



## Appeal Decision

Site visit made on 5 August and 7 October 2019 by S Witherley BA, PGDiP, PGDiP, Cert CIH, Assoc RTPI

### Decision by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2019

#### Appeal Ref: APP/J4525/W/19/3228629

#### Bojangles, 7 Sea Road, Sunderland, SR6 9BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Mark Anderson, on behalf of Maxim Brewery, against the decision of Sunderland City Council.
- The application, Ref 19/00091/FUL, dated 11 January 2019, was approved by notice on 27 March 2019 and planning permission was granted subject to conditions.
- The development proposed as described on the application form is for the change of use from Bojangles coffee shop – current use class A1/A3 to micro pub use class A4.
- The conditions in dispute are nos. 3, 5 and 6 which state:
  - (3) Notwithstanding the submitted details, the rear yard area shall not be used by patrons at any time or for any purpose (other than as a mean of escape in an emergency situation) in order to protect the amenities of nearby residential properties and to comply with Policy B2 of the UDP.
  - (5) Before the development hereby permitted is commenced, adequate facilities for the storage of refuse within the rear yard shall be provided in accordance with a scheme to be submitted to and agreed in writing by the Local Planning Authority and shall be so maintained thereafter in order to ensure a satisfactory form of development and to comply with Policy EN1 of the UDP.
  - (6) Before the development hereby commences, details of the arrangements for deliveries and the servicing of the premises shall be submitted to and agreed in writing by the Local Planning Authority. Thereafter, deliveries and servicing shall operate in accordance with the agreed details at all times, in the interests of highway safety and to comply with Policy T14 of the UDP.

### Decision

1. The appeal is allowed and planning permission Ref 19/00091/FUL for the change of use from Bojangles coffee shop – current use class A1/A3, to micro pub, use class A4, at Bojangles, 7 Sea Road, Sunderland, SR6 9BP, granted on 27 March 2019, by Sunderland City Council, is varied by deleting and substituting condition 3, and deleting condition 5 and 6. The substituted condition (3) is as follows:

Notwithstanding the submitted details, the rear yard area shall not be used by patrons at any time or for any purpose (other than as a mean of escape in an emergency situation) outside of the following hours;  
Monday to Friday (except Bank Holidays) 15:00 to 21:00  
Saturday, Sunday and Bank Holidays 11:00 to 21:00

## **Appeal Procedure**

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

## **Main Issues**

3. Planning permission was granted in March 2019 for the change of use from a coffee shop, class use A1/A3 to a micro pub, class use A4. Attached to that permission were a number of conditions. The appellant has indicated that the restriction imposed by condition 3, 5 and 6 do not meet with the 6 tests within the Governments Planning Practice Guidance (PPG).
4. Against that background, the main issues are: the effect that varying condition (3) would have on the living conditions of nearby residents, whether condition (5) is reasonable and necessary and the effect of removing condition (6) on highway safety.

## **Reasons for the Recommendation**

5. No. 7 is a terraced property located in a commercial high street. The area contains a mix of commercial and public houses. To the rear of the property is a modest size yard enclosed by high walls. Outside the yard is a rear lane which provides vehicle and pedestrian access to the commercial properties and where a number of commercial refuse bins are located. Beyond the lane and set at right angles to the commercial terrace are residential properties.

### *Condition (3)*

6. The disputed condition restricts the use of the rear yard to protect the nearby residential occupants from potential disturbance and noise levels in order to comply with Policy B2 of the City of Sunderland Unitary Development Plan (1998) (UDP). The appellant proposes that the use of the rear yard is accessed by patrons on any day up to the hours of 21:00 and that smokers may use it thereafter in a quiet and respectful manner. The National Policy Framework (the Framework) states that planning conditions should only be imposed where they are: necessary; relevant to planning and; to the development permitted; enforceable; precise and; reasonable in all other respects. The PPG states, amongst other things, that 'it is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls'.
7. Whilst the proposal has the potential to create an outdoor seating or smoking area and this may increase the perception of creating noise and disturbance between the site and the surrounding neighbouring properties, the site is located in a commercial area with nearby businesses some of which operate well into the evening. As a result of this there will be some degree of disturbance and noise levels already associated with those establishments. No substantive evidence regarding the perceived increase in levels of noise and disturbance has been submitted.
8. In principle, the condition is necessary and reasonable to protect the surrounding occupiers from unreasonable disturbance late into the evening. However, as it is currently worded the all-time restriction is unnecessary and unreasonable. The appellant has suggested alternative hours to allow patrons access, nevertheless, it would be difficult to enforce a condition which specified patrons to act in a quiet and respectful manner after the hours of 21:00. A condition which restricts access to the rear yard up to 21:00 on any given day would be reasonable and necessary in order to protect the living conditions of occupiers of neighbouring properties. As such, the proposal would not give

rise to a significantly harmful effect on the living conditions of nearby residents. Accordingly, it would not conflict with the aims of Policy B2 of the UDP.

*Condition (5)*

9. The stipulation requires details for the adequate storage of refuse facilities to be submitted to the Council prior to the commencement of development. The Council have noted the reason for the condition is to ensure a satisfactory form of development and to comply with Policy EN1 of the UDP. The appellant considers that the previous refuse arrangements of the former café still apply and the details submitted with the application indicate that the refuse bin would be located in the rear lane. At the time of both site visits it was evident that the majority of refuse bins associated with the commercial units along Sea Road were located in the rear lane. These were set back against the boundary wall of the corresponding commercial unit, and given the width of the highway, did not appear to cause any obstruction to vehicle and pedestrian traffic nor did they appear to cause any environmental issues. There has been no substantive evidence presented by the Council as to why the refuse bin associated with No. 7 would be detrimental to the proposal if they were to be located in the rear lane along with the majority of other commercial refuse bins. The Council have noted that the proposal would conflict with Policy EN1, however, the reasons for this are unclear.
10. Given the above, the proposed location of the commercial bin in the rear lane, as noted within the application details, would not result in an unsatisfactory form of development. Accordingly, the disputed condition is not considered reasonable or necessary taking account of the Framework and the advice set out in the PPG relating to the appropriate use of conditions.

*Condition (6)*

11. The condition requires details of the servicing and delivery arrangements to be submitted to the Council prior to commencement of the development. The reasons noted for applying this condition are in the interests of highway safety and to comply with Policy T14 of the UDP. The appellant considers that the previous delivery arrangement of the former café did not give rise to highway issues and it is proposed that deliveries would be made by small vans at the rear of the property. No. 7 is located within an established row of commercial properties with public access at the front. The shop fronts onto a busy highway which has parking restrictions. A single yellow line is located along this part of Sea Road which restricts vehicles from parking outside the front of the units between Monday – Saturday 8:00 am to 6:00 pm. Given the restriction at the front of the premises along with the established commercial nature of the area, it is reasonable to consider that there is an established provision for the loading and unloading of commercial vehicles at the rear of the premises. There are no visible highway signs restricting the unloading or loading of goods along this rear lane at any time. The Council have not provided any substantiated evidence that indicates the proposal would have an adverse impact on highway safety as a result of deliveries being made via the rear lane.
12. Removing condition (6) would not, therefore, have a detrimental effect on highway safety and in the absence of the disputed condition, the development would not conflict with Policy T14 of the UDP. Consequently, the condition is not reasonable or necessary, taking account of the Framework and the advice set out in the PPG relating to the appropriate use of conditions.

### **Other Matters**

13. Representations and a signed petition were received from interested parties which raised a number of concerns including the perceived increase in levels of noise and disturbance as a consequence of the proposal. These concerns have been addressed by the Council who note that the proposed use as a micro-pub would not result in antisocial behaviour or unacceptable levels of disturbance in the area. In any case, taking account of the above conclusion on the main issues, there is no evidence that suggests the development would lead to a significant increase in levels of noise and disturbance in the area.

### **Conclusion and Recommendation**

14. For the reasons given above and having had regard to all other matters raised, it is recommended that the appeal should succeed, and that the planning permission should be varied by substituting condition No. 3 and deleting conditions No. 5 and No. 6.

*S Witherley*

APPEAL PLANNING OFFICER

### **Inspector's Decision**

15. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I too agree and conclude that the appeal should succeed as set out above.

*A U Ghafoor*

INSPECTOR