



Appeal Decision

Site visit made on 29 November 2017

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th February 2018

Appeal Ref: APP/A2280/W/17/3180802

146 Hempstead Road, Hempstead, Gillingham ME7 3QE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Luthfur Rahman against the decision of The Medway Council.
 - The application Ref MC/16/4857, dated 6 December 2016, was refused by notice dated 16 February 2017.
 - The application sought planning permission for permanent change of use of the property as a restaurant with home delivery and overnight accommodation for staff without complying with conditions attached to planning permission Ref MC/14/2786, dated 31 December 2014.
 - The conditions in dispute are Nos 3, 4, 5 and 6 which state that:
 - (3) The hours of operation of the restaurant use and hot food delivery use shall not be outside the hours of 10:30 to 23:00 on Mondays to Saturdays and 10:30 to 22:00 on Sundays and Public Holidays.
 - (4) 10 car parking spaces shall be kept available at all times for parking in association with the restaurant use and hot food delivery use herein approved and home delivery vehicles shall utilise these spaces when collecting or waiting for home delivery requests.
 - (5) The use of the property shall be restricted to restaurant use and hot food delivery service only together with ancillary overnight staff accommodation for up to two staff members only at first floor level and for no other purpose, including any hot food collection facility from the premises.
 - (6) The hot food delivery service shall not operate separately from the restaurant use herein approved.
 - The reasons given for the conditions are:
 - (3) To ensure that the permitted development does not prejudice residential amenity in accordance with Policy BNE2 of the Medway Local Plan 2003.
 - (4) To ensure that the permitted development does not prejudice residential amenity through inadequate parking provision in accordance with Policy BNE2 of the Medway Local Plan 2003.
 - (5) To ensure that the permitted development does not prejudice residential amenity in accordance with Policy BNE2 of the Medway Local Plan 2003.
 - (6) To ensure that the permitted development does not prejudice residential amenity through intensification of uses at the property in accordance with Policy BNE2 of the Medway Local Plan 2003.
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Decision

1. The appeal is allowed and planning permission is granted for permanent change of use of the property as a restaurant with home delivery and overnight accommodation for staff at 146 Hempstead Road, Hempstead, Gillingham ME7 3QE in accordance with the application Ref MC/16/4857, made on the

6 December 2016 without complying with the conditions 3, 4, 5 and 6 set out in planning permission Ref MC/14/2786, granted on 31 December 2014 by Medway Council, but otherwise subject to the following conditions:

- 1) The hours of operation of the restaurant use, take away and hot food delivery use shall not be outside the hours of 10:30h to 23:00h on Mondays to Saturdays and 10:30h to 22:00h on Sundays and Public Holidays.
- 2) Ten car parking spaces shall be kept available at all times for parking in association with the restaurant use, take away and hot food delivery use herein approved and home delivery vehicles shall utilise these spaces when collecting or waiting for home delivery requests.
- 3) The use of the property shall be restricted to restaurant use, take away and hot food delivery service only together with ancillary overnight staff accommodation for up to two staff members only at first floor level and for no other purpose.
- 4) The take away and hot food delivery service shall not operate separately from the restaurant use herein approved.
- 5) The flue extractor system installed as part of the permission granted under reference MC/06/0691 shall be retained in working order.

Application for costs

2. An application for costs was made by Mr Rahman against Medway Council. This application is the subject of a separate Decision.

Main Issues

3. The main issue is whether the conditions as originally drafted are reasonable and necessary in order to protect the living conditions of residents in dwellings near to the site.

Reasons

4. The appeal relates to a detached building used as a restaurant that is open during evening hours and operates a home delivery service and has overnight accommodation for staff. The site is located within a local centre between an estate agent's office and a doctor's surgery. Nearby on the same side of the road are a food store and public house that are also open during evening hours and so generate some activity through the movement of customers. There is a small parking area on the forecourt to the restaurant and a larger car park to the rear of the site accessed via a passageway to the side of the building. The rear car park abuts dwellings in Dukes Meadow Drive and Coppergate and there are dwellings on the opposite side of Hempstead Road.
5. The planning conditions in dispute limit the commercial use of the site, the associated hours of opening and parking provision to a restaurant with a home delivery service. The appellant has applied to vary these conditions to enable provision of a take away service for customers in addition to the consented uses. A sign outside the premises refers to a take away service and having regard to the representations on the appeal, the take away use appears to have commenced. The appellant indicates that some customers make an order by phone then call at the premises on their way back home to pick up food.

6. The lawful use of the site as a restaurant and home delivery service generates some activity from customers visiting and leaving the site either on foot or using vehicles and from the appellant's use of home delivery vehicles. The site benefits from substantial on site parking areas able to accommodate many customers visiting in cars in addition to vehicles used for the home delivery service. There are also on street parking spaces available for customers adjacent to the commercial premises on this side of Hempstead Road.
7. The provision of a take away service would be likely to result in some increase in vehicular activity during evening hours to the side and rear but this would be unlikely to have a significant adverse effect on the living conditions of nearby residents through noise or disturbance given the availability of parking and the existing activity associated with the site. The access to the side of the premises does not appear to be unduly constrained; any manoeuvring of vehicles to allow another to pass would not affect residential amenity given the separation to the nearest dwellings. As such, any additional use of the rear car park is unlikely to be of such intensity to significantly impact on the living conditions of local residents in adjacent dwellings.
8. The site fronts Hempstead Road where there is already a level of noise and activity from through traffic, buses and customers to the food shop and public house also located within this local centre. Against this background level of activity, the movement of customers entering and leaving the site to utilise the proposed take away service would be unlikely to result in a material increase in disturbance for the occupiers of the nearest dwellings, particularly if the hours of operation of the take away service are limited to the current opening hours at the restaurant.
9. The proposal would thereby be in accordance with the provisions of Policy BNE2 of the Medway Local Plan (2003) which amongst other matters seeks to protect the amenities enjoyed by the occupiers of nearby properties. The proposal would also be in compliance with paragraph 17 of the National Planning Policy Framework that supports economic development whilst seeking to secure a good standard of amenity for all existing and future occupants of land and buildings.
10. In reaching these conclusions I have had regard to the representations submitted both for and against the proposal. Most of the objections relate to matters I have considered above. Some point to the nuisance resulting from inconsiderate parking, sometimes on yellow lines, arising from customers to facilities already operating in the local centre; this is a matter that should be pursued through other channels.
11. Several refer to the site's planning history, in that permission was granted for the restaurant and home delivery service only, initially on a temporary basis and then permanently and express the view that these limitations should be maintained as originally consented. The appellant is entitled to apply to operate in non-compliance with the conditions restricting the use of the site and to have that application assessed against current local and national planning policies.

Conclusion

12. For the reasons given, I conclude that the appeal should be allowed. I shall grant a new planning permission without the contested planning conditions but shall substitute revised conditions to restrict the opening hours to those currently operating at the restaurant and to enable take away customers to be able to use the on site parking facilities. I concur with the Council's suggestions on retention of non-disputed planning conditions on the original permission. However, a condition relating to the commencement of development is not needed as the proposed take away use would appear to have already commenced.

Rory MacLeod

INSPECTOR