



Appeal Decision

Site visit made on 29 November 2022

by F Harrison BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th January 2023

Appeal Ref: APP/N4720/W/22/3306829

17A Neville Road, Halton, Leeds, LS9 0HD

- 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 Biesley Walker against the decision of Leeds City Council.
 - The application Ref 22/01628/FU, dated 3 March 2022, was refused by notice dated 1 July 2022.
 - The development proposed is retrospective application for a change of use from a shop to a hot food takeaway.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development on the application form originally included reference to a replacement flue pipe. However, during the course of the determination of the application the proposal was amended to remove this element. As such I have omitted this part of the proposal in the description of development in the banner heading above.
3. The change of use proposed has already occurred and therefore I have determined the appeal on this basis.

Main Issues

4. The main issues are the effect of the proposal on the:
 - health and wellbeing of local residents, with particular regard to the health of young people; and
 - living conditions of neighbouring occupiers with regard to odour, fumes and disturbance.

Reasons

Health and Wellbeing

5. Leeds currently has a high level of obesity that is affecting people's health and wellbeing. It is well understood that there is a link between obesity and unhealthy food choices, and that food from takeaways is more likely to have a largely unfavourable nutritional content. Through the Hot Food Takeaway (HFT) Supplementary Planning Document (SPD) (2019), the Council is using the planning powers it has to try to address this problem, by limiting access to unhealthy food choices and managing the location of HFTs. The SPD aligns with

the National Planning Policy Framework (the Framework) (2021) at paragraph 92, which sets out that planning decisions should aim to achieve healthy places which enable and support healthy lifestyles, especially where this would address identified local health and wellbeing needs. While not part of the development plan, it provides advice on how policies in the plan are to be implemented and is capable of being a material consideration.

6. The SPD builds upon wider initiatives spread across several Council service areas to improve health and wellbeing. I note that Leeds does not have an exceptional problem with regard to childhood obesity. Nevertheless, with evidence implying that overweight and obese children are more likely to become obese adults, the SPD sets out that it is vital to support and encourage children to have healthy lifestyles. Restricting their access to unhealthy foods around their schools will help achieve this objective.
7. Policy HFT1 in the SPD is clear that where an HFT application falls within 400 metres (m) of a secondary school main entrance, planning permission will not be granted. It is not disputed that the appeal site falls within 400m of two secondary schools. Given this proximity, it seems to me a strong likelihood that the appeal development would be a destination for school pupils. Moreover, given the general absence of other HFTs in the area, save for the fish and chip shop next to the appeal site, the appeal development increases the access of school children to purchase unhealthy foods. The appeal scheme, as such, does not promote healthy eating.
8. I note that the appeal site is a Caribbean HFT, and the appellant argues that Caribbean food has a lower percentage of carbohydrates and/or fat content, owing to its ingredients and style of cooking, thus offering a healthier food alternative to the neighbouring fish and chip shop. In doing so the appellant contends the development will be contributing to school children eating healthier food.
9. It is possible that the intended operator's menu might well be healthier than that of other HFTs. However, the proposal before me is not for a personal planning permission. The appeal premises could be let to another HFT provider whose mode of operation and menu offering might be very different. Moreover, this is a concern that could not be rectified by the imposition of a condition that would meet the relevant test set out in Planning Practice Guidance.
10. While the SPD does not define what is meant by unhealthy foods, it states that evidence shows that HFTs sell predominantly unhealthy food, containing high amounts of fat, salt and sugar which are linked to low nutritional quality and weight gain. Even if the appellant would restrict the food offering to that which is compliant with the requirements for school food regulations to ensure the premises offer only healthy foods, given that the proposal is not for a personal permission, this could not be secured through the imposition of a condition.
11. Although saved Policy GP5 from the Leeds Unitary Development Plan (UDP) (Review 2006) does not explicitly refer to healthy lifestyles, it nonetheless recognises the importance of giving consideration to danger to health. In this regard, the policies within the SPD respond to identified local health and wellbeing needs and seeks to limit access to unhealthy food choices and manage the location of HFTs in the interest of creating healthy places and supporting healthy lifestyles. A matter which is a clear component of the Framework.

12. For the reasons given above, the development is harmful to the health and wellbeing of local residents, with particular regard to the health of young people, in conflict with saved Policy GP5 from the Leeds UDP (Review 2006) which requires proposals to avoid danger to health. It also fails to reflect guidance in Policy HF1 of the SPD (2019) which seeks to prevent new HFT uses within 400m of a secondary school main entrance and does not align with advice set out in the Framework (2021) at Paragraph 92.

Living Conditions

13. The appeal site is a single storey property located on Neville Road at the junction with Halton Moor Avenue. Adjoining the appeal property is a fish and chip shop, with, as I understand it, a residential flat above it with a window facing the appeal site. On the other side of the appeal site is a Presbytery which has a number of windows facing the appeal site which are said to serve as meeting rooms.
14. Potential odour and fumes from the use, with windows of neighbouring properties in close proximity at ground and first floor levels creates a sensitive relationship. The appellant alleges that the type of cooking that would occur would be similar to that of domestic cooking. Nevertheless, I am not satisfied that there is sufficient evidence to confirm that the extraction fan proposed would satisfactorily extract cooking smells, or whether it is fit for purpose for what would be a commercial operation, be as it may in a small unit.
15. I note the further technical information in the appellant's appeal submissions, however, even if the proposed extractor fan were to eliminate some of the emission of odours and fumes, the neighbouring property windows are in such close proximity it is appropriate to take a precautionary approach on this matter.
16. Accordingly, the development is harmful to the living conditions of neighbouring occupiers, with regard to odour and fumes. This is in conflict with Policy GP5 of the Leeds UDP (Review 2006), Policy P10 of the Core Strategy (as amended by the Core Strategy Selection Review 2019) and Policy HFT3 of the SPD which require new development to contribute positively to quality of life and wellbeing and avoid loss of residential amenity.
17. Given the appeal site's location within a small parade of other commercial uses I do not find the additional comings and goings associated with the HFT use would give rise to intrusive disturbance for neighbouring occupiers. Furthermore, the opening hours of the HFT could be secured by a condition to safeguard living conditions in this regard. As such, the development would not harm the living conditions of neighbouring occupiers with regard to disturbance and accords with policies GP5, P10 and HFT3 in relation to this matter.

Other Matters

18. While there would be economic benefits in the generation of 2 jobs, this is of limited weight owing to the scale of the development. I note that the appellant has invested in the business already and has purchased equipment, however these are largely personal circumstances and, therefore, of limited weight. Furthermore, it is argued that the development will ensure the building is occupied and not boarded up and derelict. However, it has not been shown the appeal development is the only way of achieving this.

19. There may well be appropriate parking provision, delivery access, bin storage and cycle parking if required, however policy compliance on these matters is a neutral factor.

Conclusion

20. There is no harm to the living conditions of neighbouring occupiers with regard to disturbance. However, my above findings in respect of the health and wellbeing of local residents and the living conditions of neighbouring occupiers, with regard to odour and fumes, bring the development into conflict with the development plan, read as a whole. There are no material considerations that have been shown to have sufficient weight to warrant a decision otherwise than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

F Harrison

INSPECTOR