



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/24/3343844

158 Ferham Road, Rotherham S61 1DZ

- 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 Ahmed Raza against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref is RB2023/1738.
 - The development proposed is partial change of use at front of house to jewellery shop at:(only front of house at ground floor).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. 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 any comments have been taken into consideration in the determination of this appeal.

Main Issues

3. The main issues relevant to this appeal are:
 - the effect of the proposed development upon the vitality and viability of Rotherham Town Centre
 - the effect of the proposed development upon highway safety; and
 - the effect of the proposed development upon the living conditions of the neighbouring occupiers with regard to noise and disturbance.

Reasons

Vitality and Viability of Rotherham Town Centre

4. The appeal building is a mid-terrace property located in a predominantly residential area, although there are a mix of commercial uses nearby. Part of the ground floor of 158 Ferham Road would be converted into a jewellery shop with the rest of the property remaining in residential use. The appellant states that much of the business would be operated online, however the scheme before me seeks permission to use part of the property as a jewellery shop which would fall within Use Class E of the Use Classes Order¹. As such, I have

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

determined the appeal on the basis that part of the appeal property shall be used for that purpose.

5. Rotherham Town Centre is located a modest distance from the appeal site and Policy CS12 of the Rotherham Local Plan Core Strategy (CS) identifies that this is the principal town centre, but the appeal building is not identified by the Council as being within the town centre itself. The appellant has not disputed this and given the distance between the appeal building and the town centre I find no reason to come to a different conclusion. Neither Ferham Road or Bradgate which is an area identified within the appellant's sequential test, are identified in the hierarchy of centres in the Supplementary Planning Document No. 7 Town Centre Uses and Development.
6. The proposed jewellery shop would be a retail development and the Framework identifies this as a main town centre use. The CS states that the Frameworks definition of town centre uses would apply to policies within it.
7. Policy CS12 states that proposals for town centre uses on the edge or outside of designated centres will only be permitted where it can be demonstrated that sites within and then on the edge of town centres have been assessed and it can be demonstrated that they are not available, suitable, or viable for the proposed development.
8. The Framework states that local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date local plan. Given the location and use of the proposed development the sequential test needs to be satisfied.
9. The appellant has undertaken a sequential test of the surrounding commercial uses near to the appeal site and found that there were no available properties. However, this test did not consider the availability of commercial units within Rotherham Town Centre, as required by Policy CS12. The Council has identified that there were, as of February 2024, 70 vacant units in Rotherham Town Centre and the appellant has not disputed this figure. Whilst the number of vacant units is likely to have changed since February 2024, I have no substantive evidence to indicate that they have all been occupied.
10. Furthermore, it has not been substantively evidenced that those units that are available are not suitable or viable for the proposed use. As such, it has not been robustly demonstrated that there are no available, suitable, or viable units in the town centre for the proposed jewellery shop. Consequently, the sequential test has not been satisfied in this instance.
11. Therefore, the proposed development would cause unacceptable harm to the vitality and viability of Rotherham Town Centre and conflicts with Policies CS12 of the CS and SP11 of the Rotherham Local Plan Sites and Policies (LP). Further to the need to satisfy the sequential test, these policies seek to ensure, amongst other matters that non-residential development in residential areas creates sustainable communities. It would also not accord with the Framework insofar as it identifies that main town centre uses should be located in town centres and where an application fails to satisfy the sequential test, it should be refused.

Highway Safety

12. The appeal property is located on a road where most of the dwellings are terrace buildings and very few of them appear to have off street parking. As a result, it would appear that most people who live nearby have to park their vehicles on the road. There are on street parking bays built into the pavement along Ferham Road and these appear to be unrestricted.
13. The jewellery shop is a town centre use and is not a typical local centre use that would be used on a day-to-day basis like a corner shop. Shoppers are likely to travel from some distance away for the specific purpose of visiting this shop.
14. Given that the appeal site is located in a predominantly residential area and because the appeal property does not have any off-street parking spaces available, those visiting the store using a private vehicle would have to park on the road. However, there are parking bays near to the site and those visiting the shop would be able to use them. If those visiting the shop park their vehicles safely within the bays, then this would not obstruct footways or the operation of the highway.
15. However, the parking bays are within the public highway and are not available specifically for the shop and cannot be relied upon for those visiting or working in the shop. Ferham Road is relatively narrow with traffic calming road narrowing's installed sporadically along it. As such, if cars were parked on the road outside of the parking bays this would restrict the free flow of traffic and thus the operation of the highway. Additionally, if vehicles were parked on the kerb this would obstruct the footway.
16. Whilst the shop is proposed to be relatively limited in scale, I do not have robust evidence of the number of visitors that would be expected throughout the day. This scheme would lead to an increase in the number of vehicles that would need to park nearby and without evidence of the likely number of visitors or how the scheme could reduce reliance on private car use, the increase in vehicles parked nearby on the surrounding roads could cause obstructions for all road users.
17. The scheme also does not identify a specific area outside of the public highway for deliveries to be made. If delivery vehicles were required to park outside of the parking bays, due to unavailability or the size of the vehicle, this would lead to further obstruction of the highway. Overall, the proposal would lead to a conflict between road users and particularly vulnerable users such as pedestrians and cyclists and this would have an unacceptable impact on highway safety.
18. Whilst there are bus services nearby, I have not been made aware how often the services run and whether this would be a viable and reliable option for most people who would visit the shop.
19. The appellant notes that much of their business would occur online which may reduce the number of people who would need to visit the shop. However, permission is sought for a business within Use Class E and as such I have determined the appeal on that basis.
20. Whilst the development would be limited in scale, the proposed shop in this location would have an unacceptable impact on highway safety for the reasons

given above. Therefore, the development would not comply with Policy SP56 of the LP which states, amongst other matters, that car parking should discourage the obstruction of footways by kerb parking, and parking that compromises the operation of the highway.

Living Conditions

21. The appeal property is a mid-terrace house with dwellings either side of it. The proposed shop would be located within the front of the property with the rest of it remaining in residential use.
22. The proposed use of the front of the building as a shop would lead to increased comings and goings to the building from shoppers and the number of visitors would be above and beyond what would typically be expected for a residential dwelling. Additionally, there would be engine vehicle noise from visitors, as well as from the opening and shutting of vehicle doors. Given that the scheme would be for a commercial operation, deliveries would likely need to be made, and this would lead to noise disturbances to the neighbouring occupiers when they were made.
23. However, the limited scale of the shop would restrict how many people could be in the store at any one time which would limit the possible disruption. The noise from cars being parked nearby and people opening and closing doors would not be unusual given the prevalence of parking bays nearby. Additionally, the disruption would be fleeting from people coming and going to the shop and deliveries being made.
24. Furthermore, the Council has suggested a condition ensuring the opening hours were from 09:00 to 18:00 on Mondays to Saturdays and 11:00 and 16:00 on Sundays. Most people would generally be working during these hours and thus are less likely to be within the neighbouring properties at these times. This would limit the effect of the disruption caused to the neighbouring occupiers to hours when they are least likely to be at home.
25. Therefore, subject to a suitably worded condition the proposal would not unacceptably harm the living conditions of the neighbouring occupiers. Consequently, it would accord with Policy SP11 of the LP insofar as it states that non-residential uses in residential areas will normally only be permitted where they will not have an unacceptable impact on the residential amenity of the area.

Other Matter

26. The appellant notes that they were frustrated with the Council's handling of the application and felt like matters could have been addressed had further discussions taken place. However, the appeal process should not be used to evolve a scheme and thus I have considered the appeal upon the same basis that was before the Council.

Planning Balance

27. Subject to a suitably worded condition, the proposal would not harm the living conditions of the neighbouring occupiers. However, the sequential test has not been satisfied and the proposal would harm the vitality and viability of Rotherham Town Centre as well as highway safety. As a result, the proposal would conflict with the development plan as a whole.

28. The short-term and long-term economic benefits that would arise from this development during works to convert the building and from the ongoing employment and custom from the shop would be modest despite the limited scale of the development.
29. 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

30. The proposal 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