
Appeal Decision

Site visit made on 2 May 2017

by L Fleming BSc (Hons) MRTPI

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

Decision date: 22 May 2017

Appeal Ref: APP/C1055/W/17/3170106

Former William Caxton Public House, 25 Underhill Close, Derby DE23 7RH

- 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 Sadager Rai (Homebank (UK) Limited) against the decision of Derby City Council.
 - The application Ref DER/11/16/01406, dated 21 November 2016, was refused by notice dated 18 January 2017.
 - The development proposed is two new retail units in vacant space in existing building for hairdresser/beautician and hot food takeaway. Fit out and ancillary works.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on the:
 - vitality and viability of existing defined centres in the area;
 - living conditions of nearby residents with particular regard to outlook, noise and disturbance and fumes and odours

Planning Policy

3. Since the submission of the appeal the Council adopted the Derby City Local Plan Part 1 (Core Strategy) (2017) (CS). This now forms part of the development plan for the area and supersedes saved Policies S2 and GD4 of the City of Derby Local Plan Review (2006) (LPR) referred to in the Council's decision notice. I must base my decision on the policies from the development plan prevailing at the time of determination. Moreover, the appellant is aware of these changes and has had the opportunity to comment upon them. In any event the aims of the relevant Policies of the CS are not so materially different from those referred to in the Council's decision notice, such that they would have influenced the outcome of the appeal. Consequently no prejudice has been caused to the appellant's case.

Reasons

Vitality and Viability

4. The appeal property is a two storey building standing in a carpark in a residential area. The majority of the ground floor is in retail use and the upper storey is in use as flats. The proposal would involve the development of two retail units comprising some 60 square metres of floor space falling within
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Class A1 of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO) and some 64 square metres of floor space falling within Class A5 of the UCO. Thus, the proposal would involve the development of main town centre uses as defined by the National Planning Policy Framework (the Framework) outside of an existing centre.

5. Policy CP13 of the CS states that in considering all proposals for retail, entertainment, recreation and leisure development outside of defined centres, applicants will be required to demonstrate that among other things there are no sequentially preferable sites or units within an agreed defined catchment area that could accommodate the proposal. Furthermore, it states that the first preference should be for appropriate centres in the hierarchy, followed by edge-of-centre sites and then existing out-of-centre retail parks or premises. This approach is consistent with the aims of paragraph 24 of the Framework.
6. Whilst, Policy CP13 of the CS also sets out a threshold of 1000 metres square for the requirement for a detailed retail impact assessment there is no threshold for demonstrating there are no sequentially preferable sites which is also a requirement of paragraph 24 of the Framework.
7. I have considered the retail impact assessment which formed part of the planning application where permission was granted to convert the public house to its current form. However, this assessment relates to a different development and is of some age. I have also noted the brief commentary about each centre nearby and note that only one vacant unit is available within them and have noted the comments regarding its suitability.
8. However, even if I were to accept that the vacant unit within an existing centre would not be viable for either of the proposed uses; there is no assessment as to whether at the current time there are any alternative sites on the edge of existing centres.
9. I acknowledge that the appeal building was formerly a vacant public house and that its development to its current form has provided a convenience store for local residents and regenerated the appeal site. I also note the existing storage area is relatively large, underused and not needed to support the existing retail enterprise and is therefore not in any significant use. However, these matters do not negate the need for a thorough and up to date sequential assessment which also considers sites on the edge of existing centres.
10. That said, should such alternative sites in more sequentially preferable locations be available, to allow the proposed development which would change a single shop into a small local shopping parade would be harmful to the vitality and viability of defined centres in the area.
11. Thus, the proposal is in conflict with Policy CP13 of the CS and paragraph 24 of the Framework which, taken together, aim to ensure new development supports the viability and vitality of existing centres.

Living Conditions

12. The proposed fume extraction flue would be fixed to the south elevation of the appeal building and would run between two windows which serve main habitable rooms of the first floor flats.

13. I acknowledge that the end user of the fume extraction system is unknown and note the user would influence its design. I also note the assurances that any system will be the subject of a maintenance contract and note fume extraction systems close to residential accommodation are common in many locations without causing harm.
14. However, given the close relationship with residential accommodation there is a significant risk of the residents of the existing flats being subject to unacceptable levels of noise and vibrations and fumes and odours arising from cooking and the mechanical operation of extraction equipment.
15. I have considered the indicative details provided. However, without detailed information of the actual scheme to be implemented I am not satisfied that a viable and effective solution could be found to overcome the harm. Consequently, it would not be possible to attempt to deal with this matter by condition.
16. However, the proposed flue would not project significantly beyond the wall and would be a reasonable distance away from the windows either side of it. Thus any views from those windows would be from an oblique angle as such there would be no harm to nearby residents living conditions with particular regard to outlook.
17. For these reasons, even though I have found no harm with regard to outlook, in the absence of detailed evidence to the contrary I find the proposed development would be harmful to the living conditions of nearby residents with particular regard to noise and disturbance and fumes and odours.
18. The proposal would therefore be in conflict with the aims of saved Policy GD5 of the LPR and Policy CP3 of the CS which seek to ensure good design and that new development results in a pleasant environment and does not harm residential amenity.

Conclusion

19. Overall, I find the proposed development would not accord with the development plan and thus having had regard to all other matters raised I conclude that the appeal should be dismissed.

L Fleming

INSPECTOR