

Appeal Decision

Site visit made on 21 November 2016

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 6th December 2016

Appeal Ref: APP/D5120/W/16/3158191

7 Market Parade, Sidcup High Street, Sidcup DA14 6EP

- 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 Mr Paul Panayiotou against the decision of the Council of the London Borough of Bexley.
 - The application Ref 16/01189/FUL, dated 13 May 2016, was refused by notice dated 9 August 2016.
 - The application sought planning permission for the change of use from retail shop (use Class A1) to a restaurant (use Class A3) without complying with a condition attached to planning permission Ref 96/02035/FUL, dated 13 December 1996.
 - The condition in dispute is No 6 which states that: The premises shall not be used for the preparation or sale of hot food for take-away or delivery.
 - The reason given for the condition is: To avoid indiscriminate short-term parking in the vicinity of the site.
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Decision

1. The appeal is allowed and planning permission Ref: 96/02035/FUL for the change of use from retail shop (use Class A1) to a restaurant (use Class A3) at 7 Market Parade, Sidcup High Street, Sidcup DA14 6EP granted 13 December 1996 by the Council of the London Borough of Bexley, is varied, by deleting Condition No 6.

Background and Main Issues

2. Planning permission was granted in 1996 for the change of use of the appeal property to a restaurant. The planning permission was subject to a condition (Condition 6), which prohibits the sale and preparation of hot food at the premises for takeaway or delivery. The appellant wishes to have this condition removed so that hot food can be prepared for takeaway or delivery on an ancillary basis to the existing restaurant. Consequently, the main issues in this appeal are the effects of the proposed development on: 1) Highway safety; and 2) The vitality and viability of Sidcup Major District Shopping Centre.

Reasons

The effect on highway safety

3. The appeal site is located within Market Parade, a collection of commercial premises fronting onto Sidcup High Street. The High Street is a busy thoroughfare designated as a London Distributor Road with high traffic flows.
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Parking along the road is generally restricted by double yellow lines and in the wider area by permits in the nearby residential streets. Nevertheless, in the locality of the appeal site there is short stay parking bays available immediately outside the parade and within St John's Road. I estimate that the bays could cater for something in the region of nine cars.

4. There are at least two other businesses offering a hot food takeaway service within the parade and other hot food takeaways are present in the general vicinity of the appeal site. There are also other commercial and educational uses nearby that would likely generate demand for parking. The Council are concerned that the appeal scheme would result in indiscriminate parking along the High Street and in the nearby residential side streets that would compound an existing on street parking problem.
5. The appeal site is located in an established commercial area. There are bus stops outside the appeal site and there is a wider residential hinterland within a comfortable walking distance of the appeal site. The PTAL¹ rating is 4 (Good). As such, it would be convenient for patrons of the appellant's business to pick up food prepared on the premises without needing to travel by car. The limited availability of parking near to the appeal site could make alternative forms of transport more desirable. Even if customers did use a car, they are likely to be prevented from inconsiderate or dangerous parking outside defined parking bays by the presence of double yellow lines in the High Street and resident permit parking along some of the surrounding residential side streets.
6. However, the Highway Authority (HA) have referred to Google street view images and photographs taken in November 2016 as evidence that indiscriminate and unlawful on street parking takes place in the vicinity of the appeal site. Yet, these are snap-shots in time and therefore the limited scope of this evidence is not in itself persuasive in demonstrating the appeal scheme would harmfully compound an existing highway safety problem. This is especially so if the existing parking restrictions are enforced. Furthermore, the accident data suggests that parked cars have not been a factor in the seven vehicle collisions recorded near to the appeal site in the last five years.
7. The TRICS² data referred to by the HA demonstrates that hot food takeaways can generate high levels of parking demand in the afternoon and into the evening. However, the appeal scheme does not propose a change of use to a hot food takeaway or a mixed use of a hot food takeaway and restaurant. The removal of the condition would only facilitate an ancillary takeaway and delivery service. The difference in scale between the two enables a clear distinction to be drawn. TRICS data associated with such a low key and ancillary use has not been presented. Consequently, I am not satisfied the HA has demonstrated there is an acute parking problem at present or that the ancillary activity proposed would result in high parking demand. This is especially so given the site's accessibility on foot or by bus.
8. The appellant has not specified the scale of the takeaway and delivery service proposed other than to confirm it would be at an ancillary level. As such, the removal of Condition 6 could not result in a change of use to either an A5

¹ Public Transport Accessibility Level

² Trip Rate Information Computer System

takeaway or a mixed use³ comprising a restaurant and takeaway. A separate planning permission would be required to enable this to occur. The removal of Condition 6 would only permit the ancillary and ad hoc takeaway and deliveries sales sought by the appellant. This would need to be at a relatively low and inconsequential level of activity to stay within the scope of the 1996 planning permission. This would not change were the appellant to vacate the premises.

9. As such, the level of activity and any associated impacts arising from the removal of Condition 6 cannot become significant⁴ if the takeaway and delivery service is to remain ancillary to the existing restaurant. In this respect, the proposal is materially different to the appeal schemes referred to by the Council⁵, where material changes of use from retail to hot food takeaways were proposed and refused. Consequently, as only a very low level of activity could arise from removing Condition 6, the appeal scheme would not severely effect on street parking pressures, the free flow of traffic or highway safety more generally.
10. The Council's principal concern with the appeal scheme relates to its potential effect on highway safety from customer parking. It has not overtly raised any concerns regarding a possible delivery service. Given the ancillary nature of what is proposed, any delivery service would need to be low key and infrequent so as to not represent a material change of use. Thus, such an inconsequential level of activity is unlikely to have a significant effect on highway safety or the availability of parking spaces nearby.
11. I therefore conclude that Condition 6 is not necessary to protect the safety of motorists or pedestrians using the public highway in the vicinity of the appeal site. Moreover, the development without the condition would not harm the free flow of traffic, including buses. As such, there would be compliance with saved Policies G7, G18, T17 and SH09 of the Bexley Council Unitary Development Plan 2004 (UDP) and Policies CS06 and CS15 of the Bexley Core Strategy 2012, which seek to secure adequate parking and safeguard the free flow of traffic and highway safety. Aims consistent with Paragraphs 32, 39 and 58 of the National Planning Policy Framework.

The effect on the vitality and viability of Sidcup Major District Shopping Centre

12. During my site visit I observed that the Sidcup Major District Shopping Centre is a busy area and I did not detect an unusually high number of commercial properties for sale or to let and there appeared to be a high footfall of passing trade. The area has a mixed character due to the varied uses found along the road which adds to its vitality. Whilst I accept my visit is a snap-shot in time there is no substantive evidence before me that there has been a general downward spiral in the vitality and viability of the shopping parade, for example an increase in long term vacancies and reductions in rents and footfall, that could be attributed to a concentration of hot food takeaways. In

³ See the Planning Practice Guidance Paragraph: 010 Reference ID: 13-010-20140306, which states that where a building is being used for different uses which fall into more than one class, then the overall use of the building is regarded as a mixed use, which will normally be regarded as *sui generis* (a use of its own). The exception to this is where there is a primary overall use of the site, to which the other uses are ancillary. In this case the restaurant use would remain the primary use of the appeal site. As such, any takeaway and delivery service would be ancillary to the restaurant and therefore very limited in scale.

⁴ It could not have a significant impact by definition, as this could result in a material change of use – see Paragraph: 011 Reference ID: 13-011-20140306.

⁵ See Appendix E of the Council's statement

fact my observations lead me to conclude the shopping area is reasonably healthy and vibrant.

13. Moreover, and as set out above, the appellant has not proposed a material change of use to a hot food takeaway or a mixed use comprising a hot food takeaway and restaurant. As a consequence the removal of Condition 6 would not result in an unacceptable proportion of A5 uses in Sidcup Major District Shopping Centre to the detriment of its vitality and viability.
14. The effect of removing the condition would be to permit the operation of a hot food takeaway and delivery service at an ancillary level. Anything beyond this would require planning permission and would thus be within the control of the Council. Furthermore, the appeal property is already in a non-retail use and thus the removal of the condition would not harmfully affect the retail function of the area.
15. Alternatively, the removal of Condition 6 would, in a small way, support the competitiveness of the existing business which could help in sustaining it into the future. Such a long term use, with the associated activity and customer spend, would likely have a modest benefit upon the vitality and ongoing viability of the centre.
16. I therefore conclude that the proposal would safeguard the viability and vitality of the Sidcup Major District Shopping Centre. Accordingly, the proposal would adhere to saved Policies SH05 and SH09 of the UDP, which seeks to protect the character, vitality, viability and retail function of such areas. Aims broadly consistent with the Framework.

Other Matters

17. There is no substantive evidence before me to suggest the low key nature of what is proposed would harmfully affect the amenity of the area through noise and disturbance, odour or anti-social behaviour, such as large gatherings of customers, inconsiderate parking or litter. This is especially so as the proposal would not affect the opening hours of the restaurant and food is already cooked at the premises using existing equipment. Furthermore, the appellant has suggested that the type of food that would be taken away or delivered would not be eaten in the street and is unlikely to result in litter. I have no reason to disagree. Therefore, the proposal is unlikely to harm the ambience or vitality of the area including the living conditions of nearby residents.

Conclusion

18. For the reasons given above, and having regard to all other matters raised, I conclude the appeal should be allowed.

Graham Chamberlain

INSPECTOR