



Appeal Decision

Site Visit made on 20 September 2021

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2021

Appeal Ref: APP/N4720/W/21/3276786

20 New Market, Otley LS21 3AE

- 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 Mehran Manjilli against the decision of Leeds City Council.
 - The application Ref 21/00035/FU, dated 28 December 2020, was refused by notice dated 7 May 2021.
 - The development proposed was originally described as the 'change of use of retail premises (Class E) to a hot food takeaway (Sui Generis) with an extractor located within the existing chimney and a retrospective application for the introduction of a new shop front'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development subject of this appeal is in situ with the hot food takeaway (HFT) operating therefore, I am considering the appeal retrospectively.

Main Issues

3. The main issues are:
 - the effect of vehicular movements associated with the development in the evening on pedestrian and highway safety and the living conditions of occupiers of nearby properties with particular reference to disturbance; and
 - whether the development preserves or enhances the character or appearance of the Otley Conservation Area (CA).

Reasons

Vehicular movements

4. The appeal property is a small commercial premise located along a narrow street in the town. The street contains a range of commercial premises including, amongst other things, public houses, shops and cafes. Several premises offer takeaway service as part of their business offering with one specific HFT in close proximity to the appeal site.
5. Parking is permitted after 6pm along New Market. However, due to the width of the road most parking would likely necessitate vehicles mounting the footway to provide space for passing vehicles. To the rear parking is also possible, although with the exception of a small number of private allocated spaces, the amount of parking is limited by the width and length of the road.

6. The appellant has stipulated that a dedicated parking space is available to the rear and a 'no parking' sign is displayed in the window. However, I have no substantive evidence that the appellant has control over this area, and it cannot, therefore, be relied upon. As such, any parking demand from staff or visitors would compete with the other commercial and residential premises in the vicinity.
7. Given the site's central location within Otley, many customers of the HFT would be passing pedestrians and I note the appellant's intention to provide a 'street food' offering. However, it would be unreasonable to restrict the operation in this manner, the nature of the business could change in the future and as a HFT, deliveries and collections by customers arriving by car would be likely.
8. From the evidence before me, there is existing pressure for parking along and to the rear of New Market in the evening, including vehicles parking indiscriminately. Moreover, as the road is not a through road any vehicles attempting to park would need to turn around, leading to awkward manoeuvring in a confined area.
9. Whilst the appellant advises that previous examples of such parking were not associated with the appeal business, the introduction of an additional HFT operating in the evening, in this location, will increase the risk of indiscriminate parking and excessive manoeuvring in tight awkward spaces through frequent deliveries and collections. Although no party has provided any substantive evidence of any incidents along the road, the development would, in my view, result in an unacceptably high scope for accidents.
10. A HFT has operated at the site previously. However, a consent from the 1980's restricted the hours of operation to 6pm and was for a HFT and cafe. Moreover, I have no firm details regarding previous business enterprises from the unit or the hours they operated. As such, I cannot be certain that the past use of the premises represents a direct parallel to the appeal proposal and there is no dispute that consent is required for the proposal before me.
11. Although such movements would cause disturbance to residents locally, the site is located in a central town centre area where a degree of activity is to be expected. As such, I am not persuaded that the level of vehicular activity likely to be associated with the HFT would be such that it would unacceptably harm living conditions. However, this does not alter or outweigh my findings in relation to highway and pedestrian safety.
12. Drawing the above together, I find that the development has an unacceptable effect on pedestrian and highway safety. Accordingly, the development conflicts with the requirements of Policy T2 of the Leeds City Council Core Strategy (CS), Policy GP5 of the Leeds Unitary Development Plan (UDP), the objectives of the Street Design Guide SPD and the provisions of the National Planning Policy Framework (the Framework). These seek, amongst other things, to ensure that development does not have an unacceptable impact on road safety.

Conservation area

13. The row of properties including the appeal premises has been identified within the CA appraisal as being positive buildings. Several features contribute to the significance of the CA including the historic street pattern and numerous

buildings of visual merit which often incorporate traditional architectural detailing and materials.

14. Although there are differences in the shop fronts and fascia signs along the street, timber doors and windows are the predominant material and these elements do make a positive contribution to this part of the CA. Although the replacement shopfront retains the stone stall risers and pilasters from the previous shopfront, the modern UPVC materials jar with the traditional grain along the street. Thus, the shopfront is an undesirable incremental change that erodes the overall character and quality of the area. In this respect, it harms the character and appearance of the CA.
15. As the appeal relates to the shop front of a single small retail unit in the CA, the development results in less than substantial harm to its character and appearance. Paragraph 202 of the Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
16. Although I recognise that the HFT will have economic benefits there are no specific public benefits advocated from the shopfront. Whilst I understand that the appellant is open to amend the shopfront, this is not a matter for my consideration in this appeal. Heritage assets are irreplaceable and great weight should be given to their conservation. Accordingly, there are no public benefits that outweigh the less than substantial harm to the CA.
17. The development thus, conflicts with the requirements of Policies P10 and P11 of the CS, Policy RTC4 of the Site Allocations Plan (2019), Policies GP5, BD6, BC7 and N19 of the UDP, the CA Appraisal and Framework. These are concerned with, amongst other things, the character and appearance of developments and, where relevant, developments within CA's.

Other Matters

18. The appellant has stipulated that they would accept a condition restricting the hours of operation in the evening were I minded to allow the appeal. However, this would not overcome my concerns in relation to the impact of the development on the CA.

Conclusion

19. For the reasons given above, the development conflicts with the development plan and there are no material considerations that outweigh that conflict. Accordingly, the appeal is dismissed.

Mr R Walker

INSPECTOR