



Appeal Decision

Site visit made on 31 October 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th November 2023

Appeal Ref: APP/X3025/W/23/3322721

23 Garibaldi Road, Forest Town, Mansfield, Nottinghamshire NG19 0JT

- 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 Karsan Karavadra against the decision of Mansfield District Council.
 - The application Ref 2023/0039/COU, dated 18 January 2023, was refused by notice dated 3 March 2023.
 - The development proposed is described as the “change of use of redundant retail unit to hot food takeaway and extension to form store room”.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The address in the banner heading above has been amended from that included within the planning application form, as it is clear from the Location Plan that the appeal proposal does not include 21 Garibaldi Road.
3. The appellant’s name within the application form and appeal form differ. The appellant has clarified their name which is in the banner heading above.

Main Issue

4. The main issue is whether the appeal site is a suitable location for the proposed hot food takeaway, having regard to encouraging healthy food choices.

Reasons

5. The appeal site relates to part of the ground floor of a three-storey building that has commercial uses to the ground floor and residential uses above. The building lies within a small shopping parade within a wider residential area. Policy RT10 of the Mansfield District Local Plan 2013-2033, adopted 2020 (‘the LP’) states, amongst other things, that proposals for hot food takeaways will be supported provided they are not within a hot food takeaway exclusion zone (‘the HFEZ’) which the policy defines as within a 400m radius from the main access point to any secondary school or college. The main parties agree that the appeal site is within the HFEZ to The Garibaldi Secondary School.
6. The appellant would be agreeable to a condition that would prevent the hot food takeaway from opening during lunchtimes Monday to Friday to prevent children from purchasing food during the school day. However, the policy’s aim is to prevent sedentary behaviour and easy access to unhealthy food and the explanatory text provides evidence of a higher-than-average obesity rate in both Year 6 children and adults in the Mansfield district. Consequently, a

condition limiting the day/times of opening would not encourage healthy food choices at other times of the day/week by school children or by other members of the public. Furthermore, a condition limiting opening hours is not advocated by the policy as an acceptable method of compliance.

7. I have been directed to information whereby Nottingham City Council were requested to delete a similar HFEZ policy from their draft local plan by the examining Inspector. Although the source of the information is unknown, it suggests that the removal of the policy was due to a lack of supporting evidence. Conversely, LP Policy RT10 has been examined and was found sound and therefore, attracts full weight. Furthermore, the acceptability or otherwise of another Council's draft local plan policy, even if within the same county, has no bearing on the appeal proposal.
8. It has been said that a previous fish and chip shop in the parade has subsequently closed but could re-open. However, LP Policy RT10 applies only to proposals seeking planning permission for a new hot food takeaway. Therefore, it is not directly comparable to the appeal proposal.
9. In reference to the main issue, the appeal site would not be a suitable location for the proposed hot food takeaway, as its proximity within 400m radius of the entrance of a secondary school would not encourage healthier food choices. It would therefore conflict with Policy RT10 of the LP, the purpose of which has been set out above.

Other Matters

10. I acknowledge that the proposal would likely provide employment opportunities and could attract people into the area when visiting the takeaway, which would provide some limited economic benefits. The appellant suggests that there is support for the proposal from the local community; that families depend on takeaways or delivery options; and that this part of Mansfield has limited takeaway options. However, these matters have not been supported with evidence. The Highways Authority and Environmental Public Protection have no objection to the proposal however, these are neutral matters.
11. It is said that the proposal could add to the range of hot food takeaways in the area and provide an alternative option to fish and chips. However, planning permission could not restrict the type of food to be sold from the premises, and therefore a range of food types in the area could not be guaranteed.
12. Consequently, these other matters do not outweigh the harm I have identified in relation to the main issue.

Conclusion

13. For the reasons outlined above, having had regard to the development plan as a whole and all other matters raised, the appeal should be dismissed.

A Berry

INSPECTOR