

Appeal Decision

Site visit made on 27 February 2017

by C Jack BSc(Hons) MA MA(TP) MRTPI

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

Decision date: 07 March 2017

Appeal Ref: APP/T2215/W/16/3163413

84 London Road, Stone, Kent DA2 6AX

- 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 Ceyhan Karatay against the decision of Dartford Borough Council.
 - The application Ref DA/16/00407/COU, dated 14 March 2016, was refused by notice dated 25 May 2016.
 - The development is the change of use of the unit (ground and basement) from sandwich bar (A1) to takeaway/restaurant (A3/A5) with opening hours: Mondays to Saturdays 12.00-00.00; Sundays 17.00 – 23.00 and new extraction flue to the side elevation.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the unit (ground and basement) from sandwich bar (A1) to takeaway/restaurant (A3/A5) with opening hours: Mondays to Saturdays 12.00-00.00; Sundays 17.00 – 23.00 and new extraction flue to the side elevation at 84 London Road, Stone, Kent DA2 6AX in accordance with the terms of the application, Ref DA/16/00407/COU, dated 14 March 2016, and the plans submitted with it, subject to the following conditions:
 - 1) The use hereby permitted shall only take place between the following hours: 1200 - Midnight on Mondays – Saturdays and 1700 - 2300 on Sundays.
 - 2) No amplified music or amplified sound shall be played in the premises unless otherwise agreed in writing by the local planning authority.

Preliminary Matters

2. I saw during my site visit that the change of use has taken place and that the extraction flue is in situ. I am advised that the appeal property was previously occupied by a sandwich bar.
3. The emerging Dartford Development Policies Plan¹ (EDDPP) is at examination and hearings have taken place. It is therefore at an advanced stage of preparation. However, I have not been provided with any significant details of the on-going timetable, any interim findings, or the extent to which there remain any unresolved objections to each relevant policy and the degree of consistency with the National Planning Policy Framework (the Framework). However, I have been advised where modifications are proposed to relevant policies. The Council advises that it is consulting on proposed modifications to

¹ Dartford Development Policies Plan Publication (Pre-Submission) Document December 2015

certain policies and that emerging Policies DP3 and DP19 are not subject to any modifications. The saved policies of the Borough of Dartford Local Plan 1995 (DLP) pre-date the Framework. I have therefore given weight to relevant saved and emerging policies for the purposes of this appeal in my reasoning on the main issues, having regard to Paragraphs 215 and 216 of the Framework.

4. The Council advises that it omitted to refer to saved Policy R9 of the DLP in its reasons for refusal, although it was referred to in its officer report sheet. The general aims of Policy R9 are carried forward in emerging Policy DP19 of the EDDPP. I have had regard to Policy R9 in my decision as part of the current development plan for the area.

Main Issues

5. The main issues are the effect of the proposed development on i) the character and appearance of the area and ii) highway safety.

Reasons

6. London Road is a main route, which in the vicinity of the appeal site features residential properties and various commercial premises, including a builders' merchant, a filling station, a convenience store, hairdressers and several café and takeaway outlets. Nearby side roads are principally residential in character.
7. 84 London Road (No 84) is an end of terrace property on the corner of London Road and Invicta Road, which comprises a residential unit at first floor with a takeaway and restaurant below. An extraction flue has been fitted to the side elevation of the building, which overhangs the adjacent footway in Invicta Road.

Character and appearance

8. Emerging Policy DP19, which sets out criteria relating to food and drink establishments in use classes A3, A4 and A5, states that takeaways (Class A5) will normally be permitted only within designated centres, and that permission will not normally be granted for an A5 unit adjacent to an existing or permitted A5 unit. The site lies a short distance outside the area identified by the Council as the London Road (Stone) Local Centre (LC). The area is mixed in character, with some other commercial uses also present outside the LC.
9. Furthermore, while there are several similar uses within the LC, it is a small centre and I do not consider that the development amounts to an undue proliferation or concentration of such uses such as to materially alter the character of the area, including when considered against the previous use of the site. Therefore, while A5 development would not normally be acceptable outside the LC, the specific circumstances of this case are such that I am satisfied that no significant harm arises from the location of the development a little outside the LC, and that this does not undermine the overall aims of the emerging policy, including in relation to residential amenity and the over-concentration of uses.
10. There is a residential property attached to one side of No 84 and a barber shop on the other side, across Invicta Road. The adjacent uses are therefore not A5 uses. Several residential properties lie between the barber shop and the A3 and A5 uses in the LC. I therefore consider that the development does not

conflict with criterion 2 of Policy DP19 in this regard. Saved Policy R9 does not include similar criteria relating to the potential clustering of A5 uses or a specific locational restriction in favour of designated centres.

11. The extraction flue fitted to the side of the host property emerges at approximately the same height as the top of the adjacent ground floor window, and extends above eaves level. The flue has been painted cream to match the side elevation of the building and while it is perceptible in the street scene it is not significantly intrusive in visual terms. It is located above the footway, but there is ample clearance between the ground and the base of the flue such that it does not impede the normal passage of pedestrians and it protrudes only a short distance from the flank of the building. The flue is viewed in the context of a mixed urban environment where there are other examples of extraction flues at nearby food and drink premises in the LC that are visible from the public realm and have not been concealed or camouflaged. The flue at No 84 is therefore not materially at odds with the appearance of the wider locality.
12. For these reasons, I conclude that the development does cause significant harm to the character and appearance of the area. I therefore find no conflict with saved Policy R9 of the DLP or with emerging Policy DP19 of the EDDPP, the relevant requirements of which are set out above. I also find no conflict with emerging Policy DP2 of the EDDPP, which sets out criteria for good design. These policies are generally consistent with the Framework and I have afforded the saved policy substantial weight. The emerging policies are at an advanced stage of preparation and I have afforded them significant weight, taking account of their emerging status.

Highway safety

13. London Road is a main A-road. I note that it is not possible to park legally immediately adjacent to the appeal premises to the front or the side and that, as with most similar uses nearby, there is no off-street customer parking provided on the site.
14. There is a signalised crossing point on London Road, a very short distance from the front of the appeal site, with zigzag parking restrictions on the approaches. There is also a zebra crossing, referred to by the local highway authority, but this is located some distance along the road on the far side of Mile Stone Road and so its use is unlikely to be materially affected by the development. There is on street parking provision beyond the signalised crossing, on the appeal site side of the road, and further on street parking in front of the nearby LC, as well as in nearby side roads. I note that waiting is restricted by double yellow lines on the corner of London Road with Invicta Road, however there is on street parking nearby in Invicta Road.
15. At the time of my site visit, on a Monday afternoon, there were parking spaces available nearby in Invicta Road, on London Road in the LC, and in Mile Stone Road. I have not been provided with any substantive evidence of excessive parking pressure in the locality generally or at particular times of the day. I note the images provided of cars parked on the pavement, including in front of the appeal site. However the same images show that the restaurant/takeaway was closed at the time and therefore the parking shown cannot reasonably be attributed to that use. Moreover, cars were parked on the pavement on the opposite side of London Road at the time of my visit, despite parking spaces being available on the appeal site side of the road.

16. I note that the Council's Parking Standards and the Kent Vehicle Parking Standards seek parking provision for A3 and A5 uses in excess of those sought for shops. However, I have not been provided with any significant evidence that the appeal use is leading to material parking pressure. Furthermore, given the location of the site, with a number of residential streets within reasonable walking distance, it seems to me likely that a proportion of customers would access the premises on foot.
17. I have not been provided with evidence of any accidents arising from the use of the crossing, parking or waiting in the restricted areas or associated with manoeuvres in relation to the use or from nearby on street parking. Additionally, I note the Council's view that the use would be likely to lead to regular infringements of yellow line waiting restrictions, requiring highway enforcement. No significant evidence has been provided to indicate that this has been the case since the use commenced, and I see no reason to assume that customers of the appeal premises would be especially likely to disregard the Highway Code.
18. For these reasons, I conclude that the development does not cause a significant risk to highway safety. I therefore find no conflict with emerging Policies DP3 and DP19, which among other things seek to ensure there would be no adverse material impact on the safety of road-users and traffic flow, and that the development would not result in excessive pressure for on-street parking. These emerging policies are generally consistent with the Framework and are at an advanced stage of preparation. I have afforded them significant weight, taking account of their emerging status.

Other Matters

19. I have had regard to the matters raised by interested parties, including in relation to antisocial behaviour, noise from the flue and extended opening hours. I also have no significant evidence before me that the development has or is particularly likely to lead to increased littering, loitering, noise or other antisocial behaviour, or that noise from the flue is resulting in a significant adverse effect on the local noise environment. Nonetheless, I consider that residents can reasonably expect a reduced noise environment at certain times, particularly during the night, and the operating hours of the premises can therefore be controlled by condition, along the lines suggested by the appellant, so as to be generally consistent with the hours of similar businesses nearby.
20. I note the Council's concerns that Kent County Council has advised that it will not permit the encroachment of the existing extraction system over the footway and that a re-design of the extraction system will therefore be required. I must determine the appeal on the basis of the planning merits of the development before me. Any future requirement for the replacement or re-design of the extraction equipment whether arising from the County Council's position or otherwise, will be a separate matter for consideration by the Council, and accordingly it is not a matter that can be reasonably addressed by conditions to this decision.

Conditions

21. I have considered the conditions suggested by the Council and I have made minor adjustments to these where necessary in the interests of clarity.

Conditions relating to the control of operating hours and amplified music are necessary in the interests of the living conditions of nearby residents. For the reasons set out above, conditions relating to any future necessary or proposed re-design or replacement extraction system are not reasonable and I have not imposed them.

Conclusion

22. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

Catherine Jack

INSPECTOR