
Appeal Decision

Site visit made on 14 March 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 29th March 2017

Appeal Ref: APP/F4410/W/16/3166034

Bentley Food & Wine Store, 163 Bentley Road, Doncaster, South Yorkshire DN5 9TB

- 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 K Duhre against the decision of Doncaster Metropolitan Borough Council.
 - The application Ref 14/02421/FUL, dated 3 October 2014, was refused by notice dated 5 December 2016.
 - The development proposed is a ground floor extension to side/rear of existing shop.
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Decision

1. The appeal is allowed and planning permission is granted for a ground floor extension to side/rear of existing shop at Bentley Food & Wine Store, 163 Bentley Road, Doncaster, South Yorkshire DN5 9TB in accordance with the terms of the application, Ref 14/02421/FUL, dated 3 October 2014, subject to the following 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: 13-DUHRE-2; 13-DUHRE-3; 13-DUHRE-4.
 - 3) The development hereby permitted shall be carried out in accordance with the mitigation measures identified in the Flood Risk Assessment submitted with the application. Prior to the first use of the extension, the mitigation measures shall have been completed in accordance with the approved details. The mitigation measures shall be retained thereafter.
 - 4) Before any above ground development hereby permitted is commenced, details of works for the surface water drainage shall have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details prior to the first use of the extension. The surface water drainage scheme shall thereafter be managed and maintained in accordance with the approved details.
 - 5) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

Procedural Matters

2. The land fronting, below and to the rear of the archway within the site forms part of public footpath No 25 Bentley with Arksey. The public footpath provides
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a route linking Bentley Road (between property Nos 163 and 165) and Frank Road. The existence of the public footpath was established by an Order made under Section 53(2) (b) of the Wildlife and Countryside Act 1981 in 2015¹ which modified the Definitive Map and Statement, which is the legal record of public rights of way.

3. This appeal is made under Section 78 of the Town and Country Planning Act 1990 (TCPA 1990) and involves development which would affect the public right of way. However, grant of planning permission would not of itself authorise diversion of the existing public right of way. It has been brought to my attention that a separate application has been made to the Council to divert the public right of way under the powers of Section 257 of the TCPA 1990. The diversion of a public right of way under such powers is subject to a separate Order procedure, which falls beyond my jurisdiction when determining this appeal. The evidence before me indicates that the separate application to divert the public right of way has been subject to objection and, therefore, requires referral to the Secretary of State if planning permission is granted for the proposal before me. The Council refused the planning application subject to this appeal due to the effect on the public right of way and access if the development were to take place.

Main Issue

4. The main issue of the appeal is the effect on a public right of way and access between Bentley Road and Frank Road.

Reasons

5. The appeal site consists of a mid-terrace property facing Bentley Road (No 163) that is currently in use as a shop with residential accommodation at the rear of the building and at first floor level. The site also includes an existing archway at the side of the shop and below part of the first floor accommodation. The proposal seeks a single storey infill extension to the side of the existing property, including below and to the rear of the archway.
6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. In refusing the application, the Council have not referred to any conflict with Policies CS1, CS14 and CS16 of the Doncaster Council Core Strategy 2011-2028 (CS), adopted May 2012, or Saved Policies ENV54, ENV55, ENV56, ENV57 and PH12 of the Doncaster Unitary Development Plan (UDP), adopted July 1998, which have been drawn to my attention as being relevant to the proposal. The CS and UDP policies do not relate specifically to public rights of way.
7. Paragraph 14 of the National Planning Policy Framework (the Framework) states, amongst other things, that where the development plan is absent, silent or relevant policies are out-of date, planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The Council have expressed concern with respect to the proposal's compliance with paragraph 75 of the Framework which seeks that

¹ Order Ref: FPS/F4410/7/32 – Decision date 13 July 2015.

- planning policies protect and enhance public rights of way and access, and that local planning authorities seek opportunities to provide better facilities for users.
8. At the time of my visit, the section of the public footpath running through the site was inaccessible from Bentley Road due to obstruction of the archway, including the siting of a steel container that was in use as a store room for the shop. Access from a byway also used by vehicles and cyclists, which runs along the rear boundaries of the terrace row to a bridge crossing Bentley Ings Dyke and adjoining Frank Road, was also restricted by the positioning of gates at the rear of the site. I observed that in those circumstances, alternative accessible routes are in well-established public use from Frank Road via the bridge leading along the byway at the rear of the site.
 9. The alternative routes follow existing desire lines from the bridge crossing Bentley Ings Dyke along the byway towards either end of the terrace row. To the south, the byway leads to commercial premises, a car park and the nearest bus stop serving the eastern side of Bentley Road. To the north, it leads toward a recreation ground and play area. The separate application to the Council under the powers of Section 257 of the TCPA 1990 identifies a diversion via the route towards the southern end of the terrace. Consequently, the development would not preclude public access between Bentley Road and Frank Road given that alternative routes are available via an unlit byway that already forms part of public footpath No 25.
 10. The byway is very lightly trafficked and consequently, any increased use by pedestrians along its length would not have a significant adverse effect on highway and pedestrian safety. The risk of accidents in terms of conflict between vehicles and pedestrians would be limited by the approximate 3m width of the byway, its alignment, surfacing and larger areas of car parking at either end of the terraces. Taken together these factors and the absence of lighting during periods of darkness, necessitate slow speeds for the infrequent vehicles travelling along the route, with refuge areas also available for pedestrians at reasonable intervals.
 11. The loss of the public footpath running through the site would inconvenience a limited number of pedestrians who would need to walk a slightly increased distance to access the shop subject to this appeal and the front entrances of surrounding properties. However, I observed that the absence of a central pedestrian link would be comparable to other similar terraced rows in the wider area where public access is only available around either end. Furthermore, most properties can be alternatively accessed directly from the byway via rear entrances.
 12. In any case, the limited adverse effect arising from inconvenience to pedestrians would be outweighed by the benefits of removing a secluded and unlit route through the site. Activity associated to the use of that section of the public footpath would have the potential to have an adverse effect on the living conditions of occupiers of residential accommodation at Nos 163 and 165 Bentley Road, particularly in terms of noise and disturbance during periods when a quieter living environment would be expected.
 13. I conclude that the development would not have a detrimental impact upon a public right of way and access between Bentley Road and Frank Road, given the alternative routes which are available and in use. The proposal would not

conflict with relevant policies of the CS and saved policies of the UDP, or paragraph 75 of the Framework in that respect.

Other Matters

14. The development consists of an infill extension and new shop front design which, subject to matching materials secured by condition, would complement the existing building and therefore, would not have an adverse effect on the character and appearance of the area. The limited depth of the extension, when compared with existing single storey outriggers to the rear of Nos. 163 and 165 would ensure no impact on the outlook or privacy of occupiers of neighbouring properties.
15. The extension would have moderate economic benefits to the local service provision of the shop, including its post office function, by providing additional sales area and a permanent storage area to replace an existing container. This could increase the range of goods capable of being sold. However, there is no substantiated evidence before me that this would result in a considerable increase in customers or deliveries so as to have a discernible effect on local parking arrangements or highway safety along Bentley Road.
16. Representations from interested parties have raised concerns in terms of fire risk implications of the proposal. However, I am satisfied that an extension compliant with Building Regulations would not have a detrimental effect upon fire safety. The development would not reduce the effectiveness of the fire service, as the rear elevations and yards of the terrace row would be capable of being accessed via front entrances and through existing properties.
17. There is no substantiated evidence that the obstruction of the section of the public footpath that runs through the site would cause a significant adverse effect in terms of litter or anti-social behaviour in the wider area.
18. Additional concerns were raised with respect to land ownership of the footpath which is a private matter between the relevant parties and not within my jurisdiction. Accordingly, issues relating to land ownership have not had any material bearing on my assessment of the planning merits of the proposal. The issue of the public consultation process has also been brought to my attention, due to the ownership interests of the appellant and his family relating to properties surrounding the site. However, I am satisfied that the Council approach of posting site notices would have ensured that interested parties were aware of the application and had the opportunity to make comments.
19. A consultation response from the Environment Agency indicates that the site lies in Flood Zone 3 which has a high probability of flooding. In this regard, the appellant has provided a Flood Risk Assessment (FRA) which includes appropriate mitigation measures to minimise the potential impact of flooding which can be secured by condition. An additional condition is also necessary to secure appropriate details of surface water drainage to prevent an increased risk of flooding to neighbouring properties. Suitable conditions are, therefore, capable of mitigating any adverse effect in terms of flood risk.

Conditions

20. The Council provided a suggested list of conditions. Where appropriate, the wording has been slightly amended to accord with paragraph 206 of the Framework. Conditions specifying the time limit for commencement of

development and compliance with the approved plans are necessary to provide certainty. As previously mentioned, conditions requiring matching materials, compliance with the FRA and details of surface water drainage are also necessary. However, I have amended the implementation clause of the surface water drainage condition as I consider that the agreement of details only need take place prior to any above ground development.

Conclusion

21. I have found that there would be no detrimental impact in terms of the effect of the development on a public right of way and access between Bentley Road and Frank Road given the alternative routes which are available and in use. The limited inconvenience to pedestrians arising from the obstruction of the section of public footpath running through the site does not significantly or demonstrably outweigh the benefits of the development. Consequently, the proposal does not conflict with the development plan or the Framework when taken as a whole.
22. For the reasons given above and taking all other matters into consideration, I conclude that the appeal should be allowed and planning permission granted subject to the conditions previously set out.

Gareth Wildgoose

INSPECTOR