The Planning Inspectorate

Appeal Decision

Site visit made on 28 May 2019

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th July 2019.

Appeal Ref: APP/D1780/W/18/3204824
Unit B, Former Ordnance Survey Site, Romsey Road, Southampton SO16 4GU

- 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 Dominos Pizza Group Ltd against the decision of Southampton City Council.
- The application Ref 18/00236/FUL, dated 8 February 2018, was refused by notice dated 6 April 2018.
- The development proposed is change of use of Unit B, Former Ordnance Survey Site, Romsey Road, Southampton from Class A3 (Café) to Class A5 (Hot Food Takeaway) use, plus associated external alterations – including the installation of a new shopfront and ventilation and extraction equipment.

Decision

1. The appeal is allowed and planning permission is granted for change of use of Unit B, Former Ordnance Survey Site, Romsey Road, Southampton from Class A3 (Café) to Class A5 (Hot Food Takeaway) use, plus associated external alterations – including the installation of a new shopfront and ventilation and extraction equipment at Unit B, Former Ordnance Survey Site, Romsey Road, Southampton SO16 4GU in accordance with the terms of the application, Ref 18/00236/FUL, dated 8 February 2018, subject to the conditions in the attached schedule.

Preliminary matter

2. Permission was granted for the construction of the building as part of a mixed commercial and residential scheme. That planning permission[1] contained a condition (number 22) relating to the parking provision at the commercial units. The condition states "*the approved car parking and service areas to serve the retail and commercial units shall be laid out and made available for use prior to first occupation of any of the units. Once provided, those parking facilities shall be retained at all times thereafter for use by the customers of those stores and at no time shall be used by occupants of the residential units*". The reason given for the condition is "*to ensure appropriate parking and servicing facilities are available in the interest of highway safety*".

3. After the site visit, I wrote to the main parties seeking their views as to whether condition 22 prevented staff parking at the site. The Council contend that the reference in the condition to the spaces being retained "for use by the customers of those stores" makes it clear that staff cannot park there, whereas

[1] LPA Ref: 13/01789/FUL

the appellant's view is that they are not excluded from doing so, as opposed to residents, who clearly are.

4. It is evident from the reasoning in the Council officer's report for that earlier planning permission that 19 spaces were to be provided for customers of the retail stores. The Council has now suggested that staff were intended to walk or cycle to the units but I see no evidence for this in the officer report and there is no substantive evidence before me as to how this would be ensured.

5. Whilst the intention might have been that the spaces were exclusively for customers, the condition read on its face alongside the reason for it requires the spaces to be provided for customers but stops short of preventing their use by any vehicles other than those connected with the residential units. I, therefore, find no compelling evidence that the spaces could not be used by delivery staff in connection with the proposed hot food takeaway and have considered the appeal accordingly.

Main Issues

6. The main issues are the effect of the proposal on highway safety, with particular regard to parking; and the effect on living conditions, with particular regard to the effect of noise and disturbance from activities associated with the collection/delivery of hot food.

Reasons

Highway safety

7. The site is accessed via a modern estate road serving a new development. From a roundabout, a short distance from Romsey Road, the road takes an approximately 90 degree turn into the development around a parking area for the commercial units. Opposite the site are a number of dwellings with private drives leading from the estate road. Beyond this are some other delineated bays associated with the retail units.

8. Within the development are some parking bays for visitors. It appears that residents of the development contribute towards the cost of their maintenance but there is no substantive evidence of any particular controls over their use. I understand that those visitor bays may on occasion be used by those visiting the convenience store which is a frustration to local residents.

9. The footway outside the residential properties opposite the site is almost flush with the carriageway. During my site visit, I witnessed numerous cars parking on this footway and a nearby grass verge whilst their occupants visited the convenience store, despite a continuous availability of spaces within the designated areas.

10. This indiscriminate parking caused some obstruction to the highway, forcing vehicles to pass on the opposite site of the road. It may also cause obstruction to pedestrians, particularly those with infant pushchairs or wheelchair users. However, visibility is available around the bend and speeds are likely to be low due to the road alignment. As such, whilst the driver behaviour may cause some inconvenience, it does not appear to lead to particularly unsafe traffic conditions.

11. The appellants evidence accepts that the proposed use may lead to some increase in parking demand when compared to the authorised use of the building as well as an increase in simultaneous vehicle movements within the area. The Council's offer report indicates that the number of spaces available are below the maximum standard set out in the Parking Standards Supplementary Planning Document. However, being a maximum standard there would be no policy conflict in terms of parking provision.

12. That said, if sufficient parking capacity did not exist, then there would likely be an increase in the indiscriminate parking described above, or increased pressure on the residential visitor parking. However, the nature of a hot food takeaway use is such that visitors to the site are likely to spend a limited time on site, allowing a constant churn of available parking spaces.

13. In addition to visits by collecting customers and delivery drivers, store-based staff may also generate some parking demand. However, there is no compelling evidence that the corresponding demand from on-site employees would be significantly different to the permitted use, so I find that it is traffic associated with collections and deliveries that would have the greatest impact.

14. Whilst the peak traffic generation may be concurrent with that of the adjoining retail store and the overall highway network, the appellant suggests that there is unlikely to be more than one delivery vehicle on site at most times. The appellant predicts that 80% of the trips would likely relate to deliveries. In this scenario, of the 4 spaces designated for the unit, there would likely be some parking available for customers choosing to collect their orders in person.

15. The appellant has suggested that delivery/collection ratio is based on other stores and that modes of transport for delivery could be controlled through a delivery management plan. However, that would only apply to the appellant's business model and I am not convinced that such can be adequately enforced via planning conditions. I, therefore, give limited weight to this suggestion.

16. As they are not user specific, the assessments of likely trip generation for a generic hot food takeaway carry more weight than those for the appellant's particular business but these do not differentiate between collections and deliveries. However, even if there was a different end user, or the ratio of deliveries/collections were to vary, there is no compelling evidence to suggest that the overall parking requirement would be significantly different.

17. Both the permitted and proposed use would generate more traffic than the currently vacant unit. Based on the current behaviour of drivers, any occupation of the unit is likely to result in some increase in indiscriminate parking from the present scenario. However, in light of my findings above, I find that there would not be a significant increase in overspill parking onto the highway when compared to the permitted use of the site.

18. Therefore, when compared to the existing permitted use, there would not be a significant effect on the highway network and the proposal would not harm highway safety. Accordingly, there would be no conflict with Policy SDP1 of the Southampton Local Plan Review (2015) or Policy CS19 of the Southampton Core Strategy (2015) that seek to prevent harm to the safety of citizens and requires that developments have regard to the Council's maximum car parking standards.

Living conditions

19. The appeal building is situated alongside the convenience food store, close to the access to the Mercator Close development from Romsey Road. The car parking area lies between the front of the unit and Mercator Close, facing dwellings on the opposite side of the road. There are further dwellings above the convenience store. Whilst the overall character of the area is residential, the sits is small pocket of commercial activity.

20. The convenience store, like the permitted use for the appeal building, can open until 11.00 pm and attract a significant number of visitors. Indeed, a number of local residents have identified that the store already generates some noise disturbance. The site, and the closest dwellings are also very close to the busy Romsey Road, so this is unlikely to be a particularly quiet residential area.

21. Vehicles, either making personal collections or collecting orders for delivery from the proposed takeaway, would likely be frequent particularly through the evening peak hours. The frequency with which this occurs is likely to be greater than the authorised use of the building. Indeed, the regularity of traffic movements may consequently cause some disturbance to neighbouring residents. However, given the existing characteristics of the site and its location, I do not find that this would be so significant as to cause harm to living conditions.

22. My attention has been drawn to another appeal decision[2] for a Dominos Pizza takeaway in nearby Romsey. However, from the information available, it appears that the Romsey site is more closely related to surrounding residential uses, detached from other commercial activities and more likely to attract passing pedestrian trade. I do not, therefore, find that the sites are particularly comparable and attach limited weight to that decision.

23. A number of local residents have also raised concern about the potential for noise and odour disturbance from within the building. However, the Council's environmental health officer has not raised any objection on this basis and there is no substantive evidence that leads me to disagree with their position.

24. I, therefore, find that the proposal would not harm the living conditions of nearby residents. As such, there would be no conflict with those aims of LP Policies SDP1 and SDP16, or CS Policy REI7 that seek to prevent harm to the amenity of citizens through the generation of noise or other forms of nuisance arising from the proposed use.

Other matters

25. I note that a number of local residents consider that there are sufficient hot food takeaways in the area and that there may be more beneficial or other appropriate uses for the site. The Council has also indicated that there is no particular information to illustrate whether an A3 use would be commercially viable at the site or not. However, my attention has not been drawn to any particular policies that would seek to safeguard A1 or A3 uses at the appeal site or require an assessment of need for uses such as that proposed and, therefore, I attach very little weight to these matters.

[2] APP/C1760/A/09/2095062

26. The preparation of hot food has the potential to cause odour emissions. However, the Council's environmental health officer has raised no objections to the proposal. There is no substantive evidence to suggest that the proposed extraction system could not adequately prevent odour disturbance.

27. There is no robust evidence that the proposal would lead to an increase in crime within the area. The food and diet choices of individuals are largely a personal matter and my attention has not been drawn to any relevant planning policies that seek to dictate such matters. Whilst noting the comments made in respect of these issues, I therefore, give them very little weight in my decision.

Conditions

28. A plans condition is required in the interests of certainty. To safeguard living conditions, the hours of operation should be controlled so as to ensure that the premises close to customers at 23.00, to match the adjoining retail use and permitted use of the building. It is not clear why the Council's suggested condition requires a notice to this effect to be displayed at the site, so I have not included this in my condition.

29. For the same reasons, conditions are required to ensure that litter bins, refuse and recycling facilities are provided, and further details are submitted in respect of any plant, machinery, ventilation and internal noise sources. In light of the requirements to submit the above information, along with mitigation proposals, a further condition requiring modifications to the building, as suggested by the Council, to prevent disturbance is not required. However, a sperate condition is required to ensure that the submitted extract ventilation system is installed.

30. The Council has suggested a condition requiring that a servicing management plan is submitted for approval. However, the hours during which the Council wishes to prevent vehicles servicing the store are at odds with those set out in the appellant's servicing plan. In any case, the appellants evidence suggests that deliveries to a hot food takeaway are unlikely to occur every day and, therefore, I do not find that the intensity of the servicing regime warrants particular control via planning conditions.

31. I have made some minor amendments to the conditions suggested by the Council in the interests of clarity and to ensure compliance with the Planning Practice Guidance.

Conclusion

32. For the reasons given above I conclude that the appeal should be allowed.

M Bale

INSPECTOR

Schedule

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: C5068-A5-01 Rev A; C5068-A5-02; C5068-A5-03 Rev B; C5068-A5-04 Rev B; C5068-A5-05 Rev A; C5068-A5-06 Rev A.

3) Use here by permitted shall not operate (meaning that customers shall not be present on the premises for sale of food or drink for consumption on or off the premises, and no food shall be dispatched for delivery) outside the hours of 11.00 to 23.00 on any day.

4) A litter bin shall be provided at the site within the customer area of the floor space and made available for use of patrons of the hot food takeaway here by permitted during trading hours.

5) The use hereby permitted shall not commence until an acoustic report and scheme to minimise noise from plant and machinery associated with the proposed development, including details of location, orientation and acoustic enclosure, has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved scheme prior to the use commencing and shall thereafter be maintained as such.

6) Prior to the commencement of the use hereby permitted, the ventilation system detailed in the "Annex B Document: Proposed Ventilation System at Unit B Former Ordance Survey Site, Romsey Road, Southampton, SO16 4GU, C5068 Revision A 10/11/2017" shall be installed and thereafter maintained in accordance with those details.

7) Prior to the commencement of the use hereby permitted the storage for refuse and recycling shall be provided in accordance with the plans hereby permitted and shall thereafter be retained as such.