The Planning Inspectorate

Appeal Decision

Site visit made on 11 September 2018

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11th October 2018

Appeal Ref: APP/B4215/W/18/3201763
5-6 Progress Buildings, 491-493 Cheetham Hill Road, Manchester, M8 9HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Munib Ahmed against the decision of Manchester City Council.
- The application Ref 118089/FO/2017, dated 3 November 2017, was approved on 5 December 2017 and planning permission was granted subject to conditions.
- The development permitted is a change of use from bank (Class A2) to a hot food takeaway (A5) and retail unit (A1) at ground floor with offices (A2) at first floor, together with elevational alterations including shopfronts and new first floor access off Halliwell Lane.
- The condition in dispute is No 5 which states that:
  (5) The ground floor hot food takeaway unit (A5) (Unit 1) shall not be open outside the following hours:-
  Monday to Friday - 08.00 to 15.00 hrs and 17.30 to 23.00 hrs
  Saturdays, Sundays and Bank Holidays - 08.00 to 23.00 hrs
- The reason given for the condition is:
  (5) In interests of residential amenity in order to reduce noise and general disturbance in accordance with saved policy DC26 of the Unitary Development Plan for the City of Manchester and policies SP1 and DM1 of the Core Strategy.

Decision

1. The appeal is allowed and the planning permission Ref 118089/FO/2017 for a change of use from bank (Class A2) to a hot food takeaway (A5) and retail unit (A1) at ground floor with offices (A2) at first floor, together with elevational alterations including shopfronts and new first floor access off Halliwell Lane at 5-6 Progress Buildings, 491-493 Cheetham Hill Road, Manchester, M8 9HT granted on 5 December 2017 by Manchester City Council, is varied by deleting condition 5 and substituting for it the following condition:

   1) The ground floor hot food takeaway unit (A5) (Unit 1) shall not be open outside the following hours:-

   08:00 to 23:00 hrs daily

Procedural Matter

2. The reason given for the condition states that it is required in order to reduce noise and general disturbance. However, the Council has since clarified that the condition is in fact required to restrict the sale of unhealthy food within 400 metres of a school. I have therefore determined the appeal on this basis.

Main Issue

3. The main issue is whether varying the disputed condition would significantly increase children's exposure to foods that contribute towards obesity.

Reasons

4. Policy 3 of the Council's Hot Food Takeaway Supplementary Planning Document (SPD) (2017) states that where a hot food takeaway is proposed within 400 metres of a primary school, it shall not be open to the public between 15:00 and 17:30 on weekdays. The disputed condition reflects this requirement.

5. The site is approximately 292 metres from a primary school[1] via a relatively direct route along Halliwell Lane. However, Policy 3 of the SPD allows for an exception where the proposal is within a District Centre as designated in the Local Plan. In this case, the appeal site is close to the edge of Cheetham Hill District Centre, the boundary of which was adopted in 1995. It is within (and opposite to) an established shopping parade, and retail uses extend further to the south along both sides of the street. In this regard, a recent appeal decision at the site[2] stated that *"the parties agree that over time the district centre and the extent of commercial premises has expanded southwards along Cheetham Hill Road and beyond the appeal site"*. Whilst it is in an edge-of-centre location, it has a very similar character to the District Centre to the north where hot food takeaways are not restricted. Moreover, there are 2 existing hot food takeaways on Halliwell Lane that are nearer to the school and have no restrictions on their opening hours. Anyone walking from the school to the appeal site along Halliwell Lane would first pass by these existing takeaways. In these circumstances, I am not persuaded that the appeal premises would significantly increase the availability of unhealthy food to children at the school.

6. For the above reasons, I conclude that varying the disputed condition would not significantly increase children's exposure to foods that contribute towards obesity. It would therefore accord with Policies DM 1, SP 1, and CS 10 of the Manchester Core Strategy (2012), and saved Policy DC10 of the Unitary Development Plan for the City of Manchester (1995). These policies seek to ensure, amongst other things, that new development avoids an over-concentration of hot food takeaways, and considers potential impacts of the proposal on the wider community. Whilst there would be some conflict with Policy 3 of the Hot Food Takeaway SPD (2017) that is outweighed, in the circumstances of this appeal, by the lack of harm that would arise.

Conclusion

7. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition and substituting it for another.

Thomas Hatfield

INSPECTOR

[1] Cheetham Church of England Community Academy
[2] APP/B4215/W/17/3178323