



Appeal Decision

Site visit made on 29 October 2024

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2025

Appeal Ref: APP/P4415/W/24/3347103

41 Winterwell Road, West Melton, Rotherham S63 6DP

- 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 Hussain of YH 2020 Investments Ltd against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref is RB2023/0486.
 - The development proposed is application for change of use of former public house to diner on ground floor and first floor from landlords accommodation to 2 nr flats.
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Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. The development appears to have taken place, although there is also a retail unit within the building that appears to be in a different use and the description of development on the application form did not include that use.
3. Whilst the appellant has referred to a retail unit within their Statement of Case I have not been provided with an agreement between the parties to change the description of development. The Council determined the application on the basis of the diner on the ground floor and the two flats above. Furthermore, the submitted plans do not include the separate retail unit.
4. As such, the development has not taken place in accordance with the submitted plans, and I have therefore determined the appeal based on the description of development taken from the application form and the plans before me.
5. I have removed reference to 'retrospective' from the description of development as this is not an act of development.
6. The National Planning Policy Framework (the Framework) was updated in December 2024, during the determination of this appeal. The main parties were given the opportunity to comment on the updates to the Framework and these comments have been taken into consideration in the determination of this appeal.

Main Issues

7. The main issues relevant to this appeal are:

- whether the site is a suitable location for the development having particular regard to the health and well-being of local school children; and
- the effect of the development upon the living conditions of the neighbouring occupiers with regard to noise and disturbance.

Reasons

Location, Health and Well-Being

8. Based on the information before me the appeal building was previously used as a public house and is surrounded by residential development on three sides and a park on the other side. The ground floor of the building appears to now be in use as a diner and a separate retail unit. The upper floor of the building is shown on the plans to be subdivided to provide two residential flats.
9. Supplementary Planning Document No.5 Equal and Healthy Communities (SPD), 2020, states that planning permission will not be granted for any new hot food takeaway (Use Class A5¹) or hybrid uses incorporating A5 uses, where proposals are located within 800 metres(m) of a primary school. The Council has identified that the appeal site is located within 400m of Highfield Farm Primary School and 800m from two further primary schools and the appellant does not dispute this.
10. The SPD is consistent with paragraph 97 of the Framework which states that local planning authorities should refuse applications for hot food takeaways and fast food outlets within walking distance of schools. It also supports the refusal of applications for those uses where there is evidence that a concentration of such uses is having an adverse impact on local health.
11. The appellant states that the business is operated as a sit in diner that also offers a take-out and delivery service. The submitted floor plan shows a separate diner area as well as customer seating separated by a wall and the space is relatively evenly split between the two. The Uber Eats advertisement for the diner, provided by the Council, identifies the hot food that the diner sells which is available for takeaway and delivery. I have not been provided with the percentage of turnover attributed to hot food takeout from the diner and whilst not specified as a hot food takeaway, by offering take-out and delivery services and considering the scale of the operation the A5 use would not be ancillary. As a result, this scheme is a hybrid use incorporating hot food takeaway and is within 800m of a primary school.
12. To walk from Highfield Farm Primary School to the appeal site the children would typically need to cross over two roads but other than that the relatively short route between them is easily walkable along pavements.
13. The purpose of the SPD in this regard is to reduce pupils access to unhealthy food options thereby improving the health of residents and reducing childhood obesity. It identifies that within Rotherham obesity levels for children at primary school age are higher than the national average. The appellant has not disputed this. The advertisement on Uber Eats identifies that the diner

¹ The Town and Country Planning (Use Classes) Order 1987

provides fast food such as pizza, burgers, and kebabs which are typically unhealthy food options. Whilst the food the diner provides may not necessarily be unhealthy, the use allows for such foods to be made available.

14. The Council has provided the opening hours advertised on Uber Eats for the diner which opens at 15:00 throughout the week and based on this information the diner would be open just after schools close when children will be travelling back from school. This proposal would seek to formalise this use and with that could come conditions to restrict when the use would operate.
15. The appellant has suggested opening hours from 16:00 to 23:00 on Sundays to Thursdays and from 15:00 to 00:00 on Fridays and Saturdays. Whilst this may limit the hours when children could visit the diner, especially during school hours, by only opening an hour after schools typically finish and being open when schools finish on Friday's would mean the diner would be open when school children are likely to be walking or travelling home or socialising in the area after school. Given the limited distance and easily walkable route between the school and the diner, the proposed opening hours would not overcome the issue of the diner operating in this location close to several schools.
16. Conditions which would reduce the hours of operation further than those proposed have not been put to me and further reduced opening hours may be overly restrictive to the operation of the business to make it unviable.
17. The evidence is that the development would likely attract young children and exacerbate the already high levels of obesity in the area relative to the national average.
18. Therefore, the site is not a suitable location for the development and harms the health and well-being of local school children. Consequently, it conflicts with Policy CS27 of the CS. This states, amongst other matters, that development should contribute to securing a healthy and safe environment and minimises health inequalities. The development would also conflict with the SPD and paragraph 97 of the Framework insofar as it would be a hot food takeaway/fast food outlet within walking distance of schools in an area where there is evidence such uses are having an adverse impact on local health.

Living Conditions

19. The proposal includes two flats on the first floor of the building and around the site are several houses and apartment buildings. As such, near to the site there are multiple sensitive receptors to noise and disturbances.
20. Given that the building would be used as a diner people would sit in and socialise whilst eating food and this would create noise and disturbances to the occupiers of the flats above the diner. The takeout and delivery service as well as comings and goings from diners in vehicles would also create noise and disturbances to the surrounding occupiers, as well as those in the flats above, and this could happen during the evenings.
21. The building was previously used as a public house and whilst I have not been given the opening hours this was permitted to operate; given its previous use it is likely that this operated at similar hours to those suggested by the parties for the scheme before me. Additionally, noise and disturbances from those within and outside of a public house would be considerably more disruptive

than those eating at or coming and going from a diner. As such, the effect of the scheme on the living conditions of the neighbouring occupiers would be less disruptive than the previous use of the building.

22. Furthermore, the appellant has suggested restricting the opening hours of the business which would ensure the diner would not open beyond 23:00 on Sundays to Thursdays and 00:00 on Fridays and Saturdays. By controlling when the diner was operating this would ensure disturbances should not occur late into the evening or early morning. This would contribute to ensuring the neighbouring occupiers would not be unacceptably disturbed at unsociable hours.
23. The Council notes concerns with the enforceability of restricting opening hours by condition, but such conditions are typically precise regarding when the business shall operate. If they were operating outside of those hours, then the Council has powers to enforce this.
24. Therefore, a suitably worded condition would contribute to ensuring the noise and disturbance from the development would not harm the living conditions of the neighbouring occupiers. Consequently, the development would comply with Policy CS27 of the CS as well as Policy SP11 of the Rotherham Local Plan Sites and Policies insofar as they expect non-residential development in residential areas to not have an unacceptable impact on the residential amenity of the area.

Planning Balance

25. Whilst the development, subject to suitably worded conditions, would not harm the living conditions of the surrounding occupiers, it is not in a suitable location for the use and harms the health and well-being of local school children. Consequently, this leads to a conflict with the development plan as a whole.
26. The business offers food choice to the local community and passers-by as well as providing short term and long-term economic benefits through continued employment as well as from the custom the diners bring to the area. Whilst the operation is limited in scale, I attribute modest weight to these benefits.
27. These benefits must be weighed against the harms that would arise from the development and I afford such considerations significant adverse weight in decision making terms. As a result, the benefits of the development do not outweigh the stated harms.

Conclusion

28. The development conflicts with the development plan and the material considerations do not indicate that the appeal should be determined other than in accordance with it. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

G Sibley

INSPECTOR