
Appeal Decision

Site visit made on 26 October 2017

by Nigel Harrison BA (Hons) MRTPI

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

Decision date: 1 November 2017

Appeal Ref: APP/P4605/W/17/3180038

254 Ladypool Road, Sparkbrook, Birmingham, B12 8JU

- 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 B Chandra against the decision of Birmingham City Council.
 - The application Ref: 2017/03509/PA dated 14 April 2017, was refused by notice dated 14 June 2017.
 - The development proposed is change of use from retail shop (Use Class A1) to restaurant (use Class A3) and installation of extraction flue.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from retail shop (Use Class A1) to restaurant (use Class A3) and installation of extraction flue at 254 Ladypool Road, Sparkbrook, Birmingham, B12 8JU in accordance with the terms of the application, Ref: 2017/03509/PA dated 14 April 2017, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matter

2. I have taken the description of the proposed development from the Council's decision notice. Although it differs slightly from that given on the application form, it more accurately and concisely describes the proposal.

Main Issue

3. The one main issue in this case is the effect of the proposal on the vitality and viability of the retail function of the Ladypool Road Local/Neighbourhood Centre.

Reasons

4. The appeal relates to a mid-terrace retail shop unit with residential accommodation above.
 5. The development plan includes the Birmingham Development Plan 2013 (BDP) adopted January 2017 and saved policies of the Birmingham Unitary Development Plan 2005. (UDP)
 6. BDP Policy TP21 identifies the network and hierarchy of centres in the city with their boundaries shown in the plans accompanying the *Shopping and Local Centres Supplementary Planning Document (SPD)*. 2012. The appeal site lies within the Ladypool Road Local Centre to which BDP Policy TP24 refers and as defined in the SPD.
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7. BDP Policy TP24 encourages a mixture of uses within the centres which include restaurant (A3) uses. Within Local Centres it states that applications for change of use out of retail use will normally be refused if approval would reduce the proportion of non-retail units to below 50%.
8. The SPD gives further guidance on the detailed application of policy, although the terminology differs in some respects as it refers to the lowest tier in the hierarchy as 'Neighbourhood Centres', rather than Local Centres' The SPD also refers to 'Primary Shopping Areas' within the Neighbourhood Centres, although in the case of Ladypool Road almost all the centre falls within the Primary Shopping Area designation.
9. SPD Policy 1 reflects BDP Policy TP24 and says that 50% all ground floor units in Primary Shopping Areas in Neighbourhood Centres should be retained in retail (A1) use, with applications which would lead to this threshold being lowered normally being refused unless exceptional circumstances can be demonstrated. These include, for example, where a property has remained vacant despite being continually marketed for retail use without success.
10. In its decision notice the Council says the proposal would conflict with both BDP Policy TP24 and the SPD in that it would result in a percentage figure below the 50% threshold for retained retail uses in the 'defined parade of commercial development' between Brunswick Road and Chesterton Road. In this 'parade' there are 9 units, of which 3 (33.3%) would be retained in retail (A1) use were I to allow the appeal. However, I see nothing in either Policy TP24 or SPD Policy 1 to suggest that 50% proportion should be assessed over the length of any particular frontage or parade of the Primary Shopping Area within the Local/Neighbourhood Centre.
11. Indeed the Council's survey data (2015/2017) covers the whole of the Ladypool Centre, which is linear in nature and extends along both sides of the road for a considerable distance. The data identifies 177 units in total of which 106 units (59.88%) were in retail use at the date of the survey, including vacant units. On this basis it is evident that the proposed change of use would not bring the proportion of retail uses to a figure below 50% in the Local/Neighbourhood Centre as a whole. As such the proposal does not 'on its face' conflict with either BDP Policy TP24 or Policy 1 of the SPD
12. I accept that it is desirable to avoid an over-concentration or clustering of non-retail uses which, as set out in SPD Policy 2 could lead to a 'dead' frontage. The explanatory text explains that is important that the main retail function of a centre is not undermined by a proliferation of these uses. Similarly, saved UDP Policy 8.7 seeks to control proposals for non-retail uses, saying that account will be taken on the impact they will have on the vitality and viability of the frontage and centre of which they forms a part. This is a valid concern, particularly as restaurants are often only open at lunchtime or in the evening and an over-concentration can dilute the retail function.
13. In any event the 'parade' or frontage measured by the Council is a very short one (between two closely-spaced road breaks) and it seems to me that is difficult to sustain an argument that a concentration of non-retail uses in such a stretch of road would undermine the vitality and viability of the centre taken as a whole.

14. SPD Policy 5 also encourages A3, A4 and A5 uses within Neighbourhood Centres, subject to avoiding an over-concentration where they could harm residential amenity. However, the effect on residential amenity has not been put forward as an issue by the Council. The SPD also says that certain exceptions may be made for centres which have a recognised tourist role, such as the Balti Triangle on Ladypool Road. The appeal site lies within the Balti Triangle. To my mind the fact that this area is renowned for its concentration of restaurants provides further reassurance that addition of a further restaurant is unlikely to significantly affect the vitality or prosperity of the centre.
15. Overall, on the basis of the evidence before me, I am satisfied that the proposed change of use would not lead to an unacceptable concentration or dominance of non-retail uses in the locality, and that the vitality and viability of the Ladypool Road Local/Neighbourhood Centre would not be materially harmed. It would retain its predominantly retail function and the proportion of retail uses overall would still exceed 50%. As such I find no conflict with the policies of the development plan or the SPD, and there are no other considerations of sufficient weight to alter my decision.

Conditions

16. I have considered the conditions put forward by the Council in the light of the advice in the *Planning Practice Guidance*. A condition to control opening hours is necessary to protect the living conditions of nearby residents, although the suggested condition incorrectly refers to a takeaway. Conditions requiring the submission and approval of details showing the extraction flue and refuse storage areas are needed to secure the satisfactory development of the site and to safeguard the living conditions of nearby residents.
17. The condition to prevent a takeaway service or home deliveries would be unreasonably onerous in my view, difficult to enforce, and I shall not impose it. In any event if a takeaway service were to operate at anything other than an incidental level a further application for change of use would be required.
18. A condition is needed to ensure that the development takes place in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning.

Conclusion

19. Therefore, for the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Nigel Harrison

INSPECTOR

Schedule of 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: 001 Location Plan and Site Plan; 002 Existing Ground Floor Layout and Roof Plan; 003 Existing Elevation Detail; 004 Proposed Ground Floor Layout and Roof Plan; and 005 Proposed Elevation Details.
- 3) The restaurant (Class A3) use hereby permitted shall not be open to customers outside the following times: 10.00 to 23.00 on any day.
- 4) No development shall take place until drawings showing full details of the waste and refuse storage area have been submitted to and approved in writing by the local planning authority. The agreed scheme shall be implemented before the premises are first open to customers.
- 5) No development shall take place until full details of the proposed flue extraction system, including details of odour extraction equipment, sound pressure levels, and methods of noise attenuation, have been submitted to and approved in writing by the local planning authority. The agreed scheme shall be implemented before the premises are first open to customers.