



Appeal Decision

Site visit made on 27 March 2019

by Kim Langford Tejrar LLB (Hons) BSc (Hons) PGDIP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2019

Appeal Ref: APP/C1950/W/18/3216267

4 Maynard Place, Cuffley, Potters Bar EN6 4JA

- 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 Senhouse of nails Limited against the decision of Welwyn Hatfield Council.
 - The application Ref 6/2018/1977/FULL, dated 26 July 2018, was refused by notice dated 26 September 2018.
 - The development proposed is change of use from retail (A1) to a mixed use Class A1 and sui generis retail and beauty salon (A1 and Sui Generis).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from retail (A1) to a mixed use retail and beauty salon (A1 and Sui Generis) at 4 Maynard Place, Cuffley, Potters Bar, EN6 4JA in accordance with the terms of the application, Ref 6/2018/1977/FULL, dated 26 July 2018, 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 plan A101 Proposed Floor Plan.
 - 3) The change of use hereby permitted shall not take place until a scheme for mitigating any odour omissions and for protecting the proposed nearby residential apartments from noise from any odour mitigating plant shall have been submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before any part of the use hereby permitted is commenced and shall be retained thereafter.
 - 4) The premises shall only be open for customers between the following hours: 09:00- 19:00 Monday to Saturday and not at all on Sundays and Bank Holidays.

Application for costs

2. An application for costs was made by Senhouse of nails Limited against Welwyn Hatfield Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appeal proposal seeks to change an existing retail unit into a mixed use of retail and sui generis, with a beauty salon at the rear and a larger area retailing products to the front of the shop. The Council has raised concerns that the proposed use would not amount to a mixed use but a single sui generis beauty salon use with ancillary retail; however, this does not form a reason for refusal and the proposal should be considered at face value. Any further change of use would require planning permission. I have therefore treated the proposal for the two distinct uses as shown on the submitted plan.
4. The reasons for refusal refer to policies of the Welwyn Hatfield Draft Local Plan 2016 Submission Version (LP). This is an emerging plan which was submitted for examination on 15 May 2017 and according to an updated timetable is expected to be subject to examination hearings towards the end of 2019. Paragraph 48 of the National Planning Policy Framework (the Framework) sets out that weight to be given in emerging plans should be according to its stage of preparation, the extent of unresolved objections and the degree of consistency with the Framework. The LP is at an early stage of preparation; whilst its submission version policies show a potential direction of travel, it is not yet known what level of objection these are likely to encounter. For these reasons, I attribute limited weight to the policies of the draft LP.

Main Issues

5. The main issues are the effect of the proposal on the vitality and viability of Cuffley as a Large Village Centre, and the effect of the proposal on living conditions of nearby occupiers, particularly in respect of odour.

Reasons

Town Centre

6. The appeal site is an existing retail unit in a parade of shops with flats above. The parade forms a high street area along with other small parades of shops around Station Road and Maynard Place. A small public car park is located at the end of Maynard Place alongside public services such as a doctor's surgery, hall and library.
7. Saved Policy TR26 of the Welwyn Hatfield District Plan 2005 (DP) defines Cuffley as a Large Village Centre and seeks a minimum of 60% of each frontage is retained in retail Class A1 use and seeks to resist changes of use which would reduce this percentage. Additionally, it sets out that applications for non-A1 changes of use will only be permitted where (i) the proposal would not harm the vitality and viability of the centre, (ii) it would not lead to an over-concentration on non-retail uses, (iii) the presence of vacant units indicates a lack of demand, (iv) the proposal would not harm the amenities of nearby residential properties and (v) the proposal would not be detrimental to the local highway network. The policy also states planning permission may be granted subject to conditions to control the use where planning permission which would otherwise be refused subject to conditions.
8. Policy SADM4 of the Welwyn Hatfield Draft Local Plan 2016 would reduce the minimum retail threshold requirement to 50%, though I afford this policy limited weight, as set out above.

9. The DP preceded the Framework. The Framework requires policies to make clear the range of uses permitted in such locations, as part of a positive strategy for the future of centres. Saved Policy TR26 is broadly in line with the Framework, though is inconsistent in so far as the Framework does not limit appropriate main town centre uses to A1 retail; it includes leisure, entertainment and more intensive sport and recreation uses, offices, arts, culture and tourism development. Within the Framework, a beauty salon would be defined as a main town centre use.
10. There are currently 58% of the total 38 units in Cuffley in non-retail use, the appeal proposal would increase this, albeit it would retain elements of retail. As such, the proposal would conflict with the 60% minimum retail frontage required by Policy TR26. However, during my visit I observed 4 other units in a vacant state, which is a high proportion given the size of the centre area, indicating a potential lack of demand. There is no requirement within the additional policy criteria for applicants to establish a lack of demand through marketing or viability evidence; it simply requires consideration of the number of vacant units.
11. Whilst the proportion of vacancy and other additional policy criteria of TR26 do not overcome the conflict with the 60% threshold criteria, they do indicate that concerns regarding overconcentration of non-retail uses should be balanced with the need to ensure units are occupied. The appeal proposal would occupy a vacant unit with a town centre use, including a retail element, and would make a contribution to the vitality and viability of the area. Furthermore, the weight to be given to the retail threshold is moderated by its inconsistency with the Framework. The Framework definition of town centre uses which ensure vitality and viability would include the proposed use. For these reasons, despite an element of conflict with the detailed criteria of Policy TR26, the proposal would comply with its overall aims and the aims of the Framework to maintain town centre viability and vitality.

Living Conditions

12. Subject to a condition identifying potential odour and plant noise effects and setting out a scheme for mitigation where necessary, as set out above, there is no evidence before me to suggest the proposal would have an unacceptable impact on neighbouring residential properties. Whilst no information has been supplied in respect of odour from any nail bar function, such uses frequently occupy shops with flats above, and any potential harm could be mitigated by way of a condition, in accordance with Saved Policy R19 of the DP, which seeks noise mitigation conditions where necessary and the relevant criteria of Saved Policy TR26.

Conditions

I have imposed the usual time limit and approved plans conditions in order to ensure the development is carried out in accordance with the approved plans. I have also imposed a pre-commencement condition requiring details of any odour control plant and its noise mitigation in order to protect the living conditions of the occupants of nearby flats before the use commences and any such plant is installed. Finally, I have imposed an opening hours condition in order to protect the living conditions of occupiers of nearby flats.

Conclusions

13. For the reasons given above, I find that the appeal proposal would partially conflict with the criteria of Saved Policy TR26, though it would be in line with its overall aim to ensure town centre vitality and viability and would comply with the Framework. I consider the proposal would not adversely affect the vitality or viability of the Large Village Centre of Cuffley or have an unacceptable adverse impact on the living conditions of neighbouring properties. The proposal would comply with Saved Policy R19. The appeal is accordingly allowed.

Kim Langford Tejrar

INSPECTOR