

---

## Appeal Decision

Site visit made on 3 January 2017

**by Alex Hutson MATP CMLI MArborA**

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

**Decision date: 24 January 2017**

---

**Appeal Ref: APP/T2215/W/16/3158896**

**73 Main Road, Sutton at Hone, Kent DA4 9HQ**

- 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 Mr Peter Nilsen against the decision of Dartford Borough Council.
  - The application Ref DA/16/01062/COU, dated 29 June 2016, was refused by notice dated 7 September 2016.
  - The development proposed is change of use from A1 (florist shop) to A5 use for Chinese takeaway.
- 

### Decision

1. The appeal is allowed and planning permission is granted for change of use from A1 (florist shop) to A5 use for Chinese takeaway at 73 Main Road, Sutton at Hone, Kent DA4 9HQ in accordance with the terms of the application, Ref DA/16/01062/COU, dated 29 June 2016, subject to the schedule of conditions attached.

### Preliminary matters

2. The appellant indicates on the appeal form that some additional plans have been submitted as part of the appeal. This relates to Existing Layout Plan 30213 Rev 0 (with annotations) and Proposed Layout Plan 30213 Rev 01 (with annotations). However, the Council's decision notice indicates that these plans were considered as part of the planning application process. I have therefore determined the appeal on the basis of these plans.
  3. The Council sets out that the appeal property lies within the Sutton at Hone (north) Neighbourhood Centre as defined within the emerging Dartford Development Policies Plan (DDPP). The Council cites conflict with draft Policies DP18- Neighbourhood Centres and DP19- Food and Drink Establishments, of the emerging DDPP. These policies seek, amongst other things, at least 12 months of effective marketing to demonstrate a vacant unit would not be viable for retail use and to resist new A5 units adjacent to existing ones.
  4. However, whilst the emerging DDPP has undergone consultation and has been subject to examination hearings by an Inspector, it has not yet been found sound. In addition, I have not been made aware of the full extent of any unresolved objections to these policies. I also have concerns that the elements of these policies which the Council relies upon are either onerous, which could lead to long term vacancy, or not fully consistent with the aims and objectives of the National Planning Policy Framework (the Framework) which promote
-

flexibility, customer choice and the need to support economic growth. Consequently, having regard to Paragraph 216 of the Framework, I afford limited weight to the emerging DDPP and its policies at this time.

### **Main issue**

5. The main issue is the effect of the proposal on the viability and vitality of the area.

### **Reasons**

6. The appeal property comprises one of four units within a small parade and is currently vacant, having previously been in use as a florist shop. The other units within the parade include an accountant's, a hot food takeaway and a convenience store. The proposal seeks a change of use to a hot food takeaway.
7. The evidence indicates that the appeal property has been vacant since February 2016. As such, it has contributed little to the local economy since this time. The appellant provides evidence that the appeal property has been extensively marketed through a national website, through a local estate agent and through signage within its windows, since it became vacant. This marketing has not generated any particular interest or any offers in respect of its current lawful use. On this basis, there is no compelling evidence before me that the appeal property, in its current lawful use, is likely to contribute to the local economy in the near future.
8. I acknowledge the Council's concerns that by allowing the appeal, the small parade would comprise just a single retail unit and that half the units would be given over to hot food takeaways. I also note the Council's preference for the appeal property to provide a use such as an estate agent or dry-cleaners. Nevertheless, the marketing evidence strongly suggests that such uses are not in demand in this particular location. Moreover, the proposed change of use, for which the marketing evidence does suggest has a demand, would provide an economic benefit to the local economy by bringing the appeal property back into use.
9. Consequently, I conclude that the proposal would not have a harmful effect on the viability and vitality of the area.
10. I acknowledge that there would be some conflict with draft Policies DP18 and DP19, of the emerging DDPP, in respect of the marketing period undertaken and the adjacent A5 uses that would arise. However, for the reasons set out above, I afford only limited weight to these policies.
11. The Framework requires, amongst other things, that significant weight should be placed on the need to support economic growth. The proposal would support economic growth by bringing the appeal property back into use and would therefore comply with the aims and objectives of the Framework.
12. The Council cites conflict with saved Policy R6, of the Borough of Dartford Local Plan 1995. However, this policy relates to designated local shopping centres. The Council has not provided any substantive evidence that the small parade, within which the appeal property is located, falls under this designation. As such, this policy is not relevant to the determination of this appeal. In addition, the Council cites conflict with Policy CS12- Network of Shopping

Centres, of the Dartford Core Strategy 2011. However, this policy relates to the shopping centres of Dartford Town Centre, Bluewater, Ebbsfleet/Eastern Quarry and Longfield. As such, this policy also has no relevance to this appeal.

*Other matters*

13. The Council raises a concern that the proposal would be in an unsuitable location and would increase late night activity. However, this did not form part of its reasons for refusal. Moreover, it would be located in the context of a main road and in the context of an existing hot food takeaway which operates into the late evening. As such, I consider that these concerns are unfounded.

**Conditions**

14. I have had regard to the planning conditions suggested by the Council. I have amended some of these for clarity and conciseness. In addition to the statutory time limit condition, I have also imposed a condition specifying the relevant drawings. This is necessary to provide certainty. I agree that conditions relating to fumes, odours and noise from any equipment are necessary in the interests of living conditions. I also agree that conditions relating to opening hours and delivery hours are necessary for the same reason. However, I do not consider it necessary to prevent deliveries for the whole of the day on Bank or Public Holidays given that deliveries on Sundays are considered acceptable by the Council.

**Conclusion**

15. For the reasons set out above and having regard to all other matters, I conclude that the appeal should be allowed.

*Alex Hutson*

INSPECTOR

**SCHEDULE OF 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: Site Location Plan at scale 1:500; Existing Layout Plan 30213 Rev 0 (with annotations); and Proposed Layout Plan 30213 Rev 01 (with annotations).
- 3) Before the use hereby permitted takes place, details of the equipment to control the emission of fumes and odours from the premises and its maintenance shall be submitted to and approved in writing by the local planning authority. The equipment shall be installed in accordance with the approved details and shall be retained and maintained in accordance with the approved details thereafter.

- 4) Before the use hereby permitted takes place, details of noise mitigation measures for any equipment (including extraction, ventilation, refrigeration and air conditioning equipment) or ducting system, in accordance with BS 4142:2014 Methods for Rating and Assessing Industrial and Commercial Sound, shall be submitted to and approved in writing by the local planning authority. The noise mitigation measures shall be implemented in accordance with the approved details and shall be retained thereafter.
- 5) The use hereby permitted shall only take place between the following hours: 1700-2300 on Mondays to Thursdays; 1700-2330 on Fridays and Saturdays; and 1700-2230 on Sundays and Bank or Public Holidays.
- 6) Deliveries to the premises shall only take place between the following hours: 0800-2000 on Mondays to Saturdays; and 0900-1700 on Sundays and Bank or Public Holidays.