

APPEAL BY: MR T THIRUPPATHY AGAINST THE REFUSAL OF PLANNING

PERMISSION FOR:

CHANGE OF USE FROM SUI GENERIS USE (PUBLIC HOUSE AND HOT FOOD

TAKEAWAY) TO USE CLASS E (RETAIL CONVENIENCE SHOP) TOGETHER

WITH ERECTION OF 2M HIGH FENCING AND ASSOCIATED CAR PARKING

LOCATION: THE FARMER'S ARMS PH, MOORFIELD, KIRKBY, KNOWSLEY

KMBC REF: 21/00759/FUL

APPEAL REF: APP/V4305/W/22/3293572

1 THE SITE

- 1.1 The site of the appeal is the former The Farmer's Arms Public House building situated within the Tower Hill area of Kirkby, the building has a lawful use as a mixed use public house and hot food takeaway which ceased a number of years ago. The building is now vacant.
- 1.2 The site is located towards the southern end of Moorfield adjacent to its junction with Mossborough Drive and comprises the building and hardstanding areas between the highway and the building (both Moorfield and Mossborough Drive). The former car park area to the southwest of the public house building does not form part of the appeal site (which is outlined blue on the location plan submitted with the planning application).
- 1.3 The area is predominantly residential in character with recently constructed housing opposite the site on both Moorfield and Mossborough Drive. Beyond the site to the south east and to the rear of the site to the southwest is open space which is crossed by footpaths. A Local Centre 'Moorfield Shopping Parade' is approximately 140m to the north of the site near to the junction of Moorfield and Shevington's Lane and a primary school lies between the site and the shopping parade.

2 THE APPEAL PROPOSALS

- 2.1 The appeal relates to planning application 21/00759/FUL which proposed to change the use of the building to a retail convenience store (Use Class E) on the ground floor with residential accommodation above on the first floor.
- 2.2 The planning application proposed that the store would be open between 06.30 - 23.00 hours seven days a week, and it was indicated that there would be two full time members of staff, and four part-time members of staff.

- 2.3 The planning application also proposed:
- 2m high close boarded fencing from the rear corners of the building to the rear boundary of the site, and then along the rear boundary, to form an enclosed service yard.
 - 2 sets of access gates within the northeastern and southwestern lengths of fencing to allow delivery vehicles into and out of the yard area.
 - 14 car parking spaces along the southwestern boundary of the site with three disabled persons parking to the front of the building.
- 2.4 Planning permission was refused for the following reasons: -
1. The proposed change of use of the premises to a convenience store (Class E) relates to vacant premises which is in close proximity to residential properties on Moorfield and Mossborough Drive. Due to the proximity of the premises to these residential properties and the operational hours proposed the scheme would unacceptably harm the living conditions of the occupiers of those dwellings with regard to noise and disturbance, particularly during the early morning and the evening. The proposal therefore conflicts with the National Planning Policy Framework; Policies SD1, CS2 and CS19 of the Knowsley Local Plan Core Strategy adopted January 2016 and saved Policies H5 and ENV2 of the Knowsley Replacement Unitary Development Plan adopted June 2006.
 2. The proposed use would likely lead to increased crime and anti-social behaviour incidents in an area already blighted by high numbers of such incidents. This would impact severely on the wellbeing of the local residents and the residential amenities that they could reasonably expect to enjoy in their dwellings and the wider area. The application therefore conflicts with the National Planning Policy Framework, Policies CS2 and CS19 of the Knowsley Local Plan Core Strategy and saved Policies H5 and DQ2 of the Knowsley Replacement Unitary Development Plan adopted June 2006.
- 2.5 As part of their appeal, the appellant has acknowledged that the proposed opening hours of 06:30 – 23:00 hours would result in noise and disturbance and has asked that the appeal is considered on the basis of a shop operating between 07:00 – 21:00 hours. The appeal also includes a 'Crime Prevention Management Strategy'

3 RELEVANT PLANNING POLICIES & GUIDANCE

- 3.1 Paragraph 92 in the National Planning Policy Framework (NPPF) states that planning decision should aim to achieve healthy, inclusive and safe places which (b) are safe and accessible so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion.
- 3.2 Paragraph 185 of the NPPF states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment. They should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and quality of life.
- 3.3 Policy CS2 in the Local Plan Core Strategy states that new development in Knowsley will be expected to minimize negative impacts upon flood risk, air quality, water quality, land quality, soil quality, water quality and noise or vibration levels and ensuring that any negative impacts are appropriately mitigated. Where development will have an unacceptable impact upon any of the above, it will only be permitted where the benefits of the proposal clearly outweigh the harm.
- 3.4 Policy CS19 in the Local Plan Core Strategy states that to maintain a good standard of amenity for all existing and future occupants of land and buildings, development proposals will be required to:
- Avoid unacceptable impacts on existing residents, businesses and future occupiers
 - Minimise crime, fear of crime and anti-social behaviour, including good levels of natural surveillance and security
- 3.5 Saved Policy H5 in the Replacement Unitary Development Plan (RUDP) states that new development within the primary residential areas (or proposals for the change of use or redevelopment of buildings) which is for uses appropriate to a residential area will be permitted provided that the development would not have an unacceptable impact on the amenity of neighbouring occupants by reason of noise, disturbance, overlooking, visual intrusion, smells, fumes, on street parking or other causes.
- 3.6 Saved Policy DQ2 in the RUDP states that new development should be designed so as to provide good levels of personal and property security and that security features should be designed so as not to cause harm to visual or residential amenity, or highway safety.
- 3.7 Saved Policy ENV2 in the RUDP states that development that will either cause an unacceptable increase in noise or vibration levels or itself be subject to unacceptable noise or vibration from an existing source will not be permitted.

4. RELEVANT PLANNING HISTORY

13/00614/COU - CONTINUATION OF USE OF PART OF EXISTING PUBLIC HOUSE AS A HOT FOOD TAKEAWAY RESULTING IN A MIXED-USE DEVELOPMENT OF PUBLIC HOUSE (USE CLASS A4) AND HOT FOOD TAKEAWAY & DELIVERY BUSINESS (USE CLASS A5). Granted - 26 February 2014.

20/00655/FUL - CHANGE OF USE OF PUBLIC HOUSE (USE CLASS SUI GENERIS) TO FORM PART CONVENIENCE STORE AND PART HOT FOOD TAKEAWAY (USE CLASS E / SUI GENERIS) TOGETHER WITH THE ERECTION OF A SINGLE STOREY REAR EXTENSION AND THE ERECTION OF A 2.1M HIGH WALL TO THE NORTH AND EAST BOUNDARY, INSTALLATION OF 2 NO. VEHICULAR ACCESS GATES AND THE CONSTRUCTION OF A NEW VEHICULAR ACCESS TO MOSSBOROUGH DRIVE. Refused - 4 February 2021.

21/00247/CLU - CERTIFICATE OF LAWFULNESS FOR THE USE OF THE BUILDING AS A MIXEDUSEPUBLIC HOUSE AND HOT FOOD TAKEAWAY/DELIVERY BUSINESS (SUI GENERIS). Granted - 18 June 2021.

5 LPA STATEMENT AND COMMENTS ON APPELLANT'S STATEMENT

- 5.1 The appeal proposes the change of use of the building from a mixed-use pub and hot food takeaway to a retail store. The application which was refused proposed that the shop would operate 7 days a week between 06:30 and 23:00 hours, but the appellant has asked for this appeal to consider the use of the shop limited to 07:00 to 21:00 hours.
- 5.2 The Local Planning Authority (LPA) believes that the characteristics of the site would result in the proposed use having an unacceptable impact on the amenity of neighbouring residents and the wellbeing of the occupants of those properties.
- 5.3 The 'Farmers Arms' was originally constructed as part of the Tower Hill public housing estate which consisted of terrace housing, maisonettes and tower blocks. Much of the estate was demolished in the 1980s and 1990s because of social, environmental and economic issues which affected it.
- 5.4 The area of the housing estate immediately around the 'Farmers Arms' was demolished and reused as open space and the public house stood alone in an area of public open space. In 2013 planning permission was granted to change the use of the building to a mixed-use public house and hot food takeaway. The hot food takeaway catered for the pub and included a counter at the rear of the building.
- 5.5 After planning permission had been granted for the change of use, the area around 'The Farmers Arms' formed part of a regeneration area, and

in 2016 planning permission was granted for a residential development which wrapped around two sides of the appeal site. The character of the area has significantly changed.

- 5.6 The residential development has now been constructed and this has coincided with the closure of the 'Farmers Arms' as a mixed-use public house and hot food takeaway. The building is now vacant.
- 5.7 The properties on Moorfield, opposite the front elevation of the 'Farmers Arms' building are located on the back of the footpath and 'Moorfield' is a relatively quiet road and therefore they share quite an intimate relationship with the appeal site.
- 5.8 The properties on Mossborough Drive to the northeast of the appeal site are set slightly further back from the highway and do not face the front elevation of the 'Farmers Arms' building. However, they overlook the service yard and are only located around 25m away from it.
- 5.9 The appeal proposals would change the use of the building to a relatively large local retail shop which would have a retail floor area of approximately 175m². A shop of this size is likely to attract a significant amount of customer traffic early mornings and through the evening due to the variety and choice on offer compared to other such similar stores and this is evidenced by the 17 car parking spaces which would be provided to service the use.
- 5.10 The area surrounding the appeal site is characterized by a relatively low level of activity early in the morning and in the evening/night. If the appeal is allowed, the proposed shop would significantly alter the character and nature of this environment because it would result in significant increase in the level of activity in the area around the appeal site.
- 5.11 Given the relationship of the appeal site to dwellings on Moorfield (and to a lesser extent Mossborough Drive) noise and disturbance caused by customers using the shop, from cars coming and goings, car doors opening/closing/music from cars, delivery vehicles and so forth which would have an unacceptable impact on the amenity of local residents.
- 5.12 The general noise and disturbance would also be exacerbated by the high levels of crime and anti-social behavior in the area around the appeal site. Merseyside Police have advised that the instances of crime and antisocial behaviour are high in the local area (the C112 beat) with 204 crimes reported between December 2020 and December 2021 (noting that this period covers periods of COVID19 'lockdown') which includes burglary (business and residential), criminal damage, public order, violence and vehicle crime. The Police also reported that the area remains one of the

highest demand locations in Merseyside for crime and Anti Social Behavior (ASB) issues for example, the nearby Moorfield Local Shopping Centre which is sited away from residential properties had 78 reports of ASB recorded.

- 5.13 Should the appeal be allowed, the LPA believes that the characteristics of the area mean that a shop with the large areas of un-surveilled open space to the rear would attract gangs of young people and result in anti-social behaviour and crime (especially given the high levels of ASB at Moorfield Local Shopping Centre less than 150m away). Given the close relationship of the houses and the appeal site, the LPA believes that the ASB would add to the general noise and disturbance caused by the use and would cause significant harm to the amenity of local residents who live opposite the site. In an area characterised by high crime levels, the presence of groups of youths is also likely to result in an increased fear of crime.
- 5.14 It is acknowledged that the site currently had a lawful use as a mixed-use public house and hot food takeaway (i.e. neither use could operate independently without the need for planning permission). However, the use stopped trading around the time that the houses surrounding the appeal site were built and the LPA is not aware of any evidence that there is any interest in re-opening the building for its lawful purpose – indeed the appellant's statement confirms that the land owner would not be interested in re opening the building for its lawful purpose and therefore there is no reasonable prospect of it re-opening. Consequently the LPA does not regard this as a realistic fallback position, particularly given the challenges currently faced by the hospitality industry and the small chance of a business wanting to operate a mixed use public house and hot food takeaway.
- 5.15 If the Inspector disagrees with the LPA and believes there to be a realistic fall back position then the LPA submits this is more likely to be the use of the site as a public house (accepting that this would require planning permission) rather than a mixed used public house and hot food takeaway which would be a 'niche' business. The level and nature of activity would be less intensive than the use of the site as a retail shop (there would be less comings and goings as people tend to visit a public house for a prolonged period whilst a retail store attracts several more, shorter trips), vehicular movements (given that most visitors to a public house arrive on foot) or groups of young people, and the premises would be licensed which could be revoked should the pub cause unacceptable harm to amenity.
- 5.16 The planning application was refused on the basis of opening hours of 06:30 – 23:00 seven days a week, and the appellant has requested that

the appeal is determined on the basis of 07:00 – 21:00 hours seven days a week.

- 5.17 The LPA believe that given the characteristics of the appeal site, a shop with opening hours of 07:00 – 21:00 hours would still cause unacceptable harm to residential amenity and high levels of ASB/crime.
- 5.18 The appellant did not submit the planning application on this basis of the reduced opening hours despite an earlier refusal for a similar use, and a competitor 'Go Local' on Moorfield Local Shopping Centre is open until 10pm. Therefore the LPA is skeptical that in the short/medium term the appellant would be satisfied with reduced opening hours and it is highly likely that should the appeal be allowed a further application will be submitted to extend the opening hours.
- 5.19 The Appellant has provided comments from the Licensing Unit at Merseyside Police and submitted a Crime Prevention Management Strategy Statement with the appeal in order to attempt to address the LPAs concerns over ASB and crime.
- 5.20 With regard to the comments from the 'LP Licensing Assistant' this indeed highlights the fact that there are problems in the local area caused by ASB and crime and that gangs of youths may gather at the premises. The appellant correctly identifies that licensing and planning are separate processes – indeed the Licensing Authority would have no control over the land use itself, just whether alcohol could be sold from the premises. The LPA's statement is based upon its concerns with the land use implications of the potential change of use of the premises to a retail shop.
- 5.21 The Appellant's Crime Prevention and Management Strategy Statement states that CCTV and lighting would be provided. However, the LPA does not believe that this would be sufficient to deter gangs of youths congregating and causing ASB- particularly given the high levels of crime and ASB locally (Moorfield Local Shopping Centre provides evidence supporting the LPA's case).
- 5.22 The appellant's statement identifies that they believe that if the site remains vacant it will attract ASB, and although the LPA is mindful of this prospect it does not mean that an inappropriate use should be allowed. Indeed the LPA has advised on a 'without prejudice' basis that it would support a residential development on the site and has offered the appellant free pre-application discussions should they wish to engage with the LPA.

6 CONCLUSION

- 6.1 Given the characteristics of the site, the proposed use of the building as a retail store would cause unacceptable harm to the amenity of nearby residents by way of causing undue noise and disturbance which would have an unacceptable effect on their amenity. Furthermore the high levels of crime and ASB would attract crime and ASB to the site which would exacerbate the noise and disturbance and impact on the wellbeing of local residents. The proposed development is therefore contrary to the relevant parts of NPPF, Core Strategy Policies SD1, CS2, CS19, and Replacement UDP Saved Policies H5, DQ2 and ENV2.
- 6.2 There are no material considerations which indicate that planning permission should be granted despite the conflicts with the development plan and therefore the LPA respectfully requests that the Inspector dismiss the appeal.
- 6.3 However should the Inspector disagree with the LPA and be minded to allow the appeal, the LPA asks that the following conditions are applied:
1. The development shall be implemented within 3 years of the date of this decision
 2. The development shall be implemented in accordance with the submitted plans
 3. The retail store shall only open between 07:00 – 21:00 hours
 4. There shall be no deliveries outside of the hours of 07:00 – 17:00 Monday – Saturday or 09:00 – 17:00 Sundays and Public Holidays
 5. Notwithstanding the submitted layout plan, a plan showing precise details of car parking and cycle parking provision on the site shall be submitted to and agreed in writing with the local planning authority. The agreed details shall be implemented before the first use of the building as a retail store
 6. A plan showing a 0.6m high brick wall (including details of its facing materials) along the frontages of Moorfield and Mossborough Road (allowing for accesses) to be erected between the edge of the site and the footway shall be submitted to and agreed in writing with the Local Planning Authority. The agreed wall shall be erected before the first use of the site as a retail store.

