an increase in anti-social behaviour and would result in an unsafe area for the public. Thus, given the lack of justification, I do not consider this to be a reason to withhold planning permission.
21. For the reasons given above and based on the evidence submitted, the proposal would not cause harm to public safety. Accordingly, in this regard, it would not conflict with Policies LP16 and LP24 of the LP. These Policies

collectively seek, amongst other matters, to ensure new development does not give rise to anti-social behaviour and the risk of crime is minimised.

22. It would also comply with chapters 8 and 12 of the Framework which seek to promote safe places.

Other matters

23. The appellant highlights that the appeal site provides parking away from the main road. In addition, they state that the town is well known for its food outlets and they serve as an attraction to draw business into the town. However, these considerations do not outweigh the harm identified above.

Conclusion

24. Although I have found that the proposed development would not cause harm to public safety nor undermine the vitality and viability of the district centre, the scheme would be harmful to the character of the area and harm the living conditions of the occupiers of Nos 5 and 7 to which I attach significant weight. The proposal therefore conflicts with the development plan as a whole and there are no other considerations that outweigh this conflict.
25. For the reasons given above the appeal should be dismissed.

L M Wilson

INSPECTOR