
Appeal Decision

Site visit made on 26 October 2016

by M Seaton BSc (Hons) DipTP MRTPI

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

Decision date: 02 March 2017

Appeal Ref: APP/V0728/W/16/3153590

82 High Street, Marske-by-the-Sea, Redcar, TS11 7BA

- 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 Milner against the decision of Redcar & Cleveland Borough Council.
 - The application Ref R/2016/0237/CA, dated 11 April 2016, was refused by notice dated 22 June 2016.
 - The development proposed is the change of use from a shop to a micro pub.
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Procedural Matter

1. The proposed development was described on the application forms in the following terms; *'We propose to open a micro pub. Change of use from a mobility shop to a licensed premises. Only change of use required as the existing shop front will remain with repair'*. The Council has simplified the description of development, which I consider to accurately reflect the proposed development, and I have also adopted the same.

Decision

2. The appeal is allowed and planning permission is granted for the change of use from a shop to a micro pub at 82 High Street, Marske-by-the-Sea, Redcar, TS11 7BA, in accordance with the terms of the application Ref R/2016/0237/CA, dated 15 March 2016, subject to the following conditions;
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plan: Proposed Floor Plan received by the Local planning Authority on 26.04.2016.
 - 2) The premises shall not be open to customers outside the following hours:-
11:00 - 23:30 Sunday – Thursday
11:00 - 00:30 Friday and Saturday
The external rear yard area shall not be open to customers after 21:00 hours Monday – Sunday.

Application for costs

3. An application for costs has been made by the appellant against the Council. This application will be the subject of a separate decision.
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Main Issue

4. The main issue is whether the proposed development would safeguard the living conditions of the neighbouring occupiers of Prospect Terrace, having regard to noise and disturbance.

Reasons

5. The appeal site comprises the ground floor of a retail premises located on the High Street within the commercial centre of Marske. The unit was previously occupied by a disabled mobility shop, and possesses a ramped entrance on to the forecourt at the front of the property. Immediately adjacent to the shop frontage is an access to a short mews of properties, Prospect Terrace, which comprises a commercial unit accommodating a hairdressers and four residential properties. The first floor of the property is also occupied as a residential flat with access from Prospect Terrace.
6. The Council has concluded that the proposed change of use from Class A1 (Retail) to Class A4 (Drinking Establishments) would create conditions prejudicial to the amenity of the occupiers of nearby residential properties, particularly with regards to noise and disturbance. The Council has made reference to the point that the proposed change of use would encompass any use within Class A4, rather than being limited solely to occupation as a micro-pub. Whilst I would not disagree with this assessment, the justification for such a concern has not been expanded upon by the Council, and given the comparatively limited scope of possible uses within Class A4, it is therefore unclear as to the specific differences between the nature of the proposal and the remainder of Class A4.
7. I accept that the change from a retail unit to a *micro-pub* as proposed in this instance would undoubtedly result in a greater level of activity at the premises during the evenings than was previously the case. However, in considering the relationship with the nearby residential properties, I have been mindful that such proximity between the respective uses within a commercial centre could not be said to be unusual. In this respect I have noted the existing position of the nearby Clarendon Public House relative to surrounding uses.
8. I have carefully considered the potential impact of noise and disturbance, but note that customer comings and goings from the premises will be limited to the High Street frontage. Furthermore, I have no reason on the basis of my observations of the layout of the premises to conclude that the actual use of the internal areas of the premises would give rise to any unacceptable impact on neighbouring living conditions due to noise and disturbance.
9. I have noted the Council's concerns over the potential for noise and disturbance arising from the use of the rear yard, but consider that the limited external space available would mitigate against an unacceptable level of impact, as would the absence of windows to habitable rooms on the side elevation to No.2a Prospect Place. Whilst I observed the relationship with the independently accessed flat above, I note that the appellant has highlighted that the yard area would not be accessible after 2100 hours, which I consider would strike a reasonable balance with the protection of the living conditions of neighbouring occupiers, and could be satisfactorily secured by condition.

10. Other concerns relating to the potential impact on the living conditions of neighbouring occupiers have been raised in respect of a loss of privacy and the generation of odours. However, I am satisfied that the limitation of the proposed development to a change of use only would not result in any adverse impacts on the privacy of neighbouring occupiers as a consequence, and I note that there is no intention for brewing to be undertaken on the premises in connection with the change of use with none of the associated odours. I accept that there may be some impact from cigarette smoke generated by smokers within the rear yard, but I am not persuaded given the position and size of potentially affected windows that any such activity would result in anything more than a very limited impact.
11. On the basis of the submitted evidence, I am satisfied that the proposed development would, subject to appropriate conditions, adequately safeguard the living conditions of neighbouring occupiers, having regard to noise and disturbance. The proposals would therefore accord with saved Policy CS1 of the Redcar & Cleveland Core Strategy DPD 2007, and saved Policies DP2 and DP3 of the Redcar & Cleveland Development Policies DPD 2007. These policies seek to ensure that development proposals contribute towards a healthy, safe and attractive, and well maintained environment, and do not cause significant adverse impacts on the amenities of occupiers of existing nearby properties.

Other Matters

12. I have had regard to various other issues which have been raised by the interested parties in connection with the proposed use.
13. With regards to the principle of the proposed change of use, I am mindful of the location of the premises within the designated Centre and would not disagree with the Council's assessment within the Committee Report that the proposed use would be acceptable for a town centre location. I also see no reason to disagree with the conclusion that there would not be an adverse impact on the vitality and viability of the centre. I have noted the references to there being no need for a further public house in Marske and that it would result in the closure of existing public houses. However, my attention has not been drawn to any detailed evidence in this respect to counter the Council's previous conclusion, and similarly there is no evidence before me to support the contention regarding adverse impacts on existing businesses.
14. Concerns have been expressed regarding the potential for crime and anti-social behaviour as a consequence of the operation of the premises, with particular reference made to the potential for conflict between customers and residents seeking access to Prospect Place. In this respect, I am mindful that the courts have held that the fear of crime is only a material consideration where the use, by its very nature, would provide a reasonable basis for concern. However, in this instance I am not persuaded that it is a foregone conclusion that the proposed use of the premises would give rise to the contended conditions and an increase in crime and anti-social behaviour. I have not been provided with any compelling evidence to persuade me that there are existing issues related to anti-social behaviour or crime from similar uses within Marske, and as a consequence I do not find there to be any conclusive support for the contention that the proposals would undoubtedly result in crime or anti-social behaviour.
15. I have noted the concerns expressed over highway safety and parking, but whilst I observed the parking restrictions in place on the High Street close to

the premises, I am satisfied that sufficient parking would exist within both dedicated car parks and on-street in the Centre as a whole, irrespective of the availability or otherwise of parking at the nearby Co-Operative Store. I do not find the lack of available parking directly associated with the unit to be either unusual or a reason for refusal, and I note the absence of an objection from the Council on highway grounds.

16. I have also had regard to further contentions regarding the potential for damage to cobbles from deliveries to the rear, an increase in rubbish connected with the use, and future difficulties related to the rental of properties and negative impacts on house values. However, I consider that any rubbish generated by the use could be adequately addressed and note that adequate bin storage is shown on the proposed layout plan. Furthermore, these are not matters articulated by the Council into the reason for refusal, and in the absence of any additional evidence to the contrary, I consider that these would not warrant the refusal of the scheme.
17. I have had regard to the reference which has been made to restrictive covenants governing the premises, but note that these are not material planning considerations but private matters which have had no bearing on my determination of the planning merits of the proposals.
18. Representations have been made to the effect that G.W. & C.A. Linsleys' (the occupiers of Marske Hair Studio at No. 2 Prospect Terrace) and Mr & Mrs Driffields' (the occupiers of No. 2a Prospect Terrace) rights under Article 8 of the European Convention on Human Rights would be violated if the appeal were allowed. However, I do not consider them to be well-founded because the proposed development would not have the alleged impact on noise and disturbance highlighted as an impingement to the right to a private family life under Article 8. For the reasons set out, I am satisfied that the relationship between the proposed development and Prospect Terrace would not result in the claimed impact on living conditions, and that there would be no violation of G.W. & C.A. Linsleys' and Mr & Mrs Driffields' human rights.

Conditions

19. In making a recommendation to the Planning Committee, the Council highlighted several conditions that it would wish to see imposed in the event that planning permission was granted. As a consequence of the works having clearly already commenced, I am satisfied that a condition relating to timeliness is unnecessary, but that a condition related to the identification of plans would be necessary in the interest of proper planning and to provide certainty in respect of the development. I have amended the proposed condition seeking to control the hours of opening to also reflect the need to restrict customer access to the rear yard area, with the resultant condition necessary in the interests of the living conditions of neighbouring occupiers.

Conclusion

20. For the reasons given, and subject to conditions listed, the appeal is allowed.

M Seaton

INSPECTOR