



Appeal Decision

Site visit made on 26 July 2024

by S. Hartley BA(Hons) Dist.TP (Manc) DMS MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 2 August 2024

Appeal Ref: APP/H4315/W/24/3340233

169 Ormskirk Road, Rainford, Lancashire, WA11 8HR

- The appeal is made under section 78 of the Town and Country Planning Act 1990.
 - The appeal is made by Mr Fabio Cangemi of Little Italy Limited against the decision of St Helens Council.
 - The application reference is P/2023/0714/FUL.
 - The advertisement proposed is for change of use of café (Class E) to takeaway (Sui Generis), installation of external extraction unit and external alterations to shop front (part retrospective).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. In the banner heading above, I have used the description of development from the Council's refusal notice rather than the applicant's application form as this more precisely reflects the planning application proposal.

Main Issue

3. The main issues are the effect of the development upon (i) public health including compliance with the locational requirements of local planning policy in respect of hot food take-aways and (ii) the living conditions of the occupiers of No. 169A and 171 Ormskirk Road in respect of noise and disturbance.

Reasons

Site and proposal

4. The proposal relates to the ground floor of an existing two storey, semi-detached building at No. 169 Ormskirk Road, Rainford. The application property is comprised of a former café at ground floor level and an existing residential flat at first floor level. The latter does not form part of the planning application.
5. The evidence is that the former café (Tartan Tearooms) was in use for several years but has since ceased operations. There is an existing detached garage/store at the rear and hard standing to the front and side, which allows for off-street parking for at least 5 vehicles. Two way opening access gates are also located to the side. Internal works for the proposed hot food takeaway and

external alterations to the existing shopfront have been undertaken and form part of the retrospective works.

6. The application site is located to the northern end of the village of Rainford and within a primarily residential area, with some commercial, business, service and educational uses nearby. The Rainford District Local Centre is located approximately 500m south, further along Ormskirk Road. The immediate surrounding area to the application site includes No.171 Ormskirk Road which adjoins to the north and has extant permission for a change of use from a commercial unit to a dwellinghouse. There are existing residential dwellings to the east and the ARTS Independent Specialist School at No.167a Ormskirk Road is situated to the south.
7. The proposed hot food takeaway would have 2 full time staff and the hours of opening would be from 16:30pm to 22:00pm, Tuesday to Saturday. The proposal also involves the installation of an external extraction unit, and the shopfront openings and frontage has since been altered from white to black.

Health and compliance with school exclusion zones

8. Policy LPD10 of the St Helens Borough Local Plan up to 2037 (LP) states that *'planning permission for a hot food takeaway will only be granted if it would be located: a) within the defined Town Centre of St Helens or Earlestown; or b) if located outside the Town Centre of St Helens or Earlestown, be outside a 400m exclusion zone measured from the boundary of any primary or secondary school or sixth form college'*. It is common ground that the proposed hot food take-away would be within 400 metres of Corpus Christi Catholic Primary School and ARTS Independent Specialist School (ARTS), the latter of which caters for students between eleven and sixteen years old.
9. The appellant considers that there is justification for allowing the appeal even though there is conflict with policy LPD10 of the LP. This is on the basis that the opening hours would be between 16.30 and 22.00 and hence when schools are currently closed.
10. While the evidence indicates that teaching is unlikely to take place when the proposed hot food take-away would be open, it remains possible that after school clubs or extra curricula activity may take place during times when the proposed hot food take-away is open. Furthermore, it cannot be assumed that in the future the normal school day may not alter. Notwithstanding the proposed opening hours for the hot food take-away, I conclude that there would be conflict with policy LPD10 of the LP, and by association the Council's Hot Food Take-Away SPD 2011 (SPD) and, therefore, the proposal would be likely have the effect of negatively contributing to obesity issues in the Borough.
11. Indeed, the evidence is that there is a particular obesity issue in the Borough. The Examining Inspector who considered policy LPD10 of the LP stated that *'reducing access to hot food take-aways is one component of an overall approach that can help combat poor health, and childhood obesity in particular, but it is an important one. Sections 3 and 4 of Policy LPD10 are justified'*.

12. The appellant has provided details/examples of what would be sold (e.g., menus) from the hot food-take-away. I do not know the exact salt, sugar and/or calorie content of what would be sold from the hot-food take-away and, in any event, imposing a condition to control such matters would not, in my judgement, meet the test of enforceability.
13. I conclude that the proposal would not accord with policy LPD10 of the LP or the SPD. There is therefore potential for the development to cause unacceptable harm to the health of children and to exacerbate obesity issues in the Borough. Consequently, the proposal would not accord with the health requirements of policies LPD10 and LPA12 of the LP, the SPD, and paragraph 96 of the National Planning Policy Framework 2023 (the Framework).
14. In reaching this conclusion, I note the '*neutral*' position adopted by ARTS. However, this is not sufficient to justify the harm that would be caused by the proposal, and it is noteworthy that no such comment has been made by Corpus Christi Catholic Primary School. It is also important to emphasise that these schools may be run or operated differently in the future and hence it is reasonable that policy LPD10 is applied with this possibility in mind.

Living Conditions

15. I am satisfied that conditions could be imposed to ensure that the ground floor hot food take-away is properly noise insulated in order to ensure that there is not unsuitable levels of internal noise which may cause harm to the ground floor flat above, the existing ground floor flat adjoining the property, and/or the use of the whole of No.171 Ormskirk Road as a single dwellinghouse in accordance with the unimplemented planning permission for this building.
16. The evidence indicates that the ground floor of the appeal property was last used as a café in accordance with planning permission P/2005/0601. This planning permission restricts the café to a '*coffee/tea shop*' only (condition 4). It does not include any restriction from an hours of use point of view. I have limited information about the use of the former café and whether it was open at night. I consider that, even if a café were to open again in the future (i.e., a fallback position), it is unlikely that there would be the same frequency of customer comings and goings when compared to a hot food take-away.
17. In the context that No. 171 Ormskirk Road has planning permission to be used as a single dwellinghouse, coupled with the evidence that No. 169A and the upper floor of 171 Ormskirk Road are currently in use for residential purposes, I find that the likely comings and goings of customers late at night, when residents would ordinarily be relaxing or sleeping, would lead to noise and disturbance to neighbouring residents. This harm would likely be most prevalent in the summer months when residents would be more likely to want to keep windows open at night. Noise and disturbance would be likely from slamming car doors, the revving of car engines, and/or from customers chatting or laughing outside while they either eat food or wait for food to be made.
18. For the above reasons, I am unable to conclude that harm would not be caused to the living conditions of the occupiers of existing or proposed neighbouring residential properties. Therefore, the proposal would not accord with the

amenity requirements of policies LPA02 and LPD10 of the LP, the SPD and paragraph 135 of the Framework.

Other Considerations

19. I take note that there are several supportive representations. This includes supportive representations from Rainford Parish Council and Councillor Mussell. The proposal would make use of an existing empty building and would make efficient use of a brownfield site. In addition, the proposal would have economic benefits including the provision of jobs. These are positive matters which weigh in favour of allowing the appeal.
20. I do not doubt that the appellant's business, which includes a take-away elsewhere in the Borough, is popular with the local community and, in this regard, I can understand why some in the local area would like to see a similar business operate from the appeal site. Indeed, I acknowledge comments about the benefits associated from having more hot-food takeaway choice in the locality. However, this must be weighed against the harm that would be caused in respect of my conclusions on the main issues. Furthermore, it is not the case that the Council would prohibit hot food take-aways in all parts of the Borough.
21. The appellant has referred me to an appeal decision for a hot food take-away elsewhere in the Borough which was allowed. This is not directly comparable to the proposal that is before me. The appeal decision pre-dates the adoption of the LP. In any event, I am not bound by previous hot food take-away decisions and have determined this appeal on its individual planning merits.
22. The appellant asserts that the existing planning permission for a café would allow unrestricted use for Class E purposes. I do not agree that the planning permission allows an unrestricted use class E development to operate from the ground floor of the appeal property. Condition 4 of planning permission P/2005/0601 restricts use of the premises to a '*coffee-teashop*'. In my judgement, this does not permit unrestricted use of the premises for use class E purposes.
23. Therefore, I do not find that there is an unrestricted Class E use that could be operated from the premises as a fallback position to be considered in the overall planning balance. Even if I were wrong about this matter, and there were a greater than theoretical possibility of an alternative class E use operating from the site in the future, I have no details about whether such a possibility would be likely or not. Therefore, and, if this were indeed evidenced as an actual fallback position, I would have afforded this possibility limited weight in decision making terms and it would not have outweighed my overall conclusion below.
24. I acknowledge that the proposal would not cause harm to highway safety and the evidence is that it would not have a harmful impact in car parking terms. However, these are neutral matters in decision making terms.

Planning Balance and Conclusion

25. The proposal would conflict with policies LPD10 and LPA12 of the LP. It falls within 400 metres of schools and hence is within an 'exclusion zone' for a hot

food take-away proposal. Despite the proposed opening hours, the proposal still has the potential to be used by school children. Hence, if the appeal were allowed, it would likely exacerbate health and obesity issues in the Borough. Moreover, I am unable to conclude that the proposal would not cause harm to the living conditions of the occupiers of existing or future neighbouring residents from a noise and disturbance point of view. These are matters of overriding concern and are not outweighed by the identified other considerations above.

26. I conclude that when the proposal is considered as a whole, it would not accord with the development plan for the area. There are no material considerations which indicate that a decision should not be made in accordance with the development plan. Therefore, the appeal should be dismissed.

S. Hartley

INSPECTOR