

Appeal Decision

Site visit made on 13 September 2016

by P Eggleton BSc(Hons) MRTPI

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

Decision date: 1 December 2016

Appeal Ref: APP/T5720/W/16/3153455

Waitrose, Alexandra Road, Wimbledon, London SW19 7JY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Waitrose Ltd against the decision of the Council of the London Borough of Merton.
 - The application Ref 15/P2776, dated 14 July 2015, was refused by notice dated 8 February 2016.
 - The application is to vary condition 3 of permission reference 09/P2385 dated 26 November 2010 which was described as the variation of condition 12 attached to permission reference MER405/81 (D), dated 18 March 1982, and related to the sale of foods and convenience goods plus alterations and extensions to the existing building.
 - The condition in dispute is number 3 which states that: Any food store/convenience goods use shall not use any more than 20% of the retail sales area for the sale of comparison goods and no part of the premises shall be used for the purposes of a post office or dry cleaners, for the preparation of wreaths, bouquets or other formal flower arrangements or the use for A3 café/restaurant purposes.
 - The reason given for the condition is: To protect the vitality and viability of Wimbledon town centre and to accord with Policy TC.2 of the Adopted Merton Unitary Development Plan 2003.
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Decision

1. The appeal is allowed and planning permission is granted for the sale of foods and convenience goods plus alterations and extensions to the existing building at Waitrose, Alexandra Road, Wimbledon, London without compliance with condition 3 of permission Ref 09/P2385, dated 26 November 2010, subject to the conditions set out in the attached schedule which include a revision of condition 3.

Main Issue

2. The main issue is the effect on the vitality and viability of the Leopold Road Neighbourhood Parade.

Reasons

3. The change of use of the former B&Q unit to a supermarket was originally allowed by permission Ref 09/P2385, dated 26 November 2010. This involved the variation of condition 12 of permission Ref MER405/81 (D), dated 18 March
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1982. Condition 3 of permission Ref 09/P2385 sought to control various elements of the use of the shop. It required that no more than 20% of the retail sales area be used for the sale of comparison goods and that no part of the premises be used for a range of uses, including a café or restaurant use. The reason for the condition was to protect the vitality and viability of Wimbledon Town Centre.
4. This proposal seeks to amend the last part of condition 3 and allow an area of 13.67sqm for café use. It would predominantly replace an existing store and would accommodate 6 tables and 12 seats. The appellant suggests that it would not be a traditional café as it would be self-service, having only a limited offer and size. Customers would buy food and drinks from the bakery. It is suggested that it represents a 'grazing' area rather than a café. I find little to persuade me that the sale of food for consumption on the premises should not fall to be considered as a use that the condition directly sought to restrict.
 5. Although the reason for the condition specifically relates to the need to protect the vitality and viability of the town centre, the Council advise that it also sought to protect the Leopold Road Neighbourhood Parade shops to the north. The concerns raised by third parties refer predominantly to the impact of such a facility on that parade.
 6. The proposed seating area would be located at the rear of the store. It would be at the same level as the car park but a significant distance from the entrance. Although the car park would offer convenient free parking, it is unlikely, given the scale and nature of the proposed seating area, that it would attract significant levels of customers seeking only to use the new facility. I am not persuaded that this limited facility, within the main area of the supermarket, would attract visitors to it as a destination in its own right.
 7. Although I am advised that shops have closed since the supermarket opened, the parade appears to be almost fully occupied. It seems likely that its overall character has or is changing but it appears to continue to offer a range of services. Of the two units that were empty during my visit, one had a sign suggesting it would be opening soon and the other was being refurbished. The Class A3 uses appear to offer attractive accommodation. Whilst the immediately adjacent parking is not free, this is a matter for the Council. The supermarket allows free parking in its car park for customers of the parade.
 8. I am not satisfied that such a small sitting and eating area, within the rear of the supermarket, would provide any greater competition to that already experienced by the operators of units within the parade. It would be essential to maintain controls to ensure that the facility could not be significantly altered, so as to represent a café destination in its own right. However, I agree with the Council's officers that the proposed seating area would not result in harm to the vitality or viability of the local parade. The suggested condition to restrict the area of the facility, in accordance with the plans, would be reasonable and necessary and would meet the other requirements of the *National Planning Policy Framework*.
 9. The property lies within the conservation area. I am required to assess whether the proposal would preserve or enhance its character or appearance. As there would be no external changes and as the proposal would not have a significant

impact on the local parade, I conclude that it would satisfy the duties set out within the legislation and would meet the heritage requirements of the *Framework*.

10. Policy DM R2 of the Merton Sites and Policies Plan and Policies Maps 2014 seeks to focus town centre uses into the most sustainable locations and encourages small convenience shops. Policy DM R4 relates to the control of uses within parades. I am not satisfied that these policies are directly relevant to this proposal. Policy D4 relates to the impact on heritage assets which I have not found to be a concern. I do not find conflict with the retail objectives of Policy 4.8 of the London Plan 2015 which supports convenience retail and sustainable patterns of provision. Policy 4.9 which relates to large retail developments was clearly relevant when the supermarket was permitted but I am not satisfied that this proposal would significantly change the considerations that were taken into account at that time.
11. I have had regard to the concerns of local residents but I am not satisfied that this proposal would materially alter the operation of this supermarket or that it would have a significant wider impact. Subject to the area of the café being controlled, I find there to be no matters that weigh against the proposal. I therefore allow the appeal.
12. In allowing the appeal, a new planning permission is created. The original permission contains a number of conditions including those relating to construction and operation. *Planning Practice Guidance* makes it clear that decisions under section 73 should repeat the relevant conditions from the original planning permission, unless they have already been discharged. I have omitted those that I have been advised have been discharged and I have modified those that require that approved works be retained.
13. As the original act of development has already commenced, I have not imposed an implementation condition. In the interests of certainty, I have required that the development be retained in accordance with the plans and documents approved by permission reference 09/P2385, except where superseded by the floor plan submitted as part of this proposal. I have amended condition 3 to retain the previous exclusions but to allow this specific café use. I have no evidence to suggest that the other restrictions within condition 3 are now unnecessary with regard to protecting the vitality and viability of the Leopold Road Neighbourhood Parade and the Town Centre.
14. The previous permission was granted subject to a legal agreement. As this decision results in a new permission, the original agreement would no longer apply, if this permission is implemented. I understand that the only remaining requirements relate to parking and signage. I have imposed a condition that seeks the same requirements. The appellant suggests that a Car Park Management Plan should not be required as one would have been approved previously but this document has not been provided by either party.

Peter Eggleton

INSPECTOR

Schedule of conditions

- 1 The development hereby permitted shall be retained in accordance with the plans and documents approved by planning permission reference 09/P2385, dated 26 November 2010, except with regard to the internal alterations shown on plan reference 314-SDEV-GRA-REDLINE2.
- 2 The retail building shall only be used either for the retail sale of food/convenience goods or bulky durable goods, subject to the restrictions set out in condition 3.
- 3 Any food store/convenience goods use shall not use any more than 20% of the retail sales area for the sale of comparison goods. No part of the premises shall be used for the purposes of a post office or dry cleaners, for the preparation of wreaths, bouquets or other formal flower arrangements or for Class A3 café/restaurant purposes with the exception of a café area of 13.67 square metres with 12 customer seats as shown on drawing 314-SDEV-GRA-REDLINE2.
- 4 The building shall not be subdivided into two or more retail units.
- 5 The retail floor space shall not exceed 1,800 square metres.
- 6 A minimum of 30 spaces for secure cycle parking shall be retained and be made available for use at all times.
- 7 The staff showers and locker facilities and the facilities for the storage of refuse and recycling, approved under the provisions of permission reference 09/P2385, dated 26 November 2010, shall be retained at all times.
- 8 The building shall not be open to customers outside 0800-2100 hours, Mondays-Thursdays; 0800-2200 hours on Fridays; 0800-2100 hours on Saturdays; and 1000-1700 hours on Sundays.
- 9 The sound insulation/attenuation measures approved under the provisions of permission reference 09/P2385, dated 26 November 2010, shall be permanently retained.
- 10 All deliveries, loading, unloading or other servicing activities shall take place between 0600 and 2200 hours, Mondays to Fridays; 0600 and 1900 hours on Saturdays; and 0900 and 1600 hours on Sundays and public holidays.
- 11 Noise from the delivery bay shall be attenuated so as not to increase the ambient noise measurement as a LAeq(1 hour) by more than 2dBA when measured at the closest residential property.
- 12 Testing of the back-up generator shall only be carried out between 0800-1800 hours, Mondays to Fridays and not at all on Saturdays, Sundays or public holidays.
- 13 No external lighting shall be installed without the prior approval in writing of the local planning authority. Any approved external lighting shall be positioned and angled to prevent any light spillage or glare beyond the site boundary.
- 14 The re-configuration and re-marking of the vehicle parking area shown on the approved plans relating to permission reference 09/P2385, dated 26 November

2010, including the provision of the disabled bays, shall be retained for parking purposes at all times.

- 15 Prior to the first use of the café area hereby approved, a Car Park Management Plan to replace that previously approved by virtue of permission reference 09/P2385, dated 26 November 2010, shall be submitted to and agreed in writing by the local planning authority. The approved plan shall include the provision of two hours free parking for customers shopping at the property and for customers shopping in Leopold Road Neighbourhood Parade and Wimbledon Town Centre. It shall also include the position and details of signage to be erected within the property which shall direct customers to the Leopold Road Neighbourhood Parade and provide details of goods and services available in that parade. The signage shall be erected prior to the first use of the café and shall be maintained at all times thereafter. The free parking provision shall be facilitated as agreed and shall be retained at all times thereafter.