



Appeal Decision

Site visit made on 24 July 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 11th August 2017

Appeal Ref: APP/A2280/W/17/3169354

208B Maidstone Road, Rochester, Kent ME1 3LP

- 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 Rishpaul.S.Deol against the decision of The Medway Council.
 - The application Ref MC/16/4423, dated 28 October 2016, was refused by notice dated 15 December 2016.
 - The development proposed is change of use from A1 to A3 Sandwich Bar (Subway).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from A1 to A3 sandwich bar at 208B Maidstone Road, Rochester, Kent ME1 3LP in accordance with the terms of the application, Ref MC/16/4423, dated 28 October 2016, subject to the following conditions:
 - 2) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 3) The development hereby permitted shall be carried out in accordance with the following approved plans: 1250 Promap location plan and MS/CA/208A.
 - 4) The premises shall only be open for customers between the following hours: 0800 to 2200 Monday to Friday and 1000 to 2200 on Saturdays, with no opening on Sundays, Bank or Public Holidays.
 - 5) Deliveries shall be taken at or despatched from the site and goods loaded, unloaded, stored or otherwise handled only between the hours 0700 to 1900 Monday to Friday, 0800 to 1800 on Saturdays and not at any time on Sundays or on Bank or Public Holidays.

Procedural Matter

2. The application form refers to a change of use from A1 to A3 Sandwich bar with 'Subway' in brackets. I have removed this from the decision above as it is not a use and is therefore superfluous.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of neighbouring occupiers, with particular regard to vehicular movements and parking.

Reasons

4. The appeal property is a 2 storey brick built extension constructed on the side of Nos. 208-214 Maidstone Road, a row of 2 storey buildings with a retail mini mart, a fish and chip shop and a barber shop at ground floor and residential above. It is designated as the Maidstone Road Neighbourhood Centre and I note that the Council do not object to the principle of development or in terms of odour and noise, subject to conditions. On the evidence before me I have no reason to disagree.
5. There is an access, turning and parking area to the front of the building for vehicles using the centre and at the time of my site visit, albeit during the late morning, spaces were available in addition to a number of on-street parking spaces in Valley View Road to the side and rear. Parking restrictions were in place on Maidstone Road and therefore parking opportunities were very limited.
6. The existing unit has a lawful ground floor A1 use with a residential flat above. An A3 use is applied for which covers Restaurant and café uses and consequently any A3 use could take place were I to allow the appeal. The proposed opening times are 0800 to 2200 Monday to Friday and 1000 to 2200 on Saturdays, with no opening on a Sunday or Bank Holidays.
7. Maidstone Road is a busy thoroughfare and there are already a number of comings and goings from existing uses, including a hot food takeaway. Although there is likely to be a number of local customers, in such a location the introduction of an A3 use would attract additional traffic movements and comings and goings.
8. For such a use the Council's adopted standards require 15 spaces for staff and customers. Although the appellant considers such a requirement is unrealistic and unnecessary, nevertheless, the proposal would not comply with this requirement. However, a number of safe spaces were available to park on Valley View Road and the parking and turning area would also be available for customers. In my experience, the lawful A1 retail use could also attract a similar number of movements and although this is unlikely to be during the latter part of the evening this is also likely to be when the barber shop is closed.
9. Nevertheless, I am not persuaded that the likely level of activity to and from such a use would attract such a number of additional vehicle movements that would result in levels of on-street parking that would be harmful to the living conditions of neighbouring residential occupiers, sufficient to warrant dismissal of the appeal.
10. I find that in this particular case, the rigid application of the parking standards for such a use, which, as the Council states should be considered on a case by case basis¹, is not appropriate. Furthermore, a condition restricting the hours of opening in accordance with that applied for would further reduce any noise and general disturbance and ensure the use does not operate at a time when adjoining residents would expect a relatively quieter environment to allow rest and sleep.

¹ Paragraph 3.1 of the Council's statement.

11. For these reasons, the proposal would not harm the living conditions of neighbouring occupiers and would comply with Policies BNE2 and R18 of the Medway Local Plan 2003. Amongst other things and when read as a whole these require development to secure amenities of its future occupants and protect those amenities enjoyed by nearby and adjacent properties, having regard to, amongst other things, noise, activity levels and traffic generation.

Other Matters

12. In reaching this conclusion, I have had regard to the representations from third parties including matters of health and wellbeing of residents, anti-social behaviour, litter and odour and highway safety. Whilst I observed at my visit that cars had to wait on Valley View Road given the presence of parked vehicles, because of double yellow lines this was sufficiently clear of the junction to not cause harm to highway safety.
13. Moreover, there is no evidence before me of any particular highway safety issues associated with on-street parking in this locality and I note that the Highway Authority did not object to the proposal on highway safety grounds. I also note that the Council did not object on any of these grounds and on the basis of the evidence before me, I have no reason to disagree and therefore these matters do not alter my view in relation to the main issue.

Conditions

14. I have considered the conditions put forward by the Council and have amended the wording where necessary in the interests of clarity and simplicity. A condition is required to ensure compliance with the approved plans as this provides certainty. In order to protect the living conditions of neighbours a condition is necessary to restrict opening hours in accordance with those suggested by the Council. A restriction on hours of deliveries is also necessary, to protect the living conditions of neighbouring occupiers.

Conclusion

15. For the reasons set out above, the proposal would comply with the development plan, when read as a whole. Material considerations do not indicate that a decision should be made other than in accordance with the development plan. Having considered all other matters raised, I therefore conclude that the appeal should be allowed.

Richard Aston

INSPECTOR