



Appeal Decision

Site visit made on 6 November 2025

by **M Willis BSc MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th November 2025

Appeal Ref: APP/V2004/W/25/3371812

394A Holderness Road, Kingston upon Hull HU9 3DL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Ricardo Andrade against Kingston-Upon-Hull City Council.
 - The application Ref is 24/01131/FULL.
 - The development proposed is a change of use from retail unit (Class E) to hot food takeaway (Sui generis use) with installation of steel extraction flue (600mm diameter) to rear flat roof.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from retail unit (Class E) to hot food takeaway (Sui generis use) with installation of steel extraction flue (600mm diameter) to rear flat roof at 394A Holderness Road, Kingston Upon Hull, HU9 3DL in accordance with the terms of the application, ref 24/01131/FULL, and the plan submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal is made on the grounds that the Council failed to determine the application in the prescribed statutory period. The Council has confirmed that had it made a decision on the application it would have likely granted planning permission, subject to conditions. I have had regard to both parties' submissions in establishing the main issue to be considered in this case.
3. The Council revised the description of the development from that cited on the original application form. I have used this revised description as it more accurately describes the proposal.
4. Two plans have been provided which show notably different existing ground floor arrangements relating to bin storage. Drawing No. HR/01/24/A was submitted by the appellant as part of the appeal whilst Drawing No. HR/01/24/B was referenced by the Council in its suggested conditions. I understand that Drawing No. HR/01/24/B was submitted to the Council during the application stage but the appellant was unclear whether this had been formally accepted. In any case the appellant has confirmed Drawing No. HR/01/24/B is incorrect and so I have determined this appeal on the basis of Drawing No. HR/01/24/A which also reflected the layout of the property at the time of my visit.

Main Issue

5. In light of the Council confirming that it would have granted planning permission, the main issue is whether there are other considerations that might indicate that the proposal would not be acceptable.

Reasons

6. The appeal property lies on the outer edges of the Holderness Road District Centre which comprises a long linear shopping centre accommodating a mixture of retail and other uses. The proposal seeks to change the use of the ground floor of the property from a retail unit (Class E) to a hot food takeaway (Sui Generis) with external alterations being limited only to the installation of an extraction flue to the rear of the building.
7. According to the Council the loss of this retail unit would not result in an over concentration of non-A1 uses or the establishment of a hot food takeaway within 400m of a secondary school, sixth form college or playing fields. Based on the evidence before me, I have no reason to doubt the Council's position regarding the proportion or concentration of non-A1 uses currently present along Holderness Road.
8. The Council has also confirmed that, subject to conditions, the proposed use would be acceptable in relation to highway safety, flood risk and the effect of the development on the living conditions of the other occupants of the building including noise and odour. Having had regard to the comments of the Council, notably those of the highway and environmental health officers, I see no reason to disagree with these conclusions. My consideration and comments on the suggested conditions proposed by the Council are however set out below.
9. Taking all of these matters together, I conclude that the proposed development in this location is acceptable and there are no considerations to indicate otherwise. The development would accord with Policies 12, 14, 40, 47 and 49 of the Hull Local Plan (2016 to 2032). Together these Policies seek to manage the range of uses that exist within centres, avoid an over concentration of inactive frontages or the creation of hot food takeaways and seek to ensure that the design of development has taken account of flood risk and take measures to mitigate and address any adverse impacts in respect of odour, noise and the amenity of surrounding uses.
10. The appeal property lies within the Holderness Road East Conservation Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA) requires special attention to be paid to preserving or enhancing the character or appearance of conservation areas.
11. There is a mixture of retail and other uses already operating either side of the appeal property as well as further along Holderness Road and within this part of the conservation area. No changes or alterations to the front elevation of the building are proposed with external alterations being limited to the installation of the extraction flue to the rear of the property. As I observed during my visit, the proposed extraction flue would not be visible from that part of the conservation area that extends along Holderness Road. Views would also be restricted from that part of the conservation area that extends along Southcoates Lane by the rear of the adjoining property.

12. Given the screening afforded by the existing and adjoining building, along with the positioning and height of the extraction flue at the rear of the property, I conclude there would be no harm to the appearance of the conservation area. Subject to suitable conditions to control its use, I also concur with the Council that the proposed use as a hot food takeaway would not impact the character of the conservation area which already accommodates a mixture of retail and other similar uses.
13. Taking these considerations together, I therefore conclude that the character and appearance of the conservation area would be unharmed by the development, that is to say, preserved. The proposal would therefore preserve the character and appearance of the conservation area and accord with Policy 16 of the Hull Local Plan (2016 to 2032) which requires development to preserve and/ or enhance the significance and setting of the city's heritage assets.
14. As the character and appearance of the conservation area would be preserved, then it would also comply with the statutory objective as set out in Section 72 of the LBCA.

Conditions

15. The Council has provided a list of suggested planning conditions, which I have considered against paragraph 57 of the National Planning Policy Framework, and advice contained in the Planning Practice Guidance.
16. In addition to the standard time limit condition (1), I have attached a condition specifying Drawing No. HR/01/24/A as the approved plan (2) for the reasons set out previously. A condition is also attached requiring details of the flood mitigation measures to be incorporated into the development, along with a flood evacuation plan to be submitted for approval (3). This condition is required as although a flood risk assessment is understood to have been submitted as part of the original application, and the Council has referred to this in its suggested conditions, a copy of this assessment is not before me. These conditions are all necessary to provide certainty and to protect occupants of the development against existing and future flood risk.
17. Conditions requiring details of the extraction system (4) and which require sound attenuation (5) between the ground and first floors of the appeal property to be submitted, approved and subsequently carried out and verified by the Council are also attached. These conditions are necessary to protect the users of the first and second floors of the appeal property from unacceptable levels of noise, vibration, odour and emissions.
18. A condition is also attached requiring details relating to the storage of refuse to be submitted for approval (6). This condition is necessary as although the plan before me shows an area as existing within the property no such provision is shown on the proposed plan. As a result, further information is necessary to ensure suitable provision is made in the interests of visual amenity.
19. Finally, conditions restricting the permitted hours relating to the use of the premises by customers (7) and deliveries (8) are attached to protect the other users of the property from unacceptable levels of noise and disturbance and in the interests of highway safety.

Conclusion

20. Taking into account the above, and my considerations following the site visit, I conclude that the proposed development would comply with the Development Plan when it is considered as a whole. Consequently, the appeal is allowed.

M Willis

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plan Drawing No HR/01/24/A Existing and Proposed Ground Floor Plan and Proposed Rear Elevation.
- 3) Prior to the use hereby permitted commencing, details of the flood mitigation measures to be incorporated into the development, along with a flood evacuation plan, shall be submitted and be approved in writing by the Local Planning Authority. The approved details and measures, including evacuation arrangements, shall thereafter be carried out and implemented before the use hereby permitted commences and shall thereafter be retained whilst ever the use hereby permitted persists.
- 4) Prior to the installation of the extraction flue system, details of the equipment to be installed shall be submitted and be approved in writing by the Local Planning Authority. The details shall include the location and design of any odour abatement system and external pipe or flue along with information on the measures to mitigate noise and vibration and to control the emission of fumes and odours. The approved details and equipment shall be installed before the use hereby permitted commences and shall thereafter be retained and operated in accordance with the manufacture's specifications and instructions.
- 5) Prior to the use hereby permitted commencing, a scheme and details of the measures to be undertaken to attenuate sound between the ground and first floors of the property shall be submitted and be approved in writing by the Local Planning Authority. The scheme shall be in accordance with BS 8233: 2014 Guidance on Sound Insulation and Noise Reduction for Buildings and following its approval shall be carried out in accordance with the approved details. Following the completion of all works and measures as identified in the approved sound attenuation scheme, a verification report that demonstrates the effectiveness of the measures carried out must be produced and be submitted for the written approval of the Local Planning Authority. The scheme shall thereafter be retained.
- 6) Prior to the use hereby permitted commencing, provision shall be made for the storage of refuse in accordance with a scheme that has first been submitted and approved in writing by the Local Planning Authority. The provision shall thereafter be retained in accordance with the approved scheme.
- 7) Customers shall only be permitted on the premises between 0900 and 2300 hours Monday to Saturday and between 1100 and 2100 hours Sundays, Bank and Public Holidays.
- 8) No deliveries shall be received or dispatched from the premises except between the hours of 0900 and 2300 Monday to Saturday or between the hours 1100 and 2100 Sundays, Bank or Public Holidays.

End of Schedule