
Appeal Decision

Site visit made on 15 May 2017

by Zoe Raygen Dip URP MRTPI

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

Decision date: 16 June 2017

Appeal Ref: APP/Y1945/W/16/3165807
19-21 The Parade, Watford WD17 1LQ

- 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 Charterhouse Property Group against the decision of Watford Borough Council.
 - The application Ref 16/01332/FUL, dated 22 September 2016, was refused by notice dated 21 November 2016
 - The development proposed is change of use at ground and basement levels from retail (use class A1) to restaurant (use class A3) including new plant and equipment.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The Council refers to Policy TLC5 of the emerging Watford Local Plan Part 2: Site Allocations and Development Management Policies (Published Version, July 2016) (DMP) within its reason for refusal. This Policy relates to restriction of non-retail uses within secondary retail frontage. Both parties agree that the appeal site is located within the designated Primary Retail Frontage (PRF). Furthermore, the Council acknowledges the reference to Policy TLC5 was in error and it should have read TLC3, which relates to Restriction of Retail Uses in PRF.
 3. I note the comments of the appellant regarding the lack of provision in the 1990 Act to amend or correct a decision notice. However, the National Planning Policy Framework (the Framework) does not alter the requirement for applications or appeals to be determined in accordance with the development plan unless material considerations indicate otherwise.
 4. In this instance the development plan consists of Watford's Local Plan Part 1 - Core Strategy 2006-31 adopted 2013 (CS) together with saved Policies from the Watford District Plan 2000 adopted 2003 (DP).
 5. I have been advised that the DMP has undertaken the Formal Publication stage between August and October 2016 in preparation for Examination. I am also advised that most Policies have no significant unresolved objection. Policy TLC3 seeks to restrict non A1 uses in the PRF. In this respect therefore it is broadly in accordance with paragraph 23 of the Framework which requires Councils to set policies that make clear what uses will be permitted in town centres and primary shopping areas to ensure the vitality of town centres.
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However the DMP has not yet been examined and I have not been advised if there are any unresolved objections to the Policy. That limits the weight I can give to it. Accordingly while I have taken emerging Policy TLC3 into account I have afforded it only modest weight.

6. The appellant has submitted further details regarding the noise from external plant, noise transfer between the ground and first floor of the appeal site and odours from the fume extraction system in order to try and overcome the Council's second reason for refusal. Both the Council and interested parties have had the opportunity to comment on these additional details. I am satisfied that no party would be prejudiced were I to consider them as part of this appeal. I have, therefore, taken the additional information into account in the determination of the appeal.

Main Issues

7. The main issues are firstly, the effect of the proposal on the character, function and effectiveness of the primary retail frontage within which the appeal site is located and secondly, whether the proposal would lead to acceptable living conditions for the future occupiers of the proposed first floor flats, with particular regard to odour and noise and disturbance.

Reasons

8. Nos 19-21 The Parade form a mid terrace property within a pedestrianised area of Watford Town Centre. The impression from my site visit is that this is a busy and vibrant centre, with a large amount of pedestrian traffic. From what I saw, the number of vacancies at ground-floor level is low and there is no visual evidence to demonstrate that the centre is in decline. This is a view confirmed by the material submitted by both the Council and the appellant, which shows only four vacant units within the PRF a vacancy rate of only 6%. At the time of my site visit the ground floor of the unit the subject of this appeal was occupied by a shop use.
9. Policy S5 of the DP states that A3 uses will only be permitted if they do not detrimentally undermine the retail character, function or effectiveness of that part of the PRF. To achieve this the Council will normally seek to retain at least 80% of the measured linear frontage of eleven shop fronts, being five either side of the application site in retail use. The appeal site lies within a row of ten shops, some of which are double fronted. Although the Council states that the proposal would be contrary to this Policy, they have not demonstrated how the proposal would not comply.
10. The appellant has stated that 73 % of the properties within the row of 10 are in A1 use. This would reduce to 55% if the appeal was to be allowed. However, it is not clear whether these figures relate to numbers of shops or measured linear frontage. While the properties in non-A1 use have a relatively narrow frontage compared to the existing A1 uses, the appeal site itself has a wide frontage. Therefore, while I cannot be sure that at least 80% of the measured linear frontage would be retained in retail use the extent of the appeal site frontage in the middle of the terrace would make it particularly noticeable in the PRF.
11. Policy TLC3 repeats the requirement of Policy S5 but states that the Council will achieve this by normally seeking to achieve at least 60% of the shop units on a

street within the primary area in retail class A1 use. It is part of a wider suite of retail Policies which seek to deliver the future town centre around major redevelopment of Charter Place shopping centre. This will include Debenhams as an anchor store, 16 new retail units, 10 new restaurant units, a 9 screen IMAX cinema and a leisure facility. The centre is due for completion in November 2018 and will form an extension to the existing Intu centre. Leading on from this two parts of the High Street have been designated in the DMP as A3 hubs to aid with pedestrian circulation. I note, in this regard, that Policy TLC6 of the emerging plan seeks the provision of A3 uses in these areas and that Policy TLC5 allows A3 uses in areas designated as Secondary Retail Frontage. The appeal site lies outside these areas.

12. Evidence supplied by the Council states that the current level of A1 uses within the PRF contained in the DMP is 60.78%. Were this appeal to succeed the rate would drop to 58.82%. These figures are not disputed by the appellant. It is not clear from the Policy if the calculation needs to be made in relation to the entire PRF or the street in the PRF where the appeal site is located. In this respect I note that the Council's own Policy Team assessed the application in relation to both calculations. If only the street where the appeal site is located is taken into account, then, using the information supplied by both parties, only 11 out of the 18 units are in A1 use (61%) which would reduce to 56% should the appeal be allowed. In both scenarios therefore the amount of A1 uses would be below the requirements of Policy TLC3.
13. I accept that Policy TLC3 states that the Council will *normally* seek to achieve at least 60% of the shop units in Class A1 use. Furthermore, if the appeal site were to be used for non-A1 use, there would be no more than three non-A1 uses within the row and they would not be located next to each other. In this respect, the proposal would be in compliance with Policy S5.
14. Nevertheless, the location of the property is within a pedestrianised part of the centre which links to the secondary retail frontage to the northwest and clearly forms part of the established commercial character and retail centre. I acknowledge that the redevelopment of the Charter shopping centre may be providing some commercial uncertainty. However, the Council in its emerging plan sets out a clear strategy to deliver the future of the centre. While I have only attributed modest weight to the Policies in the emerging plan, based on the evidence before me the use of the appeal site for A3, given its size and location would lead to a clear risk of the retail character of this particular part of the Parade within the High Street being diluted to a level that would be harmful to the retail character, function and effectiveness of the PRF.
15. Both Policies TLC3 and S5 state that the Council will take into account the length of time that the premises have been vacant and the impact of the vacant building on the attractiveness of the Town Centre. The appellant has submitted evidence that the building has been marketed for over a year, including the display of a board on site and online marketing, as well as direct approaches having been made to retail operators known to be keen to establish in Watford. The marketing report states that limited interest has been shown. As a result the property has been vacant since January 2016, although I note it has had seasonal occupation and was occupied at the time of my site visit.
16. Notwithstanding the appellant's case, including that an A3 user has been secured for the appeal premises, given the low level of overall vacancy within

the PRF I am not convinced that, at this point, a vacant unit at this location would be materially harmful to the attractiveness of the Town Centre. Furthermore, the intermittent occupation of the property, means it has not been continually vacant for a lengthy period of time.

17. For the reasons above I conclude that the proposal would be harmful to the character, function and effectiveness of the primary retail frontage within which the appeal site is located. As a result it would be contrary to Policy S5 of the DP, Policy SPA1 of the CS and emerging Policy TLC 3 of the DMP.

Living conditions

18. Planning permission has been granted for the conversion of the upper floors of 11-21 The Parade (which includes the upper floors of the appeal site) to create 9 self-contained flats (16/00953/FUL). Units 1, 2 and 3 would be directly above the appeal premises.
19. External plant in the form of supply and extract fans and condenser units would be sited to the rear of the appeal site, mainly below two windows to proposed unit 3 which would serve a bedroom and kitchen area of an open living room. The appellant has submitted an Acoustic Report by RBA Acoustics 2016 (AR). It includes a plant noise assessment which concludes that noise levels at the windows would significantly exceed the target criterion of 34dBa.
20. The AR goes on to consider the noise transfer between the proposed ground floor A3 use and the first floor flats. It concludes that current insulation would not be sufficient to adequately attenuate the predicted noise levels from the proposed ground floor use, particularly in respect of amplified music.
21. However, the AR also proposes mitigation measures in respect of both sources of noise which would bring the noise down to an acceptable level. I have seen no evidence to suggest that the mitigation proposed would not be acceptable, even at times when windows to the flats were open, and I am mindful that the Council raises no objection to these measures. I have no reason to disagree with this view. Had the proposal been otherwise acceptable, the implementation of all of the mitigation measures contained in the AR could have been secured by an appropriately worded condition.
22. The use of the ground floor of the appeal site for an A3 use would generate customer movements later at night than would be expected from a unit in A1 use. Furthermore, I note the appellant's intention to operate the unit until 24.00 hours Monday-Saturday, operating until 23.00 on a Sunday. However, the wider central area already includes a mix of uses, some of which are A3. It would not be unusual, therefore, for customers to be in the locality late at night. Such conditions would be part and parcel of town centre living.
23. The Council raises concerns regarding the lack of information in relation to the proposed extraction flue and the potential for harm to the future occupiers of the first floor flat from odour. However, the submitted plans show an extract flue at the rear of the property, which would discharge above eaves level, a significant distance from the first floor windows of the flat. Subject to further details and controls, which could be ensured by condition, this should ensure that any discharge of odours would not be harmful to the living conditions of nearby residents.

24. For the reasons above I conclude that the proposal would not result in unacceptable living conditions for the future occupiers of the proposed first floor flats with particular regard to odour and noise and disturbance. It would therefore be in accordance with paragraph 17 and 134 of the Framework and Policies SD14 and TLC8 of the DMP. These state that development should seek to secure a good standard of amenity for all future occupants of buildings and avoid noise giving rise to significant adverse impacts on health and quality of life. Furthermore, A3 uses should not have an adverse effect on the amenities of residential occupiers by virtue of noise or emission of fumes.

Conclusion

25. I have found that there would be material harm in terms of the character, function and effectiveness of the PRF. Although I have found no harm, subject to conditions, in terms of the living conditions of future residents, that does not weigh in favour of the proposal. On balance therefore, having regard to all other matters raised, I conclude that the appeal should be dismissed.

Zoe Raygen

INSPECTOR