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## Appeal Decision

Site visit made on 12 January 2017

**by AJ Steen BA (Hons) DipTP MRTPI**

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

**Decision date: 2 February 2017**

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**Appeal Ref: APP/T2215/W/16/3159296**  
**291 Lowfield Street, Dartford DA1 1LB**

- 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 Kanil Saglam against the decision of Dartford Borough Council.
  - The application Ref DA/15/01896/COU, dated 22 December 2015, was refused by notice dated 17 June 2016.
  - The development proposed is described as “existing bicycle retail shop to have a change of use to a fast food takeaway, the new shop will be a kebab shop, with the flat upstairs to be rented out, the existing windows that were broken have already been replaced to make the premises water tight.”
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is the effect of the proposed change of use on the vitality and viability of the district shopping centre.

### Reasons

3. The shopping centre surrounding 291 Lowfield Street comprises a mix of retail and other uses, surrounded by a residential area, that is designated as a local shopping centre by Policy R6 of the adopted Dartford Local Plan (LP) and District Centre by Policy DP17 of the draft Dartford Development Policies Plan (DPP). Policy R6 of the LP confirms that changes of use that would adversely affect the economic viability, physical attractiveness or efficient functioning of the centre will not normally be permitted. Policy DP17 of the draft DPP includes more detailed criteria in support of that aim, including the retention of at least 50% of the units in the centre in Class A1 (retail) or A2 (financial and professional services) use.
  4. The proposal would change the use of the building from Class A1 use to Class A5 (hot food takeaways). It is the end unit on the parade of shops on this side of Lowfield Street, the neighbouring unit being in A1 retail use, thus ensuring that the unit would not be adjacent to an existing or permitted A5 use, in accordance with Policy DP19 of the DPP. However, other units in the District Centre in uses other than Classes A1 or A2 add up to more than 50% of the centre, such that the proposed use would be contrary to Policy DP17 of the DPP.
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5. Policy DP17 of the DPP confirms that, where the unit is vacant and it has been demonstrated, through sufficient effective marketing, to be unviable for shop or community use, a change of use may be permitted. In this case, the bicycle shop ceased trading some time ago and the unit has remained vacant since and I have been presented with some evidence of marketing of the unit.
6. That marketing evidence comprises a letter from the previous owner of the unit, who operated the previous bicycle sales business. He confirms that the business became financially unviable and closed in 2015. 'Homes 4 You' marketed the property between August 2013 and May 2015 for use under Class A1, but did not receive any serious offers. 'Land Estates' confirm in a letter dated 12 May 2016 that they had been marketing the property since August 2015, but have not had interest from potential occupiers who would use the building within Class A1. 'Anthony Martin' marketed the building between August 2015 and December 2015, but no interest was expressed for use within Class A1. 'Land Estates' and 'Anthony Martin' both confirmed that there was interest in the use of the unit for Class A5 use.
7. No evidence has been presented regarding marketing of the unit for use under Class A2 that the Council suggest would be otherwise acceptable in accordance with Policy DP17 of the DPP. It is clear from the marketing over a considerable period of time, in excess of the 12 months the Council suggest is necessary, that there is no interest in the use of the building for A1 retail use. However, that lack of marketing for Class A2 use means that the marketing would not demonstrate the unit would be unviable for use in accordance with Policy DP17 of the DPP. I understand that the lack of interest in Class A1 use may be because of the proximity of the shop to Dartford Town Centre that makes it unattractive to potential retail occupiers, but that is not clear in relation to potential Class A2 occupiers.
8. For these reasons, I conclude that the proposed change of use of 291 Lowfield Street to Class A5 use would cause harm to the vitality and viability of the local shopping centre of which it forms part. As such, the proposed change of use would be contrary to Policy R6 of the LP and also Policy DP17 of the draft DPP that seek to protect the economic viability, physical attractiveness or efficient functioning of the district shopping centre.
9. I accept that the proposed development would include ducting that would ensure adjoining occupiers would not be harmed by odours, vibrations and noise from the proposed ventilation system and adequate refuse disposal methods would be provided. My attention has been drawn to the applicant's experience of operating similar businesses elsewhere and there is adequate access to the premises. However, none of these matters would overcome the harm I have identified.
10. The renovation and re-use of the premises would improve the appearance of the building surrounding area. However, no evidence has been provided that this could not take place under Class A2 that would be in compliance with Policy DP17 of the DPP.
11. My attention has been drawn to a number of other appeal decisions. The main issues in those cases differ from that identified in this case, such that the considerations were somewhat different. Only one was within Dartford, the others being subject of different Development Plan policies. Consequently, I

consider that these decisions differ significantly from this case and, in any event, I need to consider the proposed change of use on its own merits.

12. The description of development includes conversion of the upper floor to a separate flat. The Council have not raised any concerns regarding that conversion and I see no reason to disagree with their conclusions in that regard. However, this would not overcome the harm to the vitality and viability of the local shopping centre that I have identified.

### **Conclusion**

13. For the above reasons and taking into account all other matters raised, I conclude that the appeal should be dismissed.

*AJ Steen*

INSPECTOR