
Appeal Decision

Site visit made on 14 August 2019

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th September 2019

Appeal Ref: APP/Q1445/W/18/3214694

Unit 2, 22-25, Supermulti store, 24 Station Road, Portslade, Brighton, East Sussex, BN41 1GB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval under Schedule 2, Part 3, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Emanuel Abadi against the decision of Brighton & Hove City Council.
 - The application Ref BH/2018/01998, dated 18 June 2018, was refused by notice dated 23 October 2018.
 - The development proposed is prior approval for change of use from retail (A1) to café/restaurant (A3).
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. I have used the description of development from the decision notice in the interests of brevity. It more concisely summarises the works proposed than the description used on the planning application form.

Main Issue

3. Whether or not the proposal comprises permitted development as set out in Class C, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("GPDO").

Reasons

Background

4. Class C of Part 3, Schedule 2 of the GPDO provides that development consisting of a change of use of a building from class A1 (shops) to a use falling within Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order is permitted development, subject to conditions. These conditions require the prior approval of the local planning authority for certain matters, specified in the legislation.
5. In this case prior approval was refused on the basis that insufficient information has been provided to determine that there would be no adverse noise and odour impacts. It is also argued that the works depicted on the plans

are ineligible for the procedure as it involves external works involving the reconfiguration of the shopfront.

Noise and Odour

6. The site is surrounded by two other commercial units and a car park to the rear. However, there is residential accommodation at a raised level to the south of the site, which could potentially be affected by noise and odour arising from the proposed use.
7. The information provided by the appellant refers to fans and ducting being used in connection with a fish frying range, however the location of this plant is not shown on the floor plans and there is no detailed technical assessment of what type of noise and smells this system would generate. Whilst it is suggested that this system has already been installed, the use does not appear to have commenced. In these circumstances the absence of complaints is not a reliable indicator of the acceptability of the proposed development in terms of noise and odour, particularly given the proximity of residential accommodation. Users of such accommodation would, in my experience, be particularly receptive to noise and odour typically associated with restaurants and cafes.
8. Accordingly, on the evidence before me I share the Council's view that there is an unacceptable risk that the development would result in harmful levels of noise and odour as a consequence of the proposed extraction facility. This is not a matter that could be addressed by conditions being placed on the operating hours of the facility, as suggested by the appellant. Consequently, prior approval should be refused on the basis that the proposal fails to meet condition C.2 (1) (a and b) of class C, Part 3, schedule 2 of the GPDO.

Eligibility

9. The relevant part of the GPDO makes provision for building or operations associated with the change of use. However, this is limited to building or other operations for the provision of facilities for ventilation and extraction and the storage of rubbish. The works to the front of the building shown on the proposed plans do not appear to serve either of these purposes. Accordingly, they fall outside the scope of this part of the GPDO.

Other Matters

10. The Council's environmental health officer did not object to the development, and it is suggested that building regulations approval is not required for the alterations to the front of the building. However, neither of these factors alter my view of the proposal, given the legal requirements discussed above.
11. Any hardship in relation to the existing business arising through the failure of this appeal is regrettable. However, the focus of the decision must be on whether the proposal meets the relevant legal requirements. My decision must be taken on the evidence considered by the Council.

Conclusion

12. For the reasons given above the works do not constitute permitted development. The appeal should be dismissed.

Neil Holdsworth

INSPECTOR