



Appeal Decision

Site visit made on 7 February 2023

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd March 2023

Appeal Ref: APP/A2280/W/22/3294730

68 Bush Road, Cuxton, Rochester ME2 1EY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Mohammad Niaz against the decision of Medway Council.
 - The application Ref MC/21/1796, dated 17 June 2021, was refused by notice dated 13 September 2021.
 - The development proposed is change from butcher with integral post office (Class E) to a hot food takeaway (Sui Generis).
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Decision

1. The appeal is allowed and planning permission is granted for change from butcher with integral post office (Class E) to a hot food takeaway (Sui Generis) at 68 Bush Road, Rochester, ME2 1EY in accordance with the terms of the application, Ref MC/21/1796, dated 17 June 2021, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plan: PA/21/023/001.
 - 3) Before the use hereby permitted commences, details of any plant and/or machinery to be installed on the premises, as well as a scheme to ensure that any such plant and/or machinery is enclosed with sound insulating material and mounted in a way which will minimise transmission of structure borne sound, shall be submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with the approved details and retained in working order for so long as the use continues.
 - 4) Before the use hereby permitted commences, equipment to control the emission of cooking fumes arising from the use of the premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with the approved details and retained in working order for so long as the use continues.
 - 5) The premises shall only be open for customers between the hours of 17:00 and 22:00.

Main Issues

2. The main issues are the effect of the development on;
 - the living conditions of the occupiers of neighbouring properties, with particular regard to noise and disturbance;
 - highway safety; and
 - the health and wellbeing of future customers.

Reasons

Living conditions

3. The appeal site is located within a built-up and predominantly residential area. It forms part of a 3-storey end of terrace property. A small number of commercial businesses occupy the ground floor of the properties within the terrace, which together form a short parade. The commercial unit which comprises the appeal site is currently vacant. The other 3 ground floor units within the parade are in use as a hot food take-away; a convenience/grocery store; and a hairdressing/Barbour salon. Although a snap-shot in time, during my mid-morning and mid-week site visit, I observed a fairly significant level of activity within the area. This was, amongst other things, due to vehicle movements along Bush Road, vehicles being parked and pulling away from on-street parking spaces close to the appeal site, and customers frequenting the grocery store.
4. The use of the appeal site as a hot food takeaway may result in an increase in the number of customers and delivery personnel who would visit the site during evening hours than compared with that which may have occurred when the premises was in use as a butchers and post-office. However, convenience stores and takeaways frequently open into the evening, and I have been presented with no cogent evidence to suggest that this is not the case with respect of at least some of the existing commercial units within the parade. On this basis, occupiers of the residential apartments and houses within the area would already experience a degree of noise and disturbance associated with the operation of existing commercial premises during the daytime and into the evening.
5. I accept that many customers and delivery personnel would use private vehicles to get to and from the site, and that they would be likely to try to park as close to the front door as possible. However, given the amount of housing in proximity of the site and the limited availability of on-street parking within the area, a fairly high proportion of customers could also be reasonably expected to walk or cycle. Notwithstanding this, the starting of vehicle engines and the closing of car doors would be perceptible by occupiers of the nearby residential properties, as would the normal conversation of those who choose to wait outside whilst food is being prepared. However, given the general activity levels within the area, and the proposal to close by 22:00 each day, the external noises associated with the movement of vehicles, vehicle doors, or the gathering of waiting customers would not cause an unacceptable harmful increase in the level of noise experienced by occupiers of the neighbouring residential properties.

6. The appellant has provided some detail with respect of proposed odour management and ventilation. However, the level of information provided is insufficient to enable me to conclude that the proposals in respect of these matters would not cause unacceptable harm in terms of noise and odours on the living conditions available to the occupiers of nearby residential properties. Notwithstanding this, paragraph 55 of the National Planning Policy Framework (the Framework) indicates that consideration should be given to whether otherwise unacceptable development could be made acceptable through the use of conditions. The imposition of appropriately worded conditions would prevent the development from causing unacceptable harm to the living conditions of the occupiers of neighbouring properties in respect of these matters. Such conditions would require the submission of a scheme for protecting the occupiers of the nearest residential property from noise resulting from the use of the operation of machinery and equipment within the premises. They would also require the identification and implementation of suitable mitigation measures in respect of odours.
7. I therefore conclude that the proposed development would not cause unacceptable harm to the living conditions of the occupiers of neighbouring residential properties, with particular regard to noise or disturbance. Consequently, and in this respect, I find no conflict with the requirements of policies BNE2 and R18 of the Medway Local Plan – 2003 (the Local Plan), where they require development to protect the amenities enjoyed by nearby and adjacent properties. Nor do I find conflict with paragraph 130 of the Framework where it requires development proposals to provide a high standard of amenity for existing users.

Highway safety

8. Amongst other things, policy T1 of the Local Plan supports development proposals which would not significantly add to the risk of road traffic accidents. Policy T13 of the Local Plan indicates that development proposals will be expected to make vehicle parking provision in accordance with the adopted standard. However, I have not been provided with details of any such standard.
9. To the front of the parade is a bank of unrestricted parking spaces. There is also unrestricted on-street parking on the opposite side of Bush Road from the appeal site, as well as within surrounding streets.
10. I accept there is a high level of parking stress within the area, and note that the appellant has provided no information on likely trip generation. However, and although the premises is currently vacant, it could be brought back into use within Class E without requiring planning permission. Such action would undoubtedly add to the existing level of parking stress within the area, and could lead to the obstruction of the free-flow of traffic within the highway whilst customers park or seek to park.
11. Demand for short term customer and delivery parking associated with the proposal would be likely to be relatively high during the hours the business is open. However, it has not been demonstrated that such demand would be materially different from that which would arise from the use of the premises as a convenience store or other use within Class E, where frequent comings and goings may be reasonably anticipated. I cannot therefore conclude that the proposed development would lead to a demonstrable increase in harm to highway safety in the area.

12. For the reasons given above, the proposed development would not cause an unacceptable harm to highway safety in the area. Consequently, and in this respect, it would comply with the requirement of policies T1 and R18 of the Local Plan, where they require development to not significantly add to the risk of road traffic accidents. Furthermore, whilst no designated car-parking provision is proposed to serve the proposed development, I have not been provided with details of any adopted standard for car parking provision. I cannot therefore find conflict with Policy T13 of the Local Plan. Nor would it conflict with paragraph 111 of the Framework, which indicates that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Health and wellbeing

13. The appeal site is within a village centre, and forms one of a small parade of commercial properties. Policy R18 of the Local Plan indicates that hot food take-aways will be permitted only where there would be no significant detrimental impact to residential amenity, due to either the proposed use or opening hours.
14. The proposed development would authorise the creation of a second hot food take-away within the parade. Whilst I appreciate that policy R18 of the Local Plan requires development proposals to be assessed having regard to the combined effect that any concentrations of uses would have, it only requires consideration in this respect in relation to environmental impact and highway safety matters. I have previously found that the development would not cause unacceptable harm to the living conditions of occupiers of neighbouring properties in respect of noise and disturbance. I have also found that it would not cause an unacceptable adverse effect on highway safety. In these respects the development proposal would not therefore conflict with the requirements of Policy R18.
15. The site is in a location which is within view, and close walking distance of a foundation and key stage one school. I accept that having fast food outlets in proximity to schools negates some of the independent health promotion initiatives implemented in schools. However, it is proposed that the takeaway would be open only between the hours of 16:00 and 22:00 each day, which is outside of typical school hours. Having regard to the proximity of the school, and the guidance contained within the Hot Food Takeaways in Medway Guidance Note 2014 (the Guidance Note), I consider it necessary to impose a condition limiting the opening hours to between 17:00 and 22:00 each day. These opening hours are less than those suggested by the Council within their suggested conditions. However, such a limitation is deemed necessary to ensure adequate protection of the health and wellbeing of children.
16. The evidence suggests that obesity rates within the Medway region are higher than the national average. Controlling the proliferations of fast-food outlets is part of the Council's strategy to reduce the extent of obesity. However, I have not been provided with any substantive evidence to demonstrate that there would be any adverse health impacts as a result of the proposal, if the hours of opening were restricted as previously indicated. Copies of the Joint Health and Wellbeing Strategy and the Medway Sustainable Community Strategy have not

been provided, and as such I am unable to conclude that the proposed development would either conflict or comply with either strategy.

17. For the reasons set out above, the proposed development would not have an unacceptable adverse effect on the health and wellbeing of future customers. Consequently, and in this respect, it would not conflict with policy R18 of the Local Plan. Nor would it conflict with the Guidance Note or Paragraph 92 of the Framework, where they seek to support development which will enable and support healthy lifestyles and create places which promote health and well-being.

Other Matters

18. Concern has been raised regarding the storage of waste arising from the proposed use of the site, and that refuse storage may attract vermin. However, the appeal site includes a good-sized rear courtyard area as well as covered areas and stores to the rear. As such, there is sufficient space within the site for waste to be appropriately stored and managed, without causing unacceptable harm to either the living conditions of the occupiers of the neighbouring properties, or to the character and appearance of the area.
19. It has not been demonstrated that it is necessary to investigate whether there is need or demand for the premises to be used for other purposes within Use Class E, prior to considering its change of use. Furthermore, whilst alternative uses may be more desirable to some interested parties, the development subject of this appeal has been determined on its own merits.
20. It is not proposed that external alterations be made to the front elevation of the building. As a result, it would not therefore have a detrimental impact on tourism in the area, make the village look untidy, or make the premises less accessible for those with reduced mobility.
21. No cogent evidence has been put forward from which to conclude that the development proposal would result in an increase in anti-social behaviours within the area or that it would de-value surrounding properties. Nor has it been demonstrated that it would increase fire risk or lead to an increase in insurance costs for residents of neighbouring properties.
22. There would be an increase in movements to and from the site, above that currently taking place whilst the premises is vacant. However, such an increase in use, would not lead to any unacceptable reduction in the level of privacy enjoyed by the users of the garden area to the side of the appeal site. This is because it is already clearly visible from public vantages within Bush Road close to the appeal site, and by those who walk past the front of the garden area to access other businesses within the parade.
23. Matters related to internal sanitation of workplaces are governed by other regulations, and as such are not determinative to my consideration of this appeal.

Conditions

24. The wording of conditions suggested by the Council have been amended where appropriate. This is for the purposes of clarity and to meet the six tests outlined within paragraph 56 of the Framework.

25. The statutory condition which specifies the time-period for the implementation of the permission is imposed. For clarity, a plans condition is also imposed which identifies the plan to which this permission relates.
26. The Council has requested an additional 3 conditions. The appellant had the opportunity to comment on the conditions suggested by the Council, but did not do so. Conditions related to noise and the extraction of cooking fumes, are necessary to protect the living conditions of the occupiers of neighbouring residential properties. A condition regarding opening hours, is also necessary, both to protect the living conditions of the occupiers of neighbouring properties and to protect the health and well-being of future customers.

Conclusion

27. For the reasons given above, this appeal is allowed and planning permission is granted subject to the conditions identified above.

V Simpson

INSPECTOR