
Appeal Decision

Site visit made on 9 November 2016

by B Bowker Mplan MRTPI

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

Decision date: 22 December 2016

Appeal Ref: APP/W3710/W/16/3156120

Cock and Bear Inn, Queens Road, Nuneaton, Warwickshire CV11 5LZ

- 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 Hayward Architects Ltd against the decision of Nuneaton & Bedworth Borough Council.
 - The application Ref 033887, dated 27 January 2016, was refused by notice dated 27 July 2016.
 - The development proposed is change of use of retail unit 2 (approved under application ref:031938) to A5 use – pizza delivery outlet.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of retail unit 2 (approved under application ref:031938) to A5 use – pizza delivery outlet, at Cock and Bear Inn, Queens Road, Nuneaton, Warwickshire CV11 5LZ, in accordance with the terms of the application Ref 033887, dated 27 January 2016, 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: Location Plan 16 03 01, Site Layout Plan 16 03 02C.
 - 3) The use hereby permitted shall only take place between the hours 08:00 – 23:00 Mondays – Sundays.
 - 4) Notwithstanding condition no 3, no deliveries to the premises shall be carried out other than between the hours of 08:00 to 18:00 Monday to Friday, 08:00 to 13:00 on Saturdays, and at no times on Sundays or bank holidays.
 - 5) Before the use hereby permitted takes place, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. The information should be provided as outlined in Annex B of the Defra document "Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems". All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.
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Application for costs

2. An application for costs was made by Hayward Architects Ltd against Nuneaton & Bedworth Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are the effect of the proposal on:
 - Highway safety; and,
 - The living conditions of neighbours with particular reference to noise, disturbance and odour.

Reasons

Highway safety

4. The appeal building shares a car park and vehicular access with the adjacent retail unit Sainsbury's and has an extant planning permission for retail purposes (Use Class A1). The vehicular access opens onto the B4102 which leads to a junction with a mini roundabout to the immediate east of the site.
5. During my midday site visit I observed that the B4102 received a constant flow of traffic which reduced in speed towards the mini roundabout. I observed that, at times, traffic backed up towards the site access. I also appreciate that the level of traffic and demand for parking spaces are likely to increase later in the day. In addition, the proposal and Sainsbury's would simultaneously use the vehicular access at certain parts of the day. However, this would be the case if the appeal building began operating a retail use.
6. The majority of trade is anticipated to occur later on in the evening, when use of the vehicular access and local highway network is likely to be reduced. In addition, the use of delivery drivers would minimise comings and goings from the appeal site. Furthermore, following the submission of a Transport Assessment, the Highway Authority raise no objection to the proposal. Although the availability of car parking space was not a reason for refusal, the appellant also submitted a Car Parking Survey which appeased initial concerns from the Highway Authority.
7. Saved Local Plan (LP) Policy S7 criterion d) seeks to ensure development such as that proposed does not adversely affect the free flow or safety of traffic on adjacent public highways. In addition, paragraph 32 of the National Planning Policy Framework (the Framework) states that development should only be refused on transport grounds where the residual cumulative impacts are severe. In this light, notwithstanding the Council's concerns, I have no localised evidence before me to demonstrate that the proposal would lead to severe harm on highway safety grounds.
8. Therefore I conclude that the proposal would not have a harmful effect on highway safety. Consequently the proposal meets the requirements of LP Policy S7 and paragraph 32 of the Framework insofar as they relate to this matter. Combined, these policies seek to ensure development does not lead to severe residual harm on highway safety grounds.

Living conditions

9. A number of properties are to the rear of the appeal site, the closest being Nos 15 and 17 Beaumont Road which are roughly 11 metres away. No 301 Queens Road is to the south west of the site opposite the car park. Saved Policy S7 criterion b) requires a sufficient separation gap is between the proposed development and nearest residential property having regard to the size and nature of the proposal and nature and character of the surrounding area. To protect the living conditions of neighbouring residents, the policy's explanatory text outlines that the separation distance is unlikely to be less than 30 metres and may need to be more.
10. I have been referred to an appeal decision¹ where the Inspector considered that failing the 30 metres separation distance is not the end of the matter and that any consequential harm arising from the proposal is a determinative factor. Similarly, the proposal before me includes an existing separation between the appeal site and adjacent properties and an existing lawful use. Following revisions to the proposal that includes increasing the height of the chimney, I note that the Council's Environmental Health Officer raises no objection subject to conditions. These conditions would require approval of a ventilation and extraction system (including noise produced by the system) before the use commences alongside time restrictions for deliveries to the site.
11. Noise and disturbances from customer movements would be limited in the context of those at Sainsbury's. In addition, a proportion of the business would be delivery based which would reduce the number of customer movements at the site. A condition restricting opening hours to those as suggested by the Council would further ensure the use would not have a harmful effect on neighbouring living conditions.
12. Therefore I conclude that the proposal would not have a harmful effect on the living conditions of neighbours with particular reference to noise, disturbance and odour. Consequently, insofar as it relates to this matter, the proposal meets the requirements of LP Policy S7 and paragraph 123 of the Framework which seek mitigate and minimise adverse impacts on the living conditions of neighbouring residents.

Other matters

13. Concerns are raised regarding the number of hot food takeaways in the area. However, the Council state that the proposal would result in 12.5% of the local centre comprising A3-A5 uses which is below the maximum limit of 20% as outlined in saved LP Policy S7 for such uses.
14. Based on the evidence before me, dismissing the proposal based on its effect on obesity and litter would not be justified.

Conditions

15. The conditions in the attached schedule are based on those suggested by the Council. Where necessary, I have amended the wording of the conditions in the interests of precision and clarity in order to comply with advice given in the Planning Practice Guidance.
16. I have imposed a condition specifying the relevant drawings as this provides certainty. Conditions relating to the opening hours of the use, the delivery of

¹ APP/W3710/W/14/3000770

goods to the site and the ventilation and extraction system are necessary in the interests of neighbouring living conditions and based on comments from the Council's Environmental Health Officer.

Conclusion

17. For the reasons given above, and having taken all matters raised into account, I conclude the appeal should be allowed subject to the noted conditions.

B Bowker

INSPECTOR