
Appeal Decision

Site visit made on 28 March 2017

by Alex Hutson MATP CMLI MArborA

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

Decision date: 5 April 2017

Appeal Ref: APP/D1590/W/16/3162594

79 Hamlet Court Road, Westcliff on Sea, Essex SS0 7ES

- 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 Pavel Remenar against the decision of Southend-on-sea Borough Council.
 - The application Ref 16/01424/FUL, dated 5 July 2016, was refused by notice dated 31 October 2016.
 - The development proposed is change of use of shop (Class A1) to Restaurant (Class A3).
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The appeal property appeared to be vacant on the day of my site visit. Nevertheless, both the appellant's and the Council's evidence indicates that it was last in use as a grocery shop and therefore a Class A1 retail use. I have therefore considered the appeal on the basis that this is its current lawful use.
3. I have taken the description of the proposed development from the Council's Decision Notice as this provides a more accurate and concise description than that provided on the application form.
4. The appellant has indicated on the appeal form that an application for costs against the Council would be made. However, I have received no further information in this regard. As such, I have not considered this matter any further.

Main issues

5. The main issues are the effect of the proposal on the vitality and viability of the area; and the effect of the proposal on the living conditions of the occupiers of 79A Hamlet Court Road with particular regard to odour, noise and vibration.

Reasons

Vitality and viability

6. The appeal property is located on Hamlet Court Road and comprises a ground floor retail unit within a three storey building. It forms part of a District Centre and Primary Shopping Frontage (PSF) as defined within the Southend on Sea Borough Council Development Management Document 2015 (DMD). Policy
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CP2- Town Centre and Retail Development, of the Southend on Sea Core Strategy Development Plan Document One 2007 (Core Strategy) requires, amongst other things, development to contribute to the vitality and viability of District Centres and to be appropriate to their function. Policy DM13- Shopping Frontage Management Outside the Town Centre, of the DMD, seeks, amongst other things, to reinforce the vitality and viability of PSFs and to resist the loss of Class A1 retail use within these areas. This policy restricts the change of use of Class A1 retail units where it would result in the proportion of frontage units remaining in retail use falling below 60% of the PSF length, unless it can be demonstrated that the use is no longer viable by way of an effective marketing exercise over a period of 2 years.

7. The supporting text to Policy DM13, of the DMD, sets out that PSFs perform a vital retail function for the area they serve and contribute to maintaining sustainable communities. Moreover, they predominantly comprise Class A1 retail units and are characterised by a low level of vacant units. I observed there to be few vacant units in the area. The supporting text identifies that it is important that the retail character and function of PSFs is not eroded though acknowledges that some non-retail uses can be appropriate providing these do not result in an over-concentration of such uses.
8. Hamlet Court Road is characterised by a mix of uses, including retail, restaurants and commercial uses. However, the Council sets out that a recent survey undertaken in 2016 found that retail units account for approximately 57.6% of the PSF length. The appellant has provided no substantive evidence to the contrary. As such, the Council's survey indicates that non-retail uses are becoming over-concentrated in the area. Consequently, the proposed change of use would exacerbate this effect and would detract from the retail function of the area. This would result in harm to the vitality and viability of the area.
9. Moreover, I have not been presented with any substantive evidence that an effective marketing exercise has been carried out to demonstrate that the appeal property is no longer viable in its current Class A1 use. This is notwithstanding that it currently appears to be vacant.
10. Thus, the proposal would be contrary to the requirements of Policy DM13, of the DPD; and Policy CP2, of the Core Strategy. These policies are consistent with the aims and objectives of the National Planning Policy Framework (the Framework) which seek to promote the vitality of urban areas and to support strong and vibrant communities by providing accessible local services that reflect its needs.

Living conditions

11. The first and second floors of the building, which are accessed via a separate entrance from Hamlet Court Road, comprise a residential flat. The entrance indicates that the address of this flat is 79A Hamlet Court Road. The proposed change of use has the potential to cause odours from cooking, which could adversely affect the living conditions of the occupiers of this flat. In addition, any extraction unit has the potential to cause a nuisance to these occupiers by way of noise and vibration.
12. The appellant has provided details of a system which uses ozone to alter the molecular structure of offensive micro-organisms, to eliminate odour. An extractor fan and cover would be fixed to the rear ground floor elevation of the

building which, according to the appellant, would discharge just air from this system. It is claimed that this type of system is approved by most London Boroughs.

13. Nevertheless, there is no substantive evidence to support this claim. Moreover, whilst I note this system is for commercial purposes generally, it is unclear whether it would be adequate to mitigate cooking fumes and odours from a restaurant kitchen specifically. On the basis of the limited amount of evidence before me, I cannot be confident that the system would adequately prevent the harmful effect of odours on the occupiers of No 79A. It is also unclear from the evidence whether the system would comply with current noise standards or would result in any vibration.
14. Consequently, I conclude that there is insufficient evidence to demonstrate that there would be no harm to the living conditions of the occupiers of No 79A in respect of odour, noise and vibration. This would be contrary to Policy DM1- Design Quality, of the DMD; and Policy CP4- The Environment and Urban Renaissance, of the Core Strategy. These policies seek, amongst other things, to protect the amenities of neighbours and to prevent noise and airborne pollution. These policies are consistent with the aims and objectives of the Framework which seek to secure a good standard of amenity for all existing occupiers of land and buildings and to prevent unacceptable levels of air or noise pollution. The proposal would also be contrary to the guidance of the Council's Supplementary Planning Document 1- Design and Townscape Guide 2009, which advises that noise can be a significant nuisance.

Other matters

15. The appeal property occupies an accessible location and there are many opportunities to park along the road. The Council would receive business rate payments and some jobs would be created. I also note that the appellant wishes to stay and trade in the area given the relationships he has developed with the local community. Nevertheless, these matters would not be sufficient to outweigh the harm I have identified. In addition, it seems to me that many of these benefits would occur in any case from the continued lawful use of the appeal property.
16. Whilst the appeal property may have once been used as a restaurant, there is no compelling evidence to demonstrate that such a use was lawful. As such, this does not provide justification for a planning approval in this instance.
17. Whilst I note that there has been some local support for the change of use, this does not inevitably mean that there would be an absence of harm. The Council has clearly set out why it considered the proposal to be unacceptable, having regard to local and national planning policy, which as can be seen from my reasoning above, is a position I would concur with.

Conclusion

18. For the reasons set out above and having regard to all other matters, including waste, litter and noise and disturbance generated by any additional comings and goings of customers into the evening, I conclude that the appeal should be dismissed.

Alex Hutson INSPECTOR