
Appeal Decision

Hearing held on 16 August 2016

Site visit made on 16 August 2016

by David Richards B Soc Sci DipTP MRTPI

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

Decision date: 20 September 2016

Appeal Ref: APP/G5180/W/16/3143042

Nugent Shopping Park, Cray Avenue, Orpington, Kent, BR5 3RP

- 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 Nugent Shopping Park Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/15/02678/FULL1, dated 19 June 2015, was refused by notice dated 27 November 2015.
 - The development proposed is the erection of Class A1/A3 pod unit, works to the car park, including additional landscaping and other works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of Class A1/A3 pod unit, works to the car park, including additional landscaping and other works at Nugent Shopping Park, Cray Avenue, Orpington, Kent, BR5 3RP in accordance with the terms of the application, Ref DC/15/02678/FULL1, dated 19 June 2015, 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 plans: 150081 – A – P – Si – D /001 REV C, /002 REV C, /003 REV C, /004 REV D, and 150081 -A- VA – VA - D010 REV D.
 - 3) The landscaping scheme as shown on the submitted drawings shall be implemented in the first planting season following the first occupation of the buildings or the substantial completion of the development whichever is the sooner. Any trees or plants which within a period of 5 years from the substantial completion of the development, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species to those originally planted.
 - 4) The development permitted by this planning permission shall not commence until a surface water drainage scheme for the additional hard standing based on sustainable drainage principles, and an assessment of the hydrological and hydro geological context of the additional hardstanding has been submitted to, and approved in writing by the Local Planning Authority. The surface water drainage strategy should be

designed to achieve reductions in surface water run-off rates to greenfield rates in line with the preferred standards of the London Plan, and include a timetable for carrying out the drainage works. The scheme shall be implemented in accordance with the approved details and thereafter retained for the life of the development.

- 5) The materials to be used in the external surfaces of the building shall be as set out in the approved drawings.
- 6) The A1/A3 use for which permission is hereby granted shall not be open to customers outside the hours of 0700 – 2300 on any day.

Main Issue

2. The main issue is the effect of the proposal on the vitality and viability of Orpington Town Centre and other local centres

Reasons

3. The appeal site is within Nugent Shopping Park on the northern outskirts of Orpington. The site was formerly a mix of primarily retail and industrial units. Following its allocation within the then emerging Bromley UDP for a mix of uses (predominantly retail), outline planning permission was granted in 2004. Nugent Shopping Park is now an established retail destination and an integral part of Bromley's overall shopping offer. There are a range of existing comparison retailers including Hobbycraft, Pets at Home, Cotswold Outdoor, Maplin, Marks and Spencer, WH Smith, Card Factory, Clintons, Mothercare, Laura Ashley, Debenhams and Next. Restaurant/café uses include Costas, Nandos and a café within Marks and Spencers.
4. The site lies some 3 km from Orpington Town Centre, which offers a variety of retail and service outlets, including two large superstores. There are also a number of small neighbourhood centres within 2 km of the site. The location has a good rail connection to Bromley from St Mary Cray station (some 650 metres from the site) and frequent bus services to Orpington and the surrounding area from Cray Avenue to the west of the site.
5. The proposal is for a new A1/A3 pod unit of some 186 m² footprint to be located in a new public space in the centre of the development, as well as outdoor seating and a space that can be used flexibly for example to accommodate specific events such as a small market. The existing car park will be reconfigured, providing a small increase in customer car parking spaces from 365 to 379. In addition, a further 29 car parking spaces are to be provided in the service area to the rear of Block B. The Council has no objection to the details of the layout or appearance of the development.
6. The Bromley Replacement Unitary Development Plan (UDP) was adopted in 2006. Saved Policy S7 of the UDP requires that retail proposals outside the centres defined in Policy S6 relates will be expected to satisfy a number of criteria including need for the development, application of a sequential test, flexibility with regard to format, design and car parking provision, and that they should not harm the viability of existing centres.
7. The UDP policy reflects guidance current at the time of adoption, but predates the National Planning Policy Framework (the Framework). Paragraph 23 of the

UDP encourages local planning authorities (LPAs) to recognise town centres as the heart of their communities and pursue policies to support their viability and vitality, and to define a network and hierarchy of centres that is resilient to future economic changes. Paragraph 24 provides for a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. LPAs should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre sites and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre.

8. When assessing applications for retail and related uses outside of town centres LPAs should require an impact assessment if the development is over a proportionate, locally set floorspace threshold. If there is no locally set threshold, the default threshold in paragraph 26 of the Framework is 2,500 m².
9. The proposed pod unit (186 m²) is well short of this threshold. It would be located within an established thriving retail centre. The units are fully occupied and I saw evidence that it was well used. In addition to retail it offers customers a limited range of A3 outlets. Although not identified as for retail use in the adopted UDP, the site was identified as a proposal for mixed use (including retail) in early versions of the UDP, but omitted from the final version to reflect the fact that it was already committed through the grant of planning permission.
10. The Appellants view is that the additional unit should be regarded as ancillary to the established use. It is small scale and on the Appellant's evidence likely to be used by existing customers of the retail park, rather than attracting a significant number of new users to the detriment of neighbouring centres. They say that a unit of this size is likely to be occupied by a coffee/sandwich shop and that drive through restaurants, which might attract single purpose visits, tend to occupy larger premises of some 300 m².
11. To my mind, the addition of some 186 m² GIA (gross internal area) in an established retail park, representing some 1% of existing floorspace, is likely to have no more than a marginal and non-material effect on the vitality and viability of neighbouring centres. While I saw a limited degree of vacancy in nearby Orpington these units tended to be located in the secondary shopping frontage, or in less favoured sections of the Town Centre. However, this was not at a level that would justify significant concern about the vitality of the Town Centre, and there is no evidence to suggest that its viability is at risk. My overall impression was of a well-used and popular town centre, with good footfall along much of the High Street. This view is supported by an Experian Goad health check which identified 31 vacant units in the centre at December 2015, some 12.2%
12. I understand that some retailers, for example Marks and Spencer which previously occupied the Town Centre relocated when Nugent Retail Park was established. Nevertheless it appears to me that any significant retail impact would have occurred when the retail park was established and is very unlikely to be materially aggravated by the current proposal.
13. I also saw that redevelopment proposals in Orpington, in the form of a new multiplex cinema, hotel, A1 and A3 units, were at an advanced stage and in

part already operational. There is no question of this investment being prejudiced in any way by the appeal proposal. At least one instance of vacancy in the Walnuts Centre was due to an operator moving to a new unit in the development, which is a normal feature of this type of development. The overall impact of this investment is likely to have a strong positive influence on the vitality and viability of Orpington Town Centre.

14. The Town Centre also has a range of café/restaurant type outlets. For example Costa operates in two locations in the Town Centre, as well as having a significant presence at the Retail Park. There is nothing to suggest that additional A1/A3 provision would be at the expense of the Town Centre.
15. With regard to the other neighbourhood centres in the locality, while UDP Policy S6 refers to 'local centres, neighbourhood centres and parades', the emphasis in the Framework is on the protection of Town Centres rather than smaller neighbourhood centres. Of the neighbourhood centres and parades identified by the Council, a recent survey carried out by the Appellants indicated very low vacancy rates as follows: Carlton Parade 0%; Marion Crescent 11%; Chipperfield Road 0%; Cotmandene Road 2%; St Paul's Cray 10%; St Mary Cray. This is consistent with what I saw on my site visits. In the smaller centres, such as St Paul's Cray, 10% represents 1 vacant unit. Such levels of vacancy do not indicate significant problems of vitality or viability. Of the vacant units the largest was at Cotmandene Road, at some 87 m². In my judgment these centres have a predominantly local catchment (leaving aside highly specialist retailers such as model railway shops). They would be unlikely to have anything approaching the same footfall as is experienced in the Retail Park and in consequence are unlikely to be attractive to potential operators of the proposed pod unit.
16. While it is not impossible that the unit would be used at times when the main retailers were not open, there is strong potential for linked trips to be made, and on balance I consider that users of the unit would predominantly be customers who would come to the retail park anyway to take advantage of the range of shops already available.
17. With regard to the additional parking proposed, I consider this to be marginal in the context of the existing level of provision. I do not consider that, alone or in combination with the proposed unit, it would add materially to the attractiveness of the retail park, or detract from the vitality or viability of neighbouring centres.
18. I have taken account of the appeal decisions that were drawn to my attention. Those in Scunthorpe and Stoke-on-Trent concerned sites with no previous history of retail use. The 2009 decision affecting the current appeal site was concerned with a different proposal, involving the amalgamation of units to create a larger unit, raising different considerations to the current appeal. I do not consider these appeals are readily comparable with the current proposal.
19. In summary, I find that the appeal proposal constitutes a modest addition to the existing floorspace in an established retail park. Although not within Orpington Town Centre it has very good public transport connections, making it accessible by means other than the private car. Users would predominantly be those who would come to the retail park anyway to take advantage of the range of shops already available. For reasons given above I consider it would

not have a material impact on the vitality and viability of existing nearby centres.

20. I therefore conclude that planning permission should be granted.

21. In addition to the time limit and a condition requiring conformity with the approved plans, landscaping and materials conditions are necessary to ensure a satisfactory appearance to the development, together with a condition addressing sustainable drainage to minimise flood risk. A condition limiting hours of operation is necessary and reasonable in the interests of consistency with the original grant of outline permission.

David Richards

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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Sarah Moorhouse BA (Hons), NLP Ltd
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FOR THE LOCAL PLANNING AUTHORITY:

David Bord BA (Hons), PG Dip, LB Bromley
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DOCUMENTS

- 1 NLP Position Statement
- 2 Copy of planning permission DC/14/04327/FULL1 5 March 2015