

Appeal Decision

Site visit made on 4 October 2016

by William Fieldhouse BA (Hons) MA MRTPI

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

Decision date: 11 October 2016

Appeal Ref: APP/M5450/W/16/3152672

59 St Ann's Road, Harrow HA1 1JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Class C of The Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Chopstix Restaurants Ltd against the decision of the Council of the London Borough of Harrow.
 - The application ref P/5190/15, dated 14 September 2015, was refused by notice dated 18 December 2015.
 - The development proposed is a change of use from a shop (class A1) to a restaurant (class A3).
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Decision

1. The appeal is allowed and approval is granted under the provisions of schedule 2, part 1, class C of The Town and Country Planning (General Permitted Development) (England) Order 2015 for a change of use from a shop (class A1) to a restaurant (class A3) at 59 St Ann's Road, Harrow HA1 1JU in accordance with the details submitted with the application ref P/5190/15 dated 14 September 2015 and subject to the conditions set out in the attached schedule in addition to those specified in the GPDO.

Preliminary Matters

2. The Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO") grants planning permission for the change of use of a shop to a restaurant provided that certain specified limitations and conditions are met. The Council is satisfied that, provided a number of conditions are imposed, the proposal would comply with all but one of the relevant requirements set out in sections C.1 and C.2 of schedule 2 of the GPDO, and there is no evidence before me to indicate that this would not be so.
 3. Harrow town centre is identified as a "Metropolitan Centre" in the Harrow Core Strategy 2012 and London Plan 2015. The site is within the primary shopping frontage of the primary shopping area defined on the Harrow Policies Map, and there is no dispute that this is a "key shopping area" as referred to in section C.2(1)(f) of the GPDO.
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Main Issue

4. In light of the above, the main issue is whether the proposed change of use would be undesirable because of the impact that it would have on the sustainability of the Harrow Metropolitan Centre.

Reasons

5. The appeal relates to a two-storey building with a floorspace of around 132m² located at the end of one of the main pedestrianised streets in the town centre. I am advised that at the time of the application the building was vacant, although it was apparent from my site inspection that the proposed use had started¹. According to the application form, the operating hours are 09.00 to 23.00 everyday of the week.

The sustainability of Harrow Metropolitan Centre shopping area

6. Planning Practice Guidance ("PPG") advises that matters for prior approval are set out in full in the relevant parts of schedule 2 of the GPDO, and that other matters cannot be considered². Furthermore, prior approval is expected to be a light touch process which applies where the principle of development has already been established, and it is important that onerous requirements are not unnecessarily imposed on developers³.
7. Section W(10) of the GPDO requires account to be taken of any representations made about the application for prior approval and regard to be had to the National Planning Policy Framework ("NPPF") so far as relevant to the subject matter of the prior approval, as if the application were a planning application. However, this does not mean that other considerations cannot also be taken into account provided that they are relevant to the matters defined in schedule 2 of the GPDO. In this particular case, certain development plan policies are clearly relevant to the issue of the impact on the sustainability of the town centre, as is the evidence presented by the Council and the appellant about the use of various buildings in, and the health of, the centre.
8. London Plan policy 2.15C states that development proposals in town centres should sustain and enhance the vitality and viability of the centre and support the competitiveness, quality and diversity of town centre retail and leisure uses. Policy AAP17D of the Harrow and Wealdstone Area Action Plan 2013 supports restaurant use of ground floor premises within the primary shopping frontages subject to a number of criteria being met, one of which is that the length of primary shopping frontage in non-retail use would not exceed 15% within Harrow town centre. These policies are consistent with the NPPF which seeks to ensure the vitality of town centres⁴.
9. The proposal would not comply with part (a) of policy AAP17D because the length of primary shopping frontage in non-retail use in Harrow town centre is already 20.45% and the proposal would add a further 18.25 metres taking the overall proportion to 21.21%. However, the proposal would satisfy all of the other criteria in that policy. The London Plan identifies the town centre as

¹ The appellant's evidence refers to a temporary change of use under Schedule 2, Part 4, Class D of the GPDO.

² PPG ID-13-026.

³ PPG ID-13-028.

⁴ NPPF section 2.

having medium growth potential, whilst the Council describes the centre as currently being relatively healthy with a low level of vacancy and acknowledges that the proposal would not on its own lead to an inadequate provision of retail uses.

10. There is no substantive evidence that a non-retail use of this unit, which is smaller than many others nearby in the town centre and located at the end of the pedestrianised street, would materially impact on the sustainability of the centre. The proposal would ensure that what was a vacant unit is put to an alternative main town centre use on a more long term basis than at present, and that an active frontage is maintained during the daytime and evening thereby providing an additional attraction for visitors to the centre.
11. Therefore, despite the non-compliance with part (a) of policy AAP17D, the evidence before me does not indicate that the proposal would be undesirable because of the impact that it would have on the sustainability of the Harrow Metropolitan Centre.

Conditions

12. I have considered the five conditions suggested by the Council in the context of GPDO section W(13) that states that prior approval may be subject to conditions reasonably related to the subject matter of the prior approval as well as relevant national policy and guidance⁵.
13. The hours of use need to be controlled to prevent noise and disturbance to people living nearby at unsociable times.
14. A suitable waste receptacle, and a means of treating fumes and odours, need to be provided to prevent pollution and to safeguard the character and appearance of the area.
15. Any plant and machinery to be installed needs to be designed to prevent the transmission of noise, vibration, odours and fumes into neighbouring properties in order to prevent pollution and disturbance to their occupants.
16. A cycle storage space needs to be provided for staff in order to mitigate the transport and highways impacts of the development.
17. As the use has commenced, the conditions require action to be taken within one month of this approval rather than before the use commences as suggested by the Council. This period of time is reasonable given the nature of the requirements.

Conclusion

18. For the reasons given above, I conclude that the appeal should be allowed and approval granted.

William Fieldhouse

INSPECTOR

⁵ NPPF paragraphs 203 and 206, and Planning Practice Guidance ID 21a: *Use of Planning Conditions*.

Schedule of Conditions

- 1) The use hereby approved shall not be open to customers outside of the hours 08.00 to 23.00 on any day.
- 2) Within one month of the date of this approval a waste storage receptacle with a minimum capacity of 1,100 litres shall be provided within the area outlined in orange on plan ref L151041-D09-001.
- 3) Within one month of the date of this approval, a cycle parking space for staff shall be provided within the building and shall thereafter be retained for the exclusive use of staff working at the premises for the duration of the use hereby approved.
- 4) Within one month of the date of this approval, a scheme for treating fumes and odours along with an implementation timetable shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the agreed timetable and shall thereafter be retained for the duration of the use hereby approved.
- 5) Any plant and machinery, including that for fume extraction, ventilation, refrigeration and air conditioning, which may be installed in connection with the use hereby approved shall be installed, used and thereafter retained so as to prevent the transmission of noise, vibration and odours/fumes into any neighbouring properties.

End of schedule of conditions