
Appeal Decision

Site visit made on 21 November 2016

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 13 January 2017

Appeal Ref: APP/C3105/W/16/3151642

24 Church Street, Bicester, Oxfordshire OX26 6AZ

- 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 Papa John's (GB) Ltd against the decision of Cherwell District Council.
 - The application Ref 15/01724/F, dated 17 September 2015, was refused by notice dated 3 December 2015.
 - The development proposed is the change of Use from a Shop (Use Class A1) to a Hot Food Takeaway (Use Class A5) with internal and external alterations.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the development on highway safety.

Reasons

3. The appeal site is located on the north side of Church Street on the inside of a bend in the road. The site is currently vacant, its last use being a furniture shop (Class A1). The area has a mixture of residential and commercial uses including 2 restaurants opposite the site.
 4. From the figures provided by Oxfordshire County Council (as Highway Authority) Church Street has a carriageway width of between 5.7 metres and 7.8 metres and a pavement width on the north side of between 0.8 and 1.4 metres in the vicinity of the appeal site. There are also parking restrictions outside the site which prevent parking on Mondays to Saturdays between the hours of 08:00 and 18:00.
 5. From the evidence before me, a large proportion of the traffic generated by the development is likely to be on Fridays and Saturdays. Other weekdays are anticipated to have a much lower level of orders, with Sundays having a mid-range demand. On the busiest days, it is anticipated that there would be in the region of 95 food orders, of which 55 would be delivered and the remaining 40 orders would be collected by customers. A substantial amount of these orders would be during the peak times of the business (between 18:00 and 21:00) and would coincide with the end of the parking restrictions outside of the site. I also acknowledge that the average weekly deliveries would account for 63% of all orders, which is lower than the UK average of 70%.
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6. The Highway Authority and local residents have provided evidence of a high demand for on-street parking spaces after the end of the parking restrictions outside, and in the vicinity of, the appeal site with vehicles parked on both sides of the road. I also observed high demand for the parking spaces on Church Street opposite the site with no spaces available for additional vehicles to park at the time of my visit.
7. The nature of takeaways is that customers will stop off for generally shorter periods of time to collect hot food and will wish to park as close as possible to the premises. For that reason, I consider the car parks at Chapel Street and Market Square would not be used by customers collecting orders.
8. Whilst there is some restricted parking on the street nearby and unrestricted parking after 18:00 hours, there is significant demand for spaces from restaurants and the occupiers of nearby dwellings. Given this high demand, and the evidence before me, I am not convinced that there would be sufficient spaces available for customers during the opening hours of the takeaway particularly during the busy periods.
9. The lack of availability of parking nearby, particularly during the evening would encourage short-term illegal parking would create a hazard to pedestrians and other vehicles.
10. In respect of deliveries from the premises, the Appellant has indicated that this would be done by scooters and they would utilise the garage area to park and collect new orders. Whilst this would not create any off-site parking issues, owing to the on-site parking area, it would not overcome the harm I found in respect of orders collected by customers from the premises.
11. In relation to the servicing arrangements for the proposed use, I note that there would be two food deliveries, one drinks delivery and one refuse collection per week. I have also had regard to the level of servicing which could take place for the extant use which would also occur from the roadside. Given that servicing is not anticipated to take place during peak traffic hours, I consider that this would not result in any additional material harm to highway or pedestrian safety.
12. The Appellant has stated that the additional traffic generated by the proposal is not significant. Utilising a Trip Rate Information Computer System (TRICS), the Statement on Transport Matters (SOTM) provides an estimation of the traffic generated from the site had it still been in use. However, from the evidence before me, the data used to determine the theoretical traffic generation from the former furniture shop relates to a Staples and Dunelm Mill store both of which are likely to have very different, more intensive, transport characteristics than the Church Street premises. Notwithstanding that, as I have already highlighted, the times and characteristics of parking associated with a retail premises is significantly different to that of a hot food takeaway.
13. In the Council's reason for refusal, the appeal site is described as being located in a tortuous section of Church Street. Whilst the narrowing of the pavement and carriageway close to the site provides some constraints to traffic and pedestrian flows, to my mind this does not have a significant impact on the appeal proposal itself. I also note that there are no recorded accidents in the Personal Injury Accident data which can be attributed to this section of the highway.

14. Whilst Church Street is a two way street, traffic flow data shows that the direction of traffic is predominantly eastbound. From my site visit I observed a flow of traffic which appeared to be not too dissimilar to that identified in the SOTM. Vehicle speeds along this stretch of road did not appear to be excessive, although I am conscious that this was only a snapshot of the traffic flows. Notwithstanding that, to my mind, this does not significantly reduce the highway safety risk which would arise should the appeal be allowed.
15. Paragraph 32 of the National Planning Policy Framework (the Framework) indicates that developments should only be prevented if a safe and suitable access to the site for all people cannot be achieved. In this case, the resultant effect of the lack of available on-street parking in the vicinity of the site would mean that a safe and suitable access would not be achieved for customers wishing to pick up orders, and would also impact on existing users of the highway.
16. I have also been referred to possible alternative uses of the building which could have a greater traffic impact than the last retail use, such as food retail or a Class A3 use. However, customers of such uses would be likely to use parking facilities a greater distance away for the site. This is particularly the case in relation to a restaurant use where customers would spend a greater time at the premises.
17. In respect of the lapsed planning permission for the redevelopment of the site for residential purposes¹, I acknowledge that it was considered that that scheme would have an increase in traffic over the lawful Class A1 use. Whilst this indicated that some increase in traffic levels could be safely accommodated, given that this development was only for one house and 2 flats (a net increase of 1 flat and 1 house) this indicates that the traffic generated from the retail use at that point in time was very low.
18. Paragraph 14 of the Framework outlines the presumption in favour of sustainable development. However, in this case I have found significant harm to highway safety. Whilst the development plan is absent on this matter, I have found that the development conflicts with paragraph 32 of the Framework.
19. Whilst there is clear benefit which would arise from the occupation of the building for a meaningful purpose, the harm arising from the highway safety impacts of the development significantly and demonstrably outweigh this benefit.
20. For the above reasons, I find that there would be significant harm to highway safety and as such the proposal would conflict with the aims and objectives of the Framework which seeks to ensure that developments have a safe and suitable access for all people.

Other matters

21. The site is located in the Bicester Conservation Area (BCA) with several Listed Buildings in the vicinity including the Church of St Edburg (Grade I), The Old Vicarage (Grade II*) and several Grade II Listed Buildings, including 22 Church Street adjacent to the site.

¹ 03/02128/F

22. Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the setting of these buildings and the character or appearance of the BCA.
23. The building itself was designed in the late 1950s and is not reflective of the other more historic buildings in the BCA. The minor external changes to the building, particularly the new shopfront, would have a positive impact on the BCA. The Council considered that the development would not have any adverse impact on the character of the BCA or the setting of any of the listed buildings and I have no reason to disagree. Consequently, I find that the proposal would accord with the conservation aims of the Framework in this respect.
24. I have also had regard to the concerns raised in the representations relating to increased noise and litter. However, these issues could be adequately dealt with by means of suitably worded planning conditions.

Conclusions

25. Taking all matters into consideration, I conclude that the appeal should be dismissed.

Chris Forrett

INSPECTOR