The Planning Inspectorate

Appeal Decision

Site visit made on 6 August 2024

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 7th October 2024

Appeal Ref: APP/B4215/W/23/3335939
6 Honey Street, Manchester M8 8RG

- 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 Samsom Kahsay against the decision of Manchester City Council.
- The application Ref is 136001/FO/2023.
- The development proposed is a change of use from public house (sui generis) to a restaurant, bar and lounge area, along with a single storey rear extension.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the development description shown on the application form as no evidence has been presented to show a change had been agreed.

3. In March 2024 during the course of the appeal the Council adopted the "Places for Everyone Joint Development Plan Document 2022 to 2039" (PfE) and it now forms part of the statutory development plan. The Council advise that the proposal would conflict with Policies JP-Strat1, JP-Strat2 and JP-P6 of the PfE. The appellant had the opportunity to comment on the implications of the PfE, and I have considered these policies in the appeal.

4. On 30 July 2024, the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and issued a written ministerial statement titled 'Building the homes we need'. Given that those parts of the draft Framework most relevant to this decision are not proposed to be amended I consider there is no requirement to seek further submissions on these. I am satisfied that no party's interests would be prejudiced by my taking this approach.

5. On my visit, I observed the existing single storey extension and note the evidence regarding part of the premises being used as a shisha/smoking lounge. As the proposal would replace the existing extension and it would include a shisha/smoking lounge, I have based my decision on the proposed drawings and submitted evidence rather than what currently exists and occurs on the site.

6. The Council refer to unauthorised illuminated fascia signage to the front of the property. As signage does not form part of the proposal, I have not considered it in the appeal.

7. The Council has raised concerns as to whether the proposal would comply with legislation prohibiting smoking in enclosed public spaces. However, this is subject to a separate legal regime that falls outside of the planning remit of this appeal.

Main Issues

8. The main issues in the determination of the appeal are:

- the effect of the proposed development on the living conditions of residents in residential and neighbourhood areas with respect to noise and disturbance; and
- whether the proposal is compatible with the Northern Gateway Strategic Regeneration Framework (SRF).

Reasons

Living conditions of residents in residential and neighbourhood areas

9. The appeal site is a two-storey public house which fronts Honey Street. The public house operates on the ground floor and there is a house in multiple occupation (HMO) on the first floor. To the rear is a single storey extension which provides an open but covered table and seating area. Beyond the extension the area is a grassed garden. The appellant notes the rear area as being used as a shisha/smoking area and beer garden. The extension and its use are noted by the Council as being unauthorised.

10. To the sides and front of the appeal property the immediate area is mostly characterised by industrial and commercial uses.

11. The proposal would change the premises use to a restaurant, bar and lounge area and replace the existing rear extension with a similar sized single storey structure which would be constructed in similar materials to the host building. The proposed extension would be used as a shisha/smoking lounge and a large section of its rear and side elevations would be fitted with double doors and full height bi-folding windows.

12. Little detail is provided on how the proposal would affect customer numbers or how the shisha/smoking lounge would operate. However, it is highly likely that the proposal would, with its increase in covered area including seating and tables, significantly increase the number of customers using the premises. This would result in an increase in noise from such things as customers talking and their general comings and goings.

13. While the relevant legislation concerning smoking is not a matter for determination in the appeal, as no indication is given as to how the proposed lounge would be ventilated, I consider it probable that the proposed shisha/smoking use would necessitate the proposed extension's double doors and bi-folding windows being open by varying amounts. This would allow noise to escape into the surrounding neighbourhood.

14. The appellant indicates that, other than the HMO and a number of high-rise apartment blocks under construction, they are not aware of any other residential accommodation in the immediate area. However, in 2022 noise complaints were raised which, amongst other matters, resulting in the premises' licence being revoked. Although this decision is being appealed, it does raise the possibility of residents being adversely affected by noise and disturbance, especially those residing in the HMO. No compelling evidence, such as a noise assessment, has been provided to show that noise and disturbance would not adversely affect these or other residents. This concern was supported by the Council's Environmental Health Team who, amongst other matters, raised an objection to the proposal with respect to noise.

15. I appreciate that it is not intended to hold any further DJ events which were noted as the cause of the noise complaints and no further breaches of the premises licence have since occurred. However, due to the lack of any form of assessment of noise and disturbance I cannot be sure the proposal would not adversely affect residents.

16. While the Council may have been aware the appellant was addressing the concerns raised and that a premises licence appeal was ongoing, this does not change the fact that complaints occurred, and this identifies noise and disturbance can adversely affect residents in the area.

17. Reference is made that the local planning authority did not object to the premises licence application and the associated extension of the operating hours. However, the planning and licensing regimes are separate and involve consideration of different, albeit related matters. In this case the existing premises did not have any existing planning restriction on its opening hours. There was therefore little reason, from a planning perspective, for an objection to the premises licence to be made. As such, the lack of an objection in this regard does not remove my concern.

18. The appellant suggests that this matter could be secured through a suitably worded condition. However, having regard to the tests set out in Paragraph 56 of the Framework, and the uncertainty regarding noise levels, ventilation needs and residents affected, I cannot conclude that such a condition would meet the precise and reasonable tests. Furthermore, without evident such as a noise assessment which would identify the level and source of noise, it is not possible to ascertain whether any condition would be effective in mitigating any impacts. Accordingly, a condition would not be appropriate.

19. Due to the sensitivity of this matter and its potential to adversely affect health and well-being of residents potentially including those of the above HMO, a precautionary approach is reasonable and appropriate. Consequently, the proposal would adversely affect the living conditions of residents in residential and neighbourhood areas with respect to noise and disturbance. This would be contrary to Policies SP1 and DM1 of the Manchester's Local Development Framework Core Strategy Development Plan Document (July 2012) (CS), Saved Policies DC10 and DC26 of the Unitary Development Plan for the City of Manchester (July 1995) (UDP) and Paragraphs 135 and 191 of the Framework. Together these policies aim, amongst other matters, to achieve a high standard of development which have regard to effects on

amenity from noise and makes a positive contribution to the health and wellbeing of residents.

Compatibility with the SRF

20. The appeal site lies within the Strangeways Employment Area, the Regional Centre and in an Economic Improvement Area as denoted in the CS and its Proposals Map. However, the site is also clearly shown to be within the boundary covered by the Manchester Northern Gateway Strategic Regeneration Framework (2019) (SRF). This document covers a large swath of land close to Manchester city centre and sets out the future regeneration aspirations for this area. Given its size, and the scale of the transformation envisaged, the SRF states that the full development of the area could take around twenty years.

21. The SRF shows the appeal site to be in the residential led Red Bank neighbourhood which aims to establish a new community through a range of high-density developments. The SRF also shows that parts of this neighbourhood would include a mix of commercial and residential use. The appeal site and adjacent businesses are shown in the SRF as residential use with some active frontages, and it is advised that Honey Street offers a harmonious transition to Strangeways and entrance to the Northern Gateway.

22. Details of how this transition would be completed and its effect on the appeal site are very limited. Indeed, this is reflected in the Council advising that it is still reviewing the role of the wider area as part of a forthcoming Strangeways Strategic Regeneration Framework and will shortly be consulting local businesses and residents on its ideas for how the area may change over the next 20 years.

23. It is evident that parts of the SRF have commenced with development platforms, new roads, drainage and service infrastructure approved and being implemented through planning application ref 133143/VO/2022. However, even though this shows the Council's commitment in progressing the SRF, there is little evidence presented to show this work includes the appeal site. Even the indicative layout and red line boundary figures presented by the Council for the SRF's outline planning application ref 136812/OO/2023 which is being determined does not include the appeal site. Neither is there any evidence that the Council own or have rights over the appeal site's land.

24. From this it is clear that there will be residential development to the rear of the appeal site through the SRF. However, at this stage, there is significant uncertainty in terms of the detail and timescale for the residential redevelopment of the appeal site as set out in the SRF. While I appreciate the once in a generation development opportunity, radical improvement and high quality residential aims of the SRF, it would be unreasonable and inappropriate for development of the appeal site to be restricted on the SRF evidence presented.

25. The proposed extension would use materials similar to the host building and there are no concerns regarding its design or appearance. Further, while the existing appeal building's condition does require a degree of maintenance, its overall design and appearance is in keeping with the mix of buildings within the surrounding commercial area. Even though the proposal would

significantly increase customer numbers as highlighted previously, it would continue providing a local service and community facility which would support social cohesion and community well-being. It would also contribute to the local economy and utilise previously developed land.

26. Notwithstanding the above, due to the proximity of the SRF's residential development to the rear of the appeal site, the need to consider the impacts the proposal would have on future residents is reasonable and appropriate. In this regard, as I have found noise and disturbance harm to existing residents from the proposal, in all probability this harm would also apply to nearby future SRF's residents. No evidence, such as a noise assessment, has been provided to show this would not be the case. As detailed previously a condition would not be appropriate to resolve this concern and I consider a precautionary approach in relation to noise and disturbance is reasonable and appropriate. Accordingly, the proposal would adversely affect the living conditions of the future SRF's residents with respect to noise and disturbance. This harm would not be outweighed by the highlighted benefits the proposal would provide either individually or in combination.

27. Consequently, the proposal would not be compatible with the SRF and it would be contrary to Policies SP1 and DM1 of the CS, the SRF and Paragraphs 135 and 191 of the Framework. It would also be contrary to Policies JP-Strat1, JP-Strat2 and JP-P6 of the PfE which aim to deliver new homes within the neighbourhood of Red Bank and encourage healthy lifestyles.

Fallback

28. It is argued that the existing use of the premises could continue with the rear part left open and used as a smoking area and beer garden. While the appellant outlines that this would likely result in higher but not unreasonable levels of noise, little evidence to support this is provided.

29. The Council question whether these uses for the rear area are permitted but provides little evidence to confirm this. No information is provided by the appellant to show the rear areas are part of the planning unit or planning permission for the public house. I did note that the premises licence allows some indoor and outdoor activities to be undertaken and I also saw, at my visit, that the areas were well connected to the premises. Notwithstanding that the information is limited, I consider it to be reasonable to assume that the use of the rear part of the premises as a smoking area and beer garden has a greater than theoretical possibility of being pursued if the appeal is dismissed. This is, therefore, a credible fallback position.

30. However, details of the layout and customer usage of these outdoor areas are limited. While the smoking area and beer garden would result in noise and disturbance, there is little information to show how it would compare to the proposal. In my view, the areas would be significantly less inviting and attractive to customers compared to the proposed formal and more comfortable lounge. The open areas would also be susceptible to such things as inclement weather and darker evenings which would limit their use and prevent them from being available all year-round.

31. With little evidence to the contrary, I consider the open smoking area and beer garden would be significantly less attractive and less used by customers

than the proposal. I am not convinced that noise and disturbance created by these areas would have a similar or more harmful effect than the proposal. Consequently, while the fallback has significant weight as a material consideration, I see little justifiable reasons to outweigh the noise and disturbance harm I have found with the proposal. Accordingly, the fallback would not weigh in favour of allowing the appeal.

Other Matters

32. While the proposal may comply with Policies CC7, EC3 and EC4 of the CS, this does not remove the harm I have found regarding the effect on amenity from noise and it would not make a positive contribution to the health and wellbeing of residents. Taken as a whole, these policies do not change my view on the proposal's harm.

33. While the Council has not instigated enforcement action on the premises for the identified unauthorised work and use, this does not render the scheme acceptable. I have considered the proposal on its own merits and found harm.

Conclusion

34. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it and I conclude that the appeal should be dismissed.

J Symmons

INSPECTOR