



Appeal Decision

Site visit made on 7 February 2024

By A.Graham BA(Hons) MAued IHBC

an Inspector appointed by the Secretary of State

Decision date:10.04.2024

Appeal Ref: APP/V2004/W/23/3321832

The Dart Public House, Hebden Avenue, Kingston Upon Hull, HU8 9LX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Surinder Mehat against the decision of Kingston Upon Hull City Council.
 - The application Ref 22/01027/COU was approved on 18 November 2022.
 - The application sought planning permission for change of use from public house to 4 x units within Class E (Commercial, Business and Service) Use, including one unit for turf accountants.
 - The condition in dispute is Condition No 3 which states that: The proposed take-away unit on the drawings submitted, will operate as a Class E unit only.
 - The reason given for the condition is: in the interest of amenity, and to comply with policy 12 of the Local Plan.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from public house to 4 x units within Class E (Commercial, Business and Service) Use, including one unit for turf accountants, at The Dart Public House, Hebden Avenue, Kingston Upon Hull, HU8 9LX in accordance with the application Ref 22/01027/COU, dated 2 September 2022, without compliance with condition number 3 previously imposed on planning permission Ref 22/01027/COU subject to the following conditions as set out in the Schedule below.

Preliminary Matters

2. Since the determination of this application a revised National Planning Policy Framework (the Framework) was published in December 2023. The changes were not material to the main issues of this appeal. I have therefore determined this appeal in accordance with the revised provisions within the Framework.
3. This decision is an appeal made directly against a condition imposed by the Council and as such the description remains unchanged from that as originally determined.

Main Issue

4. The main issue is whether the appeal site is a suitable location for a hot food takeaway use with particular reference to the effect of such a use in this location upon the health of younger people.

Reasons

5. The appeal site was most recently a public house located within an area of post war housing estate to the east of Hull city centre. On my site visit I saw that work had commenced in implementing planning permission Ref 22/01027/COU whereby permission was granted for change of use of the pub to various uses under Class E, including one unit as a betting shop, a convenience store and another labelled on the plans as combined take away, cafe and ice cream parlour, none of which were at time of my visit, operational.
6. A condition was added to the original decision notice restricting the use of the proposed units to those within Class E only, thereby removing the potential for the take away and ice cream parlour unit to undertake a permitted change to hot food takeaway at a later date. The reasoning for this condition to restrict any hot food takeaway was due to both protecting neighbours from noise and odours as well as to meet the requirements of Policy 12 of the Hull Local Plan 2016 to 2032, adopted 2017 (the LP) which seeks to control take aways and take away uses within 400m of a secondary school or playing field. This is one way that the LP attempts to combat the temptation of school children to leave school premises and visit such establishments within their lunch breaks.
7. It is proposed to remove the relevant condition that sought to restrict any potential change of use in this building in the future so as to allow the functioning of a maximum of two units as hot food takeaway should the operators of the building so wish.
8. Within 400m of the appeal site there is an area of largely informal amenity space known as Western Gailes Park. I saw on my site visit that Western Gailes Park includes a playing pitch and children's play area, both of which fall within the fringe of this 400m boundary.
9. However, the appeal site is located on the opposite bank of the Holderness Drain. The Holderness Drain is a wide and deep drainage ditch and it would be very difficult and potentially dangerous were anyone to attempt to cross this drain were they so inclined to do so. Therefore, for the closest, southern extremity of the park to be reached it would be necessary to walk around 800m using the most practical, direct route to the park. This includes cutting a corner over a grassed area behind properties on Harleston Close.
10. The presence of the Holderness Drain therefore presents a defined and impermeable physical barrier to movement and it would be unfair to apply the 400m 'as the crow flies' to this particular scheme. Whilst recognising the methodology behind this policy and the difficulty in assessing routes and paths that may not show on defined maps, the policy retains a degree of flexibility in the use of the word 'normally'. In this case, I consider that a degree of flexibility should be applied due to the impossibility of direct routes between the appeal site and the playing fields that would result in it being very difficult for children to walk to and from any proposed use in a short amount of time.

11. As such, the appeal site is a suitable location for a hot food takeaway, ice cream parlour and café and would not be in conflict with Policy 12 of the LP. Moreover, I find no conflict with paragraph 96(c) of the Framework in its desire to achieve healthy, inclusive and safe places in this particular instance.

Other Matters

12. Coming to matters of living conditions, some local residents were concerned due to the potential of a hot food takeaway being located nearby. The parties made representations to this effect and the Council has subsequently recommended modified conditions so to further satisfy any concerns over the potential effect of noise and odour upon the living conditions of neighbours due to the proximity and potential for further disturbance caused by any such use. I am satisfied therefore that these conditions would adequately address the issues of neighbouring amenity through the control of such potential environmental disturbances.

Conditions

13. I have added the conditions as suggested by the Council and this includes the very slightly modified wording to condition 6 to include reference to the take away use as well as new condition 3 which stipulates the location and numbers of any potential take away use so as to further meet the Policy requirements of Policy 12 in its attempt to restrict over concentration of such uses.

Conclusion

14. For the reasons given above the appeal is allowed.

A Graham

INSPECTOR

Schedule of Conditions

1. The development must be carried out in complete accordance with the following approved documents: Approved plans; (drawing nos. 22 L756.1: Proposed Site Plan, 22 L756.1 P: Proposed Ground Floor Plan, 22 L756.2: Proposed First Floor Plan, 22 L756.3: Proposed South and East Elevations, 22 L756.4 Proposed North and West Elevations and Revised Drawings 22 L756.1 Pa: Proposed Ground Floor Plan showing noise mitigation dated 23.10.22.
2. The development hereby permitted shall be begun within three years of the date of this permission.
3. Take-away use shall be restricted to one of the two units only with entrances facing Hebden Avenue (excluding the unit identified as a convenience store).
4. No customer, or staff shall be permitted to be on the premises of the ground floor after 23:00 and before 07:00 hours on any day of operation.
5. No deliveries shall be received or dispatched except between the hours of 0700 and 2100.
6. Should any unit be occupied as a café, take-away, or mixed café/take-away, details of equipment to control the emission of fumes, including the location and design of any external pipe or flue and measures to mitigate noise from the extraction equipment, shall be submitted to and approved in writing by the Local Planning Authority. The approved equipment shall be installed before the use commences and thereafter retained and operated in accordance with the manufacture's specifications/instructions.
7. Details of a sound attenuation scheme between the ground and first floors shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of works. The scheme shall be in accordance with BS 8233: 2014 Guidance on Sound Insulation and Noise Reduction for Buildings and carried out as approved before the use commences and shall thereafter be retained.
8. Prior to commencement of provision shall be made for the secure storage of refuse, in accordance with a scheme to be submitted to and approved by the Local Planning Authority. The provision shall be retained in accordance with the scheme. A pre-commencement condition is required to ensure the development provides adequate refuse storage facilities.
9. The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (FRA) dated August 2022, Ref: L76/Mehat/ The Dart Hotel and the flood proofing and resilience measures detailed within the FRA. The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority. A written and photographic installation report demonstrating flood proofing

and resilience measures as detailed in the FRA shall be submitted to the Local Planning Authority following completion of these.

10. The site shall be developed with separate systems of drainage for foul and surface water on and off site. Surface water shall be drained via Sustainable Systems (SUDS). Drainage details shall be submitted to the LPA for approval prior to the commencement of development and shall be carried out as approved unless otherwise agreed in writing by the LPA. A pre-commencement condition is necessary to ensure the site can be adequately drained.
11. Details of equipment to prevent fats, oils and grease from cooking and other activities carried out on the site from entering any drainage system, including the location and design of any traps or interceptors and a maintenance regime for such traps or interceptors, shall be submitted to and approved in writing by the Local Planning Authority before development begins. The approved equipment shall be installed before the use commences and thereafter retained and operated in accordance with the agreed maintenance schedule.

END OF SCHEDULE