The Planning Inspectorate

Appeal Decision

Site visit made on 16 January 2017

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 02 February 2017

Appeal Ref: APP/Z0116/W/16/3161556
668 Fishponds Road, Fishponds, Bristol BS16 3HJ

- 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 Kamil Swisulski against the decision of Bristol City Council.
- The application Ref 16/03359/F, dated 13 June 2016, was refused by notice dated 7 September 2016.
- The development proposed is change of use from Class A1 (shop) to Class A3/A5 restaurant/hot food takeaway).

Decision

1. The appeal is allowed and planning permission is granted for change of use from Class A1 (shop) to Class A3/A5 restaurant/hot food takeaway) at 668 Fishponds Road, Fishponds, Bristol BS16 3HJ in accordance with the terms of the application, Ref 16/03359/F, dated 13 June 2016, subject to the conditions set out in the Schedule to this decision.

Procedural matters

2. The description of development given in the heading above has been taken from the appeal form as it provides the most succinct description and is also the one used on the Council's decision notice.

3. The appellant has submitted a revised proposal in respect of the hours within which the restaurant/hot food takeaway would operate. Within the application documents, these were proposed to be 1000-0200 but this has been revised to 1000-2300. I note that the Council has had the opportunity to comment on the proposed revision and has reflected this is the list of suggested conditions. I have therefore taken the proposed revised opening hours into consideration in my determination of the appeal.

Main Issues

4. The main issues in this appeal are (i) the effect of the proposal on the retail function of the Fishponds Road shopping parade; and (ii) the effect on the living conditions of nearby residential occupiers.

Reasons

Retail function

5. The appeal premises is situated at the end of an established terrace of similar sized units located within a wider retail area extending in both directions along

Fishponds Road. The property is currently vacant and the planning history indicates that it was last in use as a computer repair business.

6. Policy BCS7 of the Bristol Core Strategy (2011) (the CS) seeks to encourage retail uses that will contribute to maintaining the vitality, viability and diversity of Town, District and Local Centres. Within the policy hierarchy, Fishponds is categorised as a Town Centre. Policy BCS7 sets out that active ground floor uses will be maintained and enhanced throughout the centres. The Policy's supporting text defines 'active ground floor uses' as those falling within Use Classes A1 to A5 to which the proposal would clearly accord.

7. CS Policy BCS7 also says that retail shop uses will pre-dominate the designated primary shopping areas. Again, this is expanded upon in the supporting text, which sets out that this means those uses in Class A1. The appeal premises is located within a secondary retail frontage so taking this into account, there is no clear conflict between the proposal and CS Policy BCS7.

8. Policy DM7 of the Site Allocations and Development Management Policies (2014) (the SADMP) requires retail and other main town centre uses to be located within the identified centres. The Policy objective is to control out of centre retail development and as the proposal would be within an identified retail centre, it would not conflict with this Policy.

9. SADMP Policy DM8 refers specifically to 'primary' and 'secondary' shopping frontages. Within the latter, proposals for retail or other related uses are expected to complement the retail function in terms of vitality, viability and diversity and maintain an appropriate balance of uses.

10. The terrace of 5 shops within which the appeal premises sits is split between two hot food takeaways, a mobile phone shop, a taxi booking office and the current A1 use of the premises itself. I therefore accept that the terrace currently has a fine balance between retail and supplementary uses. However, the Fishponds retail area is much more extensive and I do not consider that the balance of uses within the terrace can be looked at in isolation of the overall balance of shops within the Town Centre and in particular the secondary retail frontages.

11. At my site visit, I observed that there were a significant number of premises in A3/A5 use along Fishponds Road. However, I also observed a large number of other retail outlets including mobile phone shops, hairdressers, sports shops and bookmakers. I am not therefore persuaded that the addition of a further shop in A3/A5 use would tip the balance away from there being an overall acceptable range of retail uses in the town centre.

12. Furthermore, planning permission was granted in 2007 for the change of use [of the appeal premises] to A3/A5 use. I do not have the full details of what led the Council to consider this acceptable and although that application was determined prior to the adoption of the CS and SADMP, no evidence has been put forward to indicate that the Council's policies in respect of retail uses have changed significantly in the intervening period. For these reasons, I give the existence of the previous permission significant weight. Moreover, it is clear from the planning history related to the appeal premises that there has been a fast turnover of uses in recent years. This suggests that to secure an alternative retail use to that proposed would be challenging, particularly given the presence of nearby large national retail outlets. I am therefore in no doubt

that the premises would be likely to remain vacant for the foreseeable future in the event of the appeal being dismissed, which would have a modest but nonetheless noticeable, detrimental effect on the overall vibrant feel of the retail centre.

13. I recognise that the addition of a further restaurant/takeaway outlet would add to the already high number of such uses nearby. Nevertheless, the proposal would add further interest to the retail area by providing a Polish food outlet, of which there are no others evident in the vicinity. Thus, it would be likely to generate increased footfall and add to the overall vitality and viability of the secondary shopping frontages along Fishponds Road. I do not therefore see any clear conflict with SADMP Policy DM8 or with Policy DM9 that includes similar objectives.

14. Furthermore, as there is no clear barrier to the proposal put up by CS Policy BCS7, the proposal would not conflict with the development plan objectives for retail centres as a whole.

Living conditions

15. There are three self-contained dwellings above and to the rear of the appeal premises, one of which shares a wall with it. These dwellings are accessed from the rear via the service road that runs alongside the appeal premises. The access would continue to be shared and refuse bins would be located in the area at the rear of the rear of the building. Concerns have been raised with regard to the incompatibility between the siting of refuse bins and the amenities of the occupiers of the residential properties.

16. CS Policy BCS21 seeks, amongst other things, to safeguard the amenity of existing development and that of future occupiers. SADMP Policy DM10 sets out a number of criteria that proposals for food and drink uses should take into account. These include the impacts on residential amenity from noise and disturbance, fumes, smells and late night activity along with the availability of facilities for refuse storage and disposal. SADMP Policy DM35 requires development to mitigate the effects of noise on environmental amenity.

17. Given the town centre location, some background noise and general activity could reasonably be expected by those living in the dwellings above and to the rear of the appeal premises. The revised opening hours of 1000-2300 would be generally in line with other nearby food and drink outlets and I am satisfied this could be secured by means of a suitably worded planning condition. Therefore, in this regard, the proposal would not generate activity late into the night and thus, there would be no unacceptable effects on the living conditions of neighbouring residential occupiers.

18. Although the residential property to the rear shares a wall with the appeal premises, no substantive evidence has been submitted to demonstrate that the occupiers would be subject to an unacceptable level of noise. Moreover, the food preparation, cooking and customer areas would be located towards the front of the building and only the cold room and staff facilities would be set within the rear of the premises. I am not therefore convinced that the proposal would be likely to generate a level of noise through the wall of greater magnitude than that which would be experienced from a neighbouring property in residential use.

19. Nevertheless, the potential would remain for an increased level of noise to affect those living above the main areas of activity within the appeal premises. However, it is reasonable to conclude that this situation would be similar to that resulting from the change of use granted permission in 2007 and the Council has not supported its stance in respect of the effects likely to arise from the current proposal with any empirical evidence. Nonetheless, I accept that there may be some potentially harmful effects but consider they could be satisfactorily mitigated by the use of an appropriate condition.

20. The proposed area for the storage and disposal of refuse would be located to the rear of the building and within the space forming part of the access to the residential properties. Whilst I recognise the potential incompatibility of such an arrangement, the area is of sufficient size for the refuse area to be located away from the residential properties. Further, matters relating to the disposal of waste into the bins could also be satisfactorily controlled by means of a suitably worded condition.

21. I have taken into account the representation from an interested party in respect of litter etc. However, there is no clear evidence that this has been generated by the use of the appeal premises and does not alter my overall findings that the proposal would be acceptable.

22. For the above reasons, the proposal would accord with CS Policy BCS21 and Policies DM10 and DM35 of the SADMP.

Conditions

23. I have had regard to the various conditions suggested by the Council, having also had regard to paragraph 206 of the National Planning Policy Framework and Planning Practice Guidance. Those imposed are based on the Council's suggestions but with some variation where necessary in the interests of clarity and precision.

24. I have imposed a condition specifying the relevant drawings as this provides certainty. All of the other conditions have been imposed in the interests of residential amenity.

25. Given the proximity of residential occupiers, a condition is necessary to control the emission of fumes and smells. I consider it appropriate to take a precautionary approach to the emission of noise and have imposed a condition relating to sound insulation. I have adapted this from the Council's suggested condition because as drafted, it would not require any action to be taken in the event that the assessment concluded that sound levels would be above the specified level.

26. Conditions are necessary relating to the provision and use of the refuse and recyclable materials storage area. However, I have altered the Council's suggested wording of the condition and split it into two in the interests of precision and clarity. It is necessary to restrict the opening hours of the premises and I have imposed a condition accordingly. However, it is unnecessary to specify the days of the week as the premises will be open every day.

Conclusion

27. For the above reasons and having had regard to all other matters raised, the appeal succeeds.

Hayden Baugh-Jones

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: Un-numbered Location Plan received by the local planning authority on 13 July 2016; Un-numbered Floor Plan received by the local planning authority on 13 July 2016.

3) 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 details that shall have first been submitted to and approved in writing by the local planning authority. Details of the equipment shall include: its method of construction; its noise levels; and its appearance. 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.

4) The building shall be adapted so as to provide sound insulation against internally generated noise of not less than 5 dB(A), with windows shut and other means of ventilation provided. The sound insulation works shall be completed before the use of the building begins and retained thereafter.

5) The use of the building hereby permitted shall not be brought into use until receptacles for the storage of refuse and the recycling of materials have been provided in accordance with the approved plans. The refuse and recycling receptacles shall be provided before the use of the building hereby permitted commences. The refuse and recycling receptacles shall thereafter be retained in the same location and refuse and recyclable materials shall only be stored within the receptacles or internally within the building to which this permission relates.

6) No refuse or recyclable materials shall be placed on the public highway or the pavement except on the day of collection.

7) The tipping of refuse into the receptacles for refuse and recyclable materials shall only take place between 0800 – 2000 on Monday to Saturday and not at all on Sundays or Bank Holidays.

8) Customers shall only be permitted on the premises between the following hours: 1000 – 2300.