



Appeal Decisions

Site visit made on 25 October 2022

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 9th December 2022

Appeal A Ref: APP/B4215/W/22/3297886
135-141 Withington Road, Manchester M16 8EE

- 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 Co-operative Group Food Ltd against the decision of Manchester City Council.
 - The application Ref 131351/FO/2021, dated 6 August 2021, was refused by notice dated 4 February 2022.
 - The development proposed is the change of use from Use Class E to Use Class E and/ or Hot Food Takeaway (sui generis)
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Appeal B Ref: APP/B4215/W/22/3297887
135-141 Withington Road, Manchester M16 8EE

- 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 Co-operative Group Food Ltd against the decision of Manchester City Council.
 - The application Ref 131304/FO/2021, dated 3 August 2021, was refused by notice dated 4 February 2022.
 - The development proposed is external works to facilitate the subdivision of the retail unit into 3 units to include shopfront works, two new entrance doors, rear service access doors, installation of plant and enclosure, bollards, cycle stands, external roller shutters, reconfigured car park, new service bay and amended servicing proposals
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Procedural Matters

3. As set out above there are two appeals on this site. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

Main Issues

4. The main issues in respect of Appeal A are: (i) the effect of the proposal on the living conditions of residents of surrounding properties, with regard to increased pedestrian and vehicular traffic and associated noise and disturbance; and (ii) whether the proposal would be in an appropriate location.

5. The main issue in respect of Appeal B is the effect of the proposal on the living conditions of residents of surrounding properties, with regard to increased pedestrian and vehicular traffic and associated noise and disturbance.

Reasons

Living Conditions

6. The site is a retail food store at the junction of Withington Road and Mayfield Road, in the Whalley Range Conservation Area. Residential uses are to the south with a more commercial area to the north. Commercial units, including a hot food takeaway, are also across from the site on Withington Road.
7. Appeal A and Appeal B involve a change in the operating hours of the unit from 07.00 - 22.00 Monday to Saturday and 10.00 - 16.00 on Sunday to 07:00 – 23:00 Monday to Sunday. Even acknowledging that the Appeal A use would not be open to the public between 15:00 – 17:30 on weekdays, there would be additional pedestrian and vehicular movements resulting from the proposals.
8. During peak hours it is unlikely that the number and type of pedestrian and vehicular movements would differ significantly from the current use. While additional movements would occur during the extended hours, these times of the evening and weekend would likely see a reduced level of activity. As such, the additional movements could be accommodated without unduly impeding traffic flow or significantly increasing risk of conflicts. While I acknowledge the concerns of interested parties, the site would continue to provide ample, convenient parking, minimising on-street parking and limiting parking stress.
9. Although the frequency of deliveries would increase, the hours during which these would occur, and the access and egress used, would be the same as the current situation. In addition, there is no substantive evidence that there would be an increase in loitering that would impact surrounding residents. The front entrances to the proposals are set back from dwellings and the nature of the Appeal A proposal is such that any loitering would be for a limited time.
10. However, while additional pedestrian and vehicular movements would not result in highway safety issues, it remains that there would be increased car park noise due to these customer movements, including engines, car doors, and voices. This car park is adjacent to the Mayfield Road dwellings, set back from the main road and notably quieter in nature. Such noise would occur during times when the appeal property is currently closed, at evening and weekend when surrounding residents can reasonably expect a level of quiet.
11. While Monday – Saturday hours would be only one hour later than at present, Sunday hours would be much longer. In addition, in respect of Appeal A, the takeaway would likely see more evening activity than the current use and, with regards to Appeal B, replacement plant equipment would also be installed close to the car park. There is therefore a possibility for the appeals to result in an unacceptable level of disturbance.
12. I have had regard to the noise reports submitted by the appellant. However, these do not factor in the proposed takeaway use of the site for the purposes of Appeal A. Noise predictions are based on a retail use. This does not reflect the car park of a takeaway, which is likely to have a greater evening activity.

13. With regards to Appeal B, the reports assess both plant noise and activity noise likely to arise from the proposal. I consider that the identified receptor represents the nearest noise sensitive location, with other dwellings, including those on Range Road, a greater distance from likely noise sources. However, concerns have been raised by local residents regarding the survey location for background readings not accurately reflecting noise levels experienced by them. I noted that this location close to the junction of Whittington Road and Mayfield Road, is in a more exposed location closer to the main road and not shielded by the existing building which could result in a greater level of background noise than nearby residential receptors, which are primarily set back from the traffic and resulting noise of Withington Road.
14. As such, the reports do not form a robust basis for a conclusion of overall noise impacts from the proposals. Rather, I find that the increased activity resulting from both proposals would create a significant level of disturbance to nearby residents, given the introduction of additional noise in the evenings and weekends due to extended opening hours. In respect of Appeal B, even acknowledging the current plant, the replacement plant equipment has the potential to further contribute to such disturbance.
15. I note that there is no objection to the proposal by the Council's Environmental Health team. The appellant has referred to an appeal decision¹ which granted planning permission for a hot food takeaway in a nearby area, in which significant weight was given by the Inspector to the lack of Environmental Health objection. However, I note that in that case the proposal did not result in adverse impacts with regards to noise due to the precise location of residential dwellings relative to the unit and parking. While the lack of objection from the Council's Environmental Health team does carry weight, I find that in this particular case, this is outweighed by the harm identified.
16. For the reasons given, while the increased vehicular and pedestrian activity of the proposals would not cause harm with regards to highway safety, it would cause significant adverse harm to the living conditions of surrounding residents with regards to noise and disturbance. As such, the proposals would fail to comply with Policy DC26 of the Unitary Development Plan for the City of Manchester (the UDP) and Policies SP1 and DM1 of the Manchester City Council Core Strategy, July 2012 (the CS) insofar as they seek to ensure development has regard to effects on noise and positively contributes to the wellbeing of residents. Appeal A would also fail to comply with Policy DC10 of the UDP which seeks that food and drink uses have regard to the amenities of residents and Policy C10 of the CS which seeks to ensure evening uses have no unacceptable noise impacts.

Suitable Location

17. Appeal A seeks the change of use of the site to a hot food takeaway. Policy DC10.1(a) of the UDP states that in determining applications for such development, the Council will have regard to the general location. Policy DC10.2 continues that the principle of such development is normally accepted in the city centre, industrial and commercial areas, in shopping centres and, at ground level, in local shopping parades of more than 8 shops or offices.

¹ APP/B4215/W/20/3261720

18. Although the precise extent of the centre is not defined, the main parties agree that the site does not fall within any of the locations set out in Policy DC10.2. However, this does not represent a closed list, with Policy DC10.3 stating that developments such as the proposal would not “normally” be permitted in other locations. The site is to the south of a long and established parade along Withington Road, which features a range of commercial units including hot food takeaways, convenience stores and hairdressers at street level. It contains a range of uses that service various needs of the surrounding community.
19. Policy C1 of the CS states that locations not identified as local centres, but which perform the same function in terms of scale and meeting local needs, will be considered to be a local centre. Given the amount and range of units present in this commercial section of Withington Road, this could be considered a local centre, where uses such as the proposal would be expected.
20. While the site is on the edge of the commercial part of Withington Road, due to its retail use and the units opposite, it reads as part of these commercial uses rather than belonging to the residential area to the south. Although a medical centre and car showroom separate the site from the shopping parade, they create a continuum of commercial uses from these shops to the property. The site has a clear visual and functional link to the commercial nature of Withington Road, marking the end of such uses prior to the transition to a more residential area. While concerns raised indicate an over-proliferation of takeaways within the area, I have no substantive evidence that this would be the case. Overall, I do not find that the proposal would appear out of place at the site.
21. Nevertheless, Policy DC10 of the UDP remains clear that in determining applications for developments such as the proposal, regard is also to be had to the effect on the amenity of neighbouring residents. This is further supported by Policy C10 of the CS, which states that development supporting the night time or evening economy will only be permitted if, among other things, it does not create an unacceptable impact on neighbouring uses with regards to noise. In this regard, I have concluded above that the proposal would result in significant adverse harm to the living conditions of surrounding residents with regards to noise such that it would not be sited in an appropriate location.
22. For the reasons given, I find that the location would be unsuitable for the proposed development. In this regard it would conflict with the provisions of Policy DC10 of the UDP and Policies SP1, CP10 and DM1 of the CS insofar as they seek to ensure development meets local needs and that hot food takeaways have regard to the types and character of other uses.

Other Matters

23. The proposals would permit the appeal site to diversify the range of services available to local residents and to contribute towards both day and night economies within the area. This would contribute to the vitality and viability of the surrounding area, particularly during times of change in the retail sector. These benefits of both proposals are acknowledged and attract significant weight.
24. Concerns were raised with regards to Appeal A regarding littering and odours associated with a hot food takeaway. However, the appellant submitted an Odour Impact Assessment and Waste Management Strategy during the

application, and the Council have raised no issue in these regards. Based on my observations, I have no reason to disagree with the Council on these points.

Planning Balance and Conclusion

25. I have concluded that the proposals would not result in harm with regards to highway safety, and have found that they would positively contribute to the vitality and viability of the area. Nevertheless, even taken together, I do not find that these factors outweigh the significant harm identified in each case to the living conditions of surrounding residents, with regards to noise and disturbance which, in respect of Appeal A, would also lead to the appeal site being an inappropriate location for a hot food takeaway.
26. For the reasons given I therefore conclude that both the appeals should be dismissed.

C Rafferty

INSPECTOR