

Appeal Decision

Site visit made on 5 January 2022

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2022

Appeal Ref: APP/V2004/W/21/3282971

476 Beverley Road, Kingston Upon Hull HU5 1NE

- 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 & Mrs Ganime Gumul against the decision of Kingston-Upon-Hull City Council.
 - The application Ref 21/00402/FULL, dated 19 March 2021, was refused by notice dated 12 May 2021.
 - The development proposed is Change of use from sandwich shop to sui generis hot food take away.
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Decision

1. The appeal is allowed and planning permission is granted for Change of use from sandwich shop to sui generis hot food take away at 476 Beverley Road, Kingston Upon Hull HU5 1NE in accordance with the terms of the application, Ref 21/00402/FULL, dated 19 March 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development in the banner heading above is taken from the decision notice which accurately describes the proposal. However, I have omitted the phrase 'retrospective application' which is not a description of development. On my site visit the roller shutters were down and the unit was closed. However, I'm told that the use has commenced. As such, I am dealing with the appeal retrospectively.

Main Issue

3. The main issue is whether the appeal site is a suitable location for a Hot Food Takeaway use with particular reference to the health of younger people.

Reasons

4. I have no firm details of local obesity levels within this particular area. However, the Council's approach to new Hot Food Takeaways (HFTs) is set down within the Hull local Plan (2017) (LP), which considers all school children on their way to and from school, but with a particular focus on older school children. Policy 12 of the LP sets out that development to accommodate HFT use will not normally be supported within 400m of a secondary school, or sixth form college, or playing fields. The use of the word 'normally' implies a degree of flexibility in the application of this 400m buffer.
5. There are no schools within 400m of the appeal site. However, I have been referred to an outdoor sports facility and a playing field by the Council.

6. The playing field is located to the north of Clough Road and lies at the outer edges of the 400m buffer from the appeal site. However, there is some dispute over the precise distance and whether its entrance lies within 400m. There are no specific facilities at this playing field and I have no firm details of how this field is used, but it is open to the public and would therefore be available for a range of informal play and recreation uses by younger people.
7. Moreover, even though the primary school to the north of the playing field is more than 400m from the appeal site, there is a pedestrian access through the playing field to the school. As such, younger school children would also likely use the playing field as an access point.
8. Even if the playing field entrance lies within 400m, there are numerous HFT's, along with other shops selling food, that are considerably closer to the playing field around the junction of Clough Road and Beverley Road. Given the number and convenience of these existing facilities to the playing field, there is a limited likelihood that the proposed HFT, further away, would be a destination for any younger people using the playing field.
9. The outdoor sports facility is a bowling club and the Council do not dispute the appellant's comments that this is a private members club with most members over 40 years of age. As such, given the nature of this sports facility there would not be an adverse effect on the health of younger people from the appeal site's location a short walk from the bowling club.
10. Drawing the above together and based on the evidence before me, I consider that the appeal site is a suitable location for a HFT use, with particular reference to the health of younger people. As such, I find no conflict with the requirements of Policy 12 of the LP. Moreover, I find no conflict with the requirements of paragraph 92 of the National Planning Policy Framework, which sets out amongst other things that decisions should aim to achieve healthy, inclusive, and safe places.

Other Matters

11. There have been no material changes to the shop front from the change of use. As such, and having regard to my statutory duties, I find no harm to the Beverley Road Conservation Area.

Conditions

12. I have adapted the Council's suggested conditions where necessary in the interests of precision or brevity. As the HFT is retrospective a three year commencement condition is not necessary. However, I have imposed a plans condition in the interests of certainty. A condition controlling the hours of operation is necessary in the interests of the amenity of the area.
13. A condition requiring the implementation of flood risk mitigation measures set out in the approved Flood Risk Assessment is necessary in the interests of protecting the development against existing and future flood risk. Conditions in relation to noise, refuse and details of extraction are necessary in the interests of the living conditions of occupiers of the flat above the HFT and other nearby residential properties.
14. There is a strict timetable for compliance for these four conditions because permission is being granted retrospectively. As such, it is not possible to use

negatively worded conditions to secure the implementation of the measures before the development takes place. The conditions will ensure that the development can be enforced against if the measures are not implemented in accordance with the timetable.

Conclusion

15. For the reasons given above, and having regard to all other matters raised, the appeal is allowed subject to conditions.

Mr R Walker

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: Drg No N.022.
- 2) Customers shall only be permitted on the premises between the following hours: 1430-2330 on any day of the week.
- 3) Unless within 6 months of the date of this decision the mitigation measures detailed within the approved Flood Risk Assessment by A.M.E. Plans ref: Flood Risk Assessment are fully implemented, the Hot Food Takeaway Use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as the approved mitigation measures are implemented.

Upon implementation of the approved mitigation measures specified in this condition, the mitigation measures shall be retained thereafter.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) Unless within 3 months of the date of this decision a scheme for the sound attenuation for the premises between the ground and first floors, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the Hot Food Takeaway use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented. The scheme shall be in accordance with BS8233:2014 Guidance on Sound Insulation and Noise Reduction for Buildings.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the Hot Food Takeaway use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved sound attenuation scheme specified in this condition, the measures shall be retained thereafter.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) Unless within 3 months of the date of this decision details of extraction equipment, are submitted in writing to the local planning authority for approval, and unless the approved details are implemented within 3 months of the local planning authority's approval, the Hot Food Takeaway use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as the details are approved and implemented. The details shall include the location and design of any external pipe or flue to control the emission of fumes and measures to mitigate noise from the extraction equipment.

If no details in accordance with this condition is approved within 6 months of the date of this decision, the Hot Food Takeaway use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as the details approved by the local planning authority are implemented.

Upon implementation of the approved details specified in this condition, the measures shall be retained thereafter.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 6) Unless within 3 months of the date of this decision a scheme for the storage of refuse, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the Hot Food Takeaway use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented. The scheme shall provide for the storage of refuse outside within the curtilage of the site.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the Hot Food Takeaway use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved sound attenuation scheme specified in this condition, the measures shall be retained thereafter.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

End of Schedule