



Appeal Decision

Site visit made on 3 April 2024

by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th April 2024

Appeal Ref: APP/A4710/W/23/3326615

315 Huddersfield Road, Halifax HX3 0PG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Lijie Zhu against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref is 23/00048/COU.
 - The development proposed is described as retrospective change of use of café to a hot food take away and the erection of an extraction flue.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are the effect of the development on:
 - the character and appearance of the area, including the Huddersfield Road East Conservation Area, with particular regard to the extraction flue, and
 - the living conditions of nearby occupiers with particular regard to noise and disturbance (from the use and extraction system).

Reasons

3. The appeal site comprises an end terraced property located on the corner of Huddersfield Road and Westbourne Grove. Although closed at the time of my visit, it appears that the use as a hot food takeaway has commenced.

Character and appearance

4. The appeal site is located within Huddersfield Road East Conservation Area (CA) whose significance derives from stone built terraced properties constructed in the late 19th century and early 20th century, laid out in a regular pattern along Huddersfield Road and along roads running off this road which slope down towards the valley below. Slate roofs, chimney stacks, enclosed yards and small, walled front gardens are a characteristic of the area.
5. Although the area is predominantly residential in character there are a number of commercial uses, particularly in properties at the end of the terraced rows. In this regard the change of use to a hot food takeaway would respect the character of the area. The statutory test relating to conservation areas is met in this regard.

6. However, whilst located on the rear of the premises, the wide, tall flue is prominent in the street scene of Westbourne Grove. Although downpipes are a feature of the rear of nearby premises, extraction flues are not. The colouring of the flue has been put to me however this would not reduce the overall scale of the flue, or indeed its impact on the streetscene to an acceptable degree. Moreover, the boxing of the flue as suggested would increase its scale even more.
7. This bulky addition fails to reflect the character or appearance of the area and consequently neither preserves or enhances the character or appearance of the CA, in conflict with Section 72 (1) of the Planning (Listed Building and Conservation Areas) Act 1990. Given the harm identified this aspect of the development conflicts with Policies BT1, HW6 and HE1 of the Calderdale Local Plan 2018/19 – 2032/33 Written Statement (CLP) which collectively requires development to be of a high quality which respects the character and appearance of existing buildings and surroundings and preserves or enhances Conservation Areas.
8. The harm that is caused to the CA as a designated heritage asset is less than substantial and in accordance with the National Planning Policy Framework (Framework) needs to be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
9. There is no evidence before me to demonstrate that the development is the optimum viable use of the premises. I acknowledge that the use as a hot food takeaway provides the public with a choice of food in the locality, but whilst accepting that such uses require suitable ventilation and extraction, it has not been demonstrated that the flue as constructed is the only available design solution to provide this. The economic and social benefits of the proposal are not substantiated. Accordingly, this limits the weight that I can give these matters.
10. Given the above, whilst less than substantial harm would be caused to the significance of the designated heritage asset, this is a matter to which I am required to give great weight. The public benefits cited carry limited weight and do not outweigh the identified harm. The proposal therefore conflicts with Policy HE1 of the CLP in respect of the public benefits not outweighing the harm, and the conserving and enhancing the historic environment objectives of the Framework.

Living conditions

11. The appeal premises is located close to residential properties including within the terrace of which the host property forms part and to the rear in Westbourne Grove. There are also residential properties on the opposite side of the junction along Huddersfield Road beyond a funeral directors.
12. The application form indicates that the premises would be open from 17.00 to 23.00 Monday to Sunday including Bank Holidays. Whilst the opening hours on the door of the premises indicate that it is closed on Wednesday, I have assessed the scheme on the basis of the application form.
13. It is likely that some customers would walk to the premises to collect their take away, but there would be a high probability that a number of customers and food delivery companies would visit the premises by motor vehicle. Parking on

Huddersfield Road within the vicinity of the appeal premises is covered by double yellow lines and in all probability customers/drivers collecting food orders would park in nearby residential streets in close proximity to the front of residential properties.

14. Whilst this activity would be unlikely to cause disturbance late afternoon into the early evening when nearby occupiers may be busy undertaking household activities or watching television, noise from people talking, closing doors and vehicle movements, including turning at the bottom of Westbourne Grove would be likely to cause noise disturbance later on in the evening when nearby residential occupiers may be sleeping. At such time, traffic flows along Huddersfield Road and associated traffic noise would be likely to be less than during the late afternoon and early evening, thereby the noise from these activities would be readily audible from inside nearby properties, particularly if front windows were open.
15. The level of disturbance late in the evening that would be caused is likely to be greater than that associated with the previous use as a café, which the Council has indicated, and is not disputed, had opening hours restricted between 08.00 and 16.00 Monday to Friday and between 10.00 and 13.30 on Saturday. The café did not open on Sundays or Bank Holidays.
16. I have considered whether a condition restricting the opening hours would be reasonable to mitigate the harm identified but given the nature of the use such a condition would be likely to be unreasonably restrictive for a business of this kind.
17. In terms of noise from the extraction system, the Council has indicated that this was audible from a nearby bedroom above the traffic noise, albeit the location of this bedroom was not identified. The system was not in operation at the time of my visit as the premises were closed.
18. The submitted Noise Impact Assessment¹ identified that the extraction system is operational when the premises are open. It took measurements of the extract plant finding that its noise level when operational was slightly below the background noise level at the nearest receptors in the late evening. Accordingly, whilst acknowledging that the noise from the extract equipment would be audible from nearby bedrooms, particularly if the bedroom windows were open, its level and tone would be unlikely to be a source of nuisance or cause any change in behaviour or attitude of nearby residential occupiers.
19. Whilst noise from the extraction system would be unlikely to harm the living conditions of nearby occupiers, noise from the comings and goings of customers and delivery drivers parking in close proximity to residential properties off Huddersfield Road in the late evening, seven days a week would be a source of nuisance harming the living conditions of nearby occupiers. The use of the premises conflicts with CLP Policies HW6, EN1 and EN3 which seek to protect residential amenity and avoid the juxtaposition of incompatible land-uses.

¹ ENS dated 23 March 2023

Conclusion

20. For the above reasons and having regard to all other matters raised, the development conflicts with the development plan taken as a whole. There are no considerations which indicate a decision other than in accordance with the development plan. The appeal is dismissed.

RC Kirby

INSPECTOR