



Appeal Decision

Site visit made on 26 August 2025

by **Elaine Moulton BA (Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 05 September 2025

Appeal Ref: APP/Z4718/W/25/3361412

Greengates House, 123 Chickenley Lane, Dewsbury, West Yorkshire WF12 8QS

- 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 Muhammed Hussain against the decision of Kirklees Metropolitan Council.
 - The application Ref is 2024/62/93287/E.
 - The development proposed is described as 'my application is for change of use for an online dessert shop which is online and no dining in. Collection is also available. The shop floor has an open kitchen which did not need any construction change. We use fridge and freezers to store all stock'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal would be in an appropriate location, having regard to local and national policies;
 - The effect of the proposal on the living conditions of the occupiers of residential properties in the area, by reason of noise and disturbance; and
 - The effect of the proposal on public health.

Reasons

Location

3. The Council considers that the proposal is for the change of use of the appeal premises to a hot food takeaway (HFT), a main town centre use. This has not been disputed by the appellant, and, based on the evidence before me, I find no reason to conclude otherwise.
4. Paragraph 91 of the Framework states that a sequential test should be applied to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. It states that main town centre uses should be located in town centres, then in edge of centre locations, and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered. Policy LP13 of the Kirklees Local Plan, adopted February 2019 (LP) is consistent with the National Planning Policy Framework (the Framework) in this regard.

5. The appeal site is located outside of any recognised centres and is not, therefore, in a location preferred by local or national policy. No sequential test has been submitted.
6. The Council advises that, currently, there are no vacant units in the nearest centre, Chickenley Local Centre. Nonetheless, as customers would order desserts online for collection or delivery, it is reasonable to consider that the catchment area for the business could include other defined centres.
7. There is nothing before me to demonstrate that there are no suitable or available units in any defined centre that falls within the catchment area of the business. There would be limited footfall, but, even so, it would direct people away from using other centres within the catchment area. Consequently, in the absence of compelling evidence to the contrary, the development would be harmful to the vitality and viability of a defined centre.
8. Accordingly, the proposal would be in an inappropriate location as it would conflict with LP policies LP2 and LP13, which seek to ensure development proposals protect and enhance the qualities that contribute to the character of places and to direct main town centre uses to defined centres. It would also be contrary to the similar aims set out in paragraphs 90 and 91 of the Framework.

Living conditions

9. The appeal site comprises part of the former Catholic Church of St Thomas More which faces onto Maple Road, a quiet residential street. It is also close to Chickenley Lane, on which there are some commercial properties and a school but is, nonetheless, predominantly residential. On my visit, which I acknowledge was a snapshot in time, I observed a steady flow of traffic travelling along Chickenley Lane.
10. The services and facilities along Chickenley Lane generate activity during the day and into the evening. Residents near to the site therefore experience a degree of noise and disturbance associated with the day-to-day use of this area. It is, however, reasonable to anticipate that the background noise will reduce in the late evening and at night when such activity and vehicular traffic also reduces. In this regard I noted on my site visit that the other commercial units along Chickenley Lane all close during the evening.
11. The desserts that would be prepared at the appeal site would be collected by customers or delivered. Parking would be provided to the front of the Church or to the rear of the adjoining dwelling on Chickenley Lane. This would inevitably increase vehicular movements around, and within, the site. The vehicular movements, the opening and closing of car doors and the noise of running engines associated with such activity, would occur late at night when occupants of surrounding residential properties are likely to be asleep or reasonably expect a quiet environment. The noise would, therefore, be intrusive and would disturb the occupants of nearby dwellings, particularly in the summer months when residents may choose to keep their windows open.
12. The premises was previously used for functions, and it is reasonable to assume that this would have generated pedestrian movements and more intensive periods of noise and disturbance than that which would be generated by the proposal.

However, in the absence of compelling evidence to the contrary, it is likely that functions did not take place every day and, probably, not on a weekly basis.

13. In contrast, the proposal would operate every day, including Sundays and Bank Holidays, either to midnight or 1am. Consequently, it would generate regular individual noise events daily, at times when residents reasonably expect to be sleeping. Such sudden noise events, unlike continuous noise, can be significantly more intrusive and perceptible. I acknowledge that there would be no consumption of desserts on the premises and, therefore, customers would not be on site for prolonged periods, however this would not materially reduce the level of disturbance that would be generated through noise of engines and opening and closing of car doors.
14. I therefore conclude that the proposal would have an unacceptable impact on the living conditions of the occupiers of residential properties in the area, by reason of noise and disturbance. As a result, there would be conflict with LP policies LP16, LP24 and LP52 which, amongst other things, seek to ensure that all development safeguards residential and local amenity. It would also conflict with the similar aims of Policy HFT4 of the HFT Supplementary Planning Document (SPD) and paragraph 187 of the Framework.

Public health

15. LP Policy LP47 states that the Council will, with its partners, create an environment which supports healthy, active and safe communities and reduce inequality which will be enabled by, amongst other things, the management of the location of HFTs particularly in areas of poor health. The policy goes on to say that a Health Impact Assessment (HIA) will be carried out for all proposals that are likely to have a significant impact on the health and well-being of the local communities, to avoid any potential adverse impacts.
16. The SPD provides further guidance specifically relating to HFTs which, amongst other things, seeks to reduce their impact on the consumption of unhealthy food. In seeking to control HFTs, the SPD is attempting to redirect people to healthier eating options and is consistent with the aims of chapter 8 of the Framework.
17. I have not been presented with a menu and, therefore, the choices that would be available to customers of the proposal is not before me. Nevertheless, given that the proposal is a dessert shop, it is reasonable to assume that unhealthy food choices comprise most of the options available. Accordingly, the proposal has the potential to have an adverse impact on health and well-being, in a location which, I am advised, has three poor health indicators that are higher than the Kirklees average.
18. I find, therefore, that to satisfy the requirements of LP Policy LP47, a HIA is required. No HIA has been provided by the appellant and, as such, I cannot be certain that proposal would accord with the aims of LP Policy LP47 and would not unacceptably contribute to poor health.
19. I note that there are other HFTs in the wider area. However, there is no evidence before me that suggests that the Council, as local planning authority, identified a conflict with LP Policy LP47 but, nevertheless, granted planning permission. Thus, it has not been demonstrated that the Council has been inconsistent in its decision making. Accordingly, the existence of such HFTs do not support the introduction of

an additional HFT, as proposed which, for the reasons set out above, conflicts with LP Policy LP47.

20. I note that health inspectors consider the business, that would operate the proposed use, to be satisfactory and that it has a high star rating. Nonetheless, such matters are related to food safety standards and customer satisfaction, and do not indicate that the proposal promotes healthy living and healthier eating options.
21. Accordingly, in the absence of evidence to the contrary, the proposal would have an unacceptable impact on public health. It, therefore, conflicts with LP Policy LP47 which seeks to create a healthy environment by managing HFTs. In addition, insufficient information has been provided to enable the proposal to be assessed against the Public Health Toolkit as set out in Policy HFT1 of the SPD.

Conclusion

22. The development conflicts with the development plan when considered as a whole and there are no other considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
23. I hereby dismiss this appeal.

Elaine Moulton

INSPECTOR