
Appeal Decision

Site visit made on 7 June 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 06 July 2017

Appeal Ref: APP/F1610/W/17/3170029

Windrush Restaurant, St Kevins, High Street, Bourton-on-the-Water GL54 2AN

- 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 Les De la Haye against the decision of Cotswold District Council.
 - The application Ref 16/03958/FUL, dated 22 September 2016 was refused by notice dated 15 December 2016.
 - The development proposed is the partial change of use of the ground floor, existing A1 unit to become A5 use class.
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Decision

1. The appeal is allowed and planning permission is granted for the partial change of use of the ground floor, existing A1 unit to become A5 use class at Windrush Restaurant, St Kevins, High Street, Bourton-on-the-Water GL54 2AN in accordance with the terms of the application, Ref 16/03958/FUL , dated 22 September 2016, 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:1369_300; 1369_301 and 1369_302.

Preliminary Matters

2. Both parties have referred to policies within the emerging Cotswold District Local Plan that is still at the draft stage. However, I have only been provided with a copy of Policy EC7 and in light of this and its emerging status I give these policies little weight.

Main Issue

3. The main issue in the appeal is the effect of the proposal on the vitality and viability of the commercial centre of Bourton-on-the-Water.

Reasons

4. The appeal property is a retail unit (Use Class A1) and was vacant at the time of my site visit but its last use was as a newsagents. It is within a 2-storey building that is grade II listed and the remainder of the building is occupied by a restaurant and hot food takeaway and there is an estate agent's within an adjoining building. The site is within the commercial centre of Bourton-on-the-

Water, as defined by saved Policy 25 of the Cotswold District Local Plan (LP), and Bourton-on-the-Water Conservation Area.

5. LP Policy 25 states that development within the commercial centres will be permitted if it would help to maintain the viability and vitality of the settlement subject to four criteria. The Council considers that the proposal would not meet criterion a), b) and d). The policy is broadly consistent with the National Planning Policy Framework (the Framework) a key aim of which is to ensure the vitality of town centres and as such I give it full weight.
6. The appellant has argued that the Government's general approach to town centres is one of encouraging greater flexibility with regard to changes of use but, as agreed by both parties, there are no permitted development rights which provide for a change from a retail to a hot food takeaway use within a listed building. Accordingly such changes do require planning permission and need to be considered in the context of the relevant planning policies.
7. The commercial centre is based around the High Street and it is a picturesque, high quality environment that appears to attract a high number of tourists and visitors. It offers mainly independent stores rather than retail chains with a predominance of gift shops and visitor attractions. The Council's evidence indicates that there are around 78 units within the commercial centre and of those the majority comprise comparison uses (35 units). This number appears to have fallen slightly from that recorded in 2012 and only 5 convenience units were recorded in 2016.
8. Furthermore, the commercial centre is, not unsurprisingly, focused on tourist and visitor trade and as such there are a high number of tea rooms, coffee shops and restaurants. However, there are very few vacant units and a supermarket is being constructed within close proximity to the commercial centre.
9. The appellant states that the proposal is part of a larger scheme in which he seeks to upgrade the property as a whole, providing a restaurant with associated take-out facilities. The adjacent restaurant was undergoing refurbishment at the time of my site visit. If this were to occur – and there is no evidence to suggest this is not the case – there would be no increase in the overall percentage of hot food takeaway units within the commercial centre. However, I recognise that this could not be guaranteed.
10. Nonetheless, the Council indicates that there are approximately 5 existing hot food takeaways within the centre. The proposal could increase this to 6 but within a commercial centre of around 78 units I do not regard this as representing an excessive concentration of hot food takeaways. There is no dispute between the parties that a hot food takeaway use can be an appropriate use in a town centre.
11. The proposal could increase the overall number of service related uses within the commercial centre but retail uses would still predominate. I have had regard to the strength of local opposition to the scheme and the loss of the newsagent and the only unit offering a newspaper delivery service. A number of parties have cited that the bank has announced that it is closing and that the majority of retail units only cater for the tourist trade.

12. However, the newsagent has already closed, the unit appeared to be vacant and there is no reason to believe that its replacement with another newsagent would be likely if I was to refuse permission for the takeaway. Furthermore, there are other outlets within close proximity of the site where newspapers and associated goods can be purchased.
13. The Council considers that the A5 uses within the settlement are reliant on tourist trade and as such a proportion close during the winter months. However, this statement has not been supported by any detailed evidence and there is a resident population which would be likely to use hot food takeaways. Bourton-on-the-Water has also been identified as a settlement that can accommodate additional residential growth. Moreover, there is no guarantee that any replacement A1 use would be convenience based rather than focussed on the tourist trade such as a gift shop.
14. Concerns have also been raised in relation to the extension of the outdoor seating area that is currently along the frontage of the adjoining hot food takeaway and restaurant and the amount of litter. The existing seating area is presently located within the hard landscaped frontage to the units and does not extend onto the pavement. As such, access to the post box, telephone kiosk and bus stop is not blocked.
15. There is the potential that this seating area could be extended but there is no reason to consider that this would create access issues to the bus stop or the pavement. The seating area itself is not unattractive and it contributes to the making of a vibrant centre. In my view the potential addition of a few more tables and chairs could make a positive contribution to the centre's vitality and retail function.
16. In respect of the potential for littering, I accept that a proportion of takeaway customers may drop litter, although I am mindful that this accusation could also be made against customers of shops which sell food, and I consider that it would be unreasonable to withhold planning permission on this basis. Nevertheless, I observed at the site visit 3 large litter bins adjacent to the seating area and that there was no evidence of excessive littering in the area from the existing units. I accept that this was only a snap shot in time but the seating area was very busy and the commercial centre was also full of people.
17. Taking into account all of the above I find no reason to conclude that if the appeal were to be allowed the commercial centre would not continue to provide for the community's day-to-day shopping needs or that it would harm the quality, vitality or viability of the commercial centre. It follows that the proposal would comply with LP Policy 25 and paragraphs 23 and 70 of the Framework which, amongst other things, seek to ensure the vitality of town centres and guard against the unnecessary loss of valued facilities and services.

Other matters

18. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. S.72(1) of the Act requires that, in the exercise of planning powers in conservation areas,

special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

19. The proposal relates solely to a change of use of part of the ground floor of the appeal building and there are no proposed changes internally or externally specifically mentioned within the information before me. I note that the Council had no objections in relation to the impact the proposal would have on the historic fabric /setting of the appeal building, which is grade II listed, or the character and appearance of the Bourton-on-the-Water Conservation Area. Based on my observations and the evidence before me I have no reason to dispute these findings.

Conditions

20. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance and the Framework. In the interests of conciseness and enforceability the wording of some of the conditions has been amended.
21. In order to provide certainty as to what has been permitted I have imposed a condition specifying the relevant drawings.

Conclusion

22. For the above reasons, and taking account of all other matters raised, I conclude that the appeal should be allowed.

D. Boffin

INSPECTOR