

Appeal Decision

Site visit made on 17 October 2016

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 19 December 2016

Appeal Ref: APP/J2210/W/16/3152601

51-52 St Dunstan's Street, Canterbury, Kent CT2 8BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission and listed building consent.
 - The appeal is made by Dominos Pizza Group Ltd against the decision of Canterbury City Council.
 - The application Ref CA/15/01461/FUL, dated 30 June 2015, was refused by notice dated 5 February 2016.
 - The development proposed is change of use from Class A2 (financial and professional services) to Class A5 (hot food takeaway) and external and internal alterations including the installation of ventilation and extraction equipment.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Dominos Pizza Group Limited against Canterbury City Council. This is the subject of a separate decision.

Preliminary Matters

3. The appeal property is a Grade II listed building. Proposed alterations to the building include the introduction of plant and extraction flues together with external alterations at the rear to provide bin storage. Alterations to the shopfront are also proposed. The Council has not raised concerns about the impact of the proposals on the listed building and I have had special regard to the desirability of preserving the special architectural or historic interest of the building. I am satisfied that the proposals would preserve those interests. Details of changes to the shopfront could be secured by condition were I to allow the appeal.
 4. The building is within the Canterbury Conservation Area and therefore I have had special regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. I find that the proposed changes to the external appearance of the building which are more in keeping with the character of the area than the existing shopfront would enhance the appearance of the conservation area.
 5. The Canterbury District Local Plan, First Review (the CDLP) was adopted in 2006. The Canterbury District Local Plan, Publication Draft, 2014 (the emerging Local Plan) is currently progressing through its Examination. The
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weight to be given to the relevant policies of both documents in my consideration of the main issues below is in accordance with paragraphs 215 and 216 of the National Planning Policy Framework (the Framework).

Main Issues

6. The main issues are:

- a) the effect of the proposed hot food takeaway on the living conditions of occupiers of neighbouring properties with particular reference to noise and disturbance; and
- b) the effect of the proposed parking arrangements on highway safety in St Dunstan's Street and surrounding roads.

Reasons

Living Conditions

- 7. The appeal site is located on the corner of St Dunstan's Street and Orchard Street outside of the commercial heart of the city although within the St Dunstan's local centre. St Dunstan's Street is a busy road into the city which is also served by a number of bus routes. The predominant land use in the immediate area is residential although there are a number of commercial uses opposite on St Dunstan's Street and a local convenience shop on the opposite corner of Orchard Street. Further south east on St Dunstan's Street can be found more commercial premises including hot food takeaways.
- 8. The previous use of the property was as a bank but the property is now vacant. The proposal is to change the use to a hot food takeaway (Use Class A5) with the installation of extraction equipment. The premises are proposed to be operational between the hours of 1100 and 2300 daily including Bank Holidays.
- 9. The Transport Statement (TS) indicates that whilst some customers would visit the premises the vast majority of the business would be served via moped deliveries. A fleet of 8-10 mopeds would operate from the rear of the premises accessed from Orchard Street which is quieter and has a more residential character than St Dunstan's Street.
- 10. The appellant has argued that maximum noise levels arising from vehicle movements associated with the proposal would be lower than the current highest levels to which properties on St Dunstan's Street and Orchard Street are currently exposed during the period 1000 to 2300. However, the effect on living conditions arising from home delivery service needs to be considered not just in terms of maximum noise levels or changes in noise levels but also in terms of the noise characteristics.
- 11. Delivery vehicle movements would be at their greatest during the evening between the hours of 1900 and 2300. Whilst the proposed routing strategy for home delivery vehicles aims to ensure that they would route via St Dunstan's Street except when delivering orders to residential streets adjoining Orchard Street, all would start from Orchard Street. I consider that the volume of delivery vehicles within Orchard Street would have an adverse impact on neighbouring residents in excess of the slight effect suggested by the appellant. Specifically the intermittent nature of the noise of the mopeds late into the evening when people are trying to sleep and its occurrence every day

- of the week would result in an adverse effect on neighbouring residents in quiet streets.
12. In response to the Council environmental health officer's comments that home delivery vehicles must not access the premises via Orchard Street, a condition to restrict the use of Orchard Street for delivery vehicles was proposed. However, this would not be easily enforceable because of the randomness of activity late at night and therefore would not mitigate the disturbance caused by delivery vehicles.
 13. In terms of customer collections, the addition of up to six pick-up orders an hour by car also increases the likelihood of disturbance to neighbouring residents. Additionally, late evening customers could generate noise and disturbance as a result of car arrival and departure noise and conversations particularly those parking in Orchard Street and Roper Street which are quieter than St Dunstan's Street.
 14. Comments from the Council's environmental health officer indicated that servicing and deliveries between the hours of 0600 and 0745 would be acceptable as the servicing would be from St Dunstan's Street. It would therefore be less likely to affect the adjoining streets which are primarily residential. However residents on St Dunstan's Street could be adversely affected notwithstanding that background noise would be greater.
 15. Whilst a change of use to unrestricted retail could occur without planning permission such a use would not necessarily have the same impacts as an A5 use. In any event I need to consider the effect of the proposal before me. There is no evidence that an A1 use would have a greater impact on residential amenity than an A5 use notwithstanding the fact that there would be no option to manage the impact of an A1 use.
 16. Taken together, the effect of the early morning servicing on St Dunstan's Street, the evening collections and in particular the effect of delivery vehicles until 2300 when the ambient noise in residential streets is lower would in my view lead to a level of noise and disturbance to the living conditions of neighbouring residents which would be unacceptable.
 17. Although the neighbouring convenience store operates until 2300 I regard this use as serving a much more local need and find that it is unlikely to generate the same level of traffic and resultant disturbance late at night as the appeal scheme.
 18. The proposed use would be contrary to Policies C40 of the CDLP and Policy QL12 of the emerging Local Plan which both require mitigation to address potential pollution from development. The proposals would also be contrary to Policies BE1 of the CDLP and DBE3 of the emerging Local Plan which seek to find compatible neighbouring land uses by avoiding development which would be detrimental to existing amenities. There would also be conflict with Policy TC10 of the CDLP and Policy TCL12 of the emerging Local Plan which together aim to prevent development having an unacceptable evening and night time impact on residential amenity.
 19. The proposal would also be contrary to paragraph 17 of the Framework which seeks a good standard of amenity and paragraph 123 which advises that new

development should aim to avoid noise giving rise to significant adverse impacts on the quality of life.

Highway Safety

20. To respond to the parking requirements created by the proposed development it is proposed to build out the pavement in front of the premises thereby removing the opportunity for vehicles to stop or park immediately outside the unit in the interests of pedestrian and highway safety. I have no reason to believe that the parking that would be displaced would lead to obstruction and illegal parking elsewhere in St Dunstan's Street and Orchard Street. Moreover, the highways authority supports the proposed build-out on St Dunstan's Street.
21. In terms of customer collections, six pick-up orders within the peak hour would be insignificant compared to existing traffic flows on St Dunstan's Street particularly as the peak time for collections would be outside of peak traffic times. Consequently the number of additional vehicle movements by customers collecting orders could be comfortably accommodated on the local highway network. Furthermore, an alternative A5 user would be unlikely to generate a significantly different pattern of movements based on the evidence presented to me.
22. Servicing of the premises would take place on St Dunstan's Street on three days per week. This too, would be outside of the peak congestion hours. This arrangement would meet the requirements of the highways authority in terms of servicing and highway safety and could be controlled by planning condition were I to allow the appeal.
23. An adequate amount of space is proposed for on-site parking of home delivery vehicles at the rear of the premises. Additionally, the Council has indicated that the use of these mopeds is not considered to have an adverse impact on highway safety and I have no evidence to the contrary.
24. The proposal does not propose any on-site customer or staff parking but as the site is accessible by means other than private vehicles the Council accepted that a variation from the parking standards sought through Policy C9 of the CDLP may be acceptable.
25. The TS Addendum indicates that six pick-up orders an hour could be expected to be collected by customers that had driven and eight orders would be collected by customers travelling by sustainable forms of transport at peak times. Pay and display parking spaces are available in St Dunstan's Street whilst Orchard Street has parking restrictions between 0800 and 1830 with demand for on-street parking in the area currently high. Evidence presented by the appellant shows that after 1830 there would be a considerable number of spaces available to meet the likely traffic generation for customer collections and it is during the period after 1900 that is likely to generate the majority of vehicle trips. Moreover, parking demand would also be limited by the short parking dwell time due to pre-ordering.
26. Whilst the Council has indicated that there would be conflict with residents seeking limited on-street parking spaces in the evening, no evidence was presented in support of this position. Consequently I find that there is sufficient capacity on the surrounding streets to accommodate parking associated with customer collections.

27. There is no evidence before me to suggest that an alternative occupier with alternative operational practices such as reliance on customer collections alone would result in a materially different level or profile of traffic generation to that indicated by the appellant during periods when background traffic movements are at their highest. In addition, it has not been demonstrated that at other times the proposed change of use would result in a significant increase in vehicle trips to the extent that traffic would be disrupted resulting in issues of highway safety.
28. I find no conflict with Policy C1 of the CDLP or Policy T1 of the emerging Local Plan which seek to ensure that adequate car parking is provided whilst controlling the level and environmental impact of vehicular traffic. Similarly there would be no conflict with Policy BE1 of the CDLP which states that the Council will have regard to accessibility and safe movement. Policy C9 of the CDLP and Policy T9 of the emerging Local Plan set out parking standards. Whilst the standards would not be met, the wider objectives in terms of highway safety and sustainable transport as reflected in Policy T1 of the emerging Local Plan would be addressed and therefore I find no material harm.
29. Additionally there would be no conflict with Policy DBE3 of the emerging Local Plan which seeks to ensure that development does not have a detrimental effect on the highway network including in terms of congestion and road safety. The Framework also recognises the importance of highway safety. It states that development should only be refused on transport grounds where the residual cumulative impacts of development are severe. That would not be the case in this situation.

Other Matters

30. The proposed use would result in the creation of up to 15 full time and 15 part time jobs which is in line with the Framework's support for economic growth and weighs in favour of the proposal. Additionally the proposed development would result in a currently vacant listed building being brought back into use and the preservation of the special architectural and historic interest of the listed building as well as enhancing the appearance of the conservation area.

Conclusion

31. I have found that the proposed development would not result in a level of traffic generation which would lead to unacceptable parking pressures on St Dunstan's Street and neighbouring roads or result in issues of highways safety. In addition the proposals would have economic benefits in terms of employment generation and would have benefits in terms of heritage considerations. However, these matters which count in favour of the proposal do not outweigh the harm which I have identified in respect of the impact on the living conditions of the occupiers of neighbouring residential properties in terms of noise and disturbance. For these reasons, and having taken into account all other matters raised, the appeal is dismissed.

Kevin Gleeson

INSPECTOR