



Appeal Decision

Site visit made on 4 November 2019

by Julia Gregory BSc(Hons) BTP MRTPI MCMI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 15 November 2019

Appeal Ref: APP/P5870/W/19/3235152

Unit 1.02 St Nicholas Centre, St Nicholas Way, Sutton SM1 1AY

- 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 Mokka Ltd against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2019/00522, dated 11 March 2019, was refused by notice dated 29 May 2019.
 - The development proposed is change of use from retail unit (Use Class A1) to flexible retail/restaurant use (Use Class A1/A3), alterations to frontage at unit 1.02.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. I have taken the address and postcode from the application form. Although I note that the address is differently described by the Council and on appeal documentation, I am satisfied that all documents relate to the same property.
3. I note the reduction in seating from 42 to 33 put forward as part of the appeal. This has not been formally considered by the Council and was not part of the application. In the interests of fairness, I have determined the appeal on the basis of the application plans.
4. No objections have been raised in respect of the frontage alterations. I shall therefore concentrate on the change of use.

Main Issue

5. The main issue is the effect on the vitality and viability of Sutton Town Centre.

Reasons

6. Policy 18 of the Sutton Local Plan 2018 (LP) specifies that within the primary shopping frontages of Sutton Town Centre and the shopping malls of Sutton Town Centre, the Council will expect the proportion of A1 (retail) ground floor units not to fall below 75%. This is considered fundamental to protecting Sutton Town Centre. Although the objectives of the policy do not use the words "vitality and viability", they centre on those matters. One objective is to seek to ensure a good range of high quality shops. The National Planning Policy Framework seeks to promote the long term vitality and viability of town centres.
7. The appeal premises lies within a shopping mall in Sutton Town Centre. The Council has made an assessment that there are 71.52% of frontages within A1

- use. This would fall with the loss of the appeal premises to 71.13%. The change of use would therefore fail to comply with LP policy 18 because it would bring it further below the minimum of 75%.
8. I acknowledge that there would still be some retail element to the use. The appellant argues that this would be substantial at 80% of trade. No mechanism has been put forward to control this percentage of trade. I consider that this would be difficult and unduly onerous to control.
 9. The appellant argues that the A3 use would be ancillary to the A1 use. The artists impressions of the interior and the plans submitted show most of the area taken up with café seating and a substantial counter for café preparation and sales. The retail patisserie counter would in comparison be a much smaller area. Most of the frontage would be physically in A3 use.
 10. In addition, even a small loss of retail floorspace would fail to comply with LP policy 18 because the retail frontage is already below 75%. Whilst the St Nicholas Centre Mall may have a higher percentage of retail units than when combined with the primary frontage, it is not separately identified for policy purposes.
 11. There are competitor uses in the primary frontage nearby and I accept that some mix is desirable. The policy does not ban all such uses because A1 is expected to be only at least 75% of the frontage overall. I note also that the Council has recently granted planning permission for a new A3 restaurant, but this created a new frontage of the St Nicholas Centre onto the secondary shopping frontage in St Nicholas Way as suggested by the Sutton Town Centre Masterplan.
 12. The LP dates only to February 2018 and so is relatively recently adopted. I note that at paragraph P18.2 of the accompanying text that the Council has adjusted its policy with regard to shopping centres to allow more town centre uses in secondary shopping frontages. If the Council sees fit to change its stance in respect of town centre retailing, then it is open to it to review the local plan. I understand that the Council is monitoring floorspace provision.
 13. It is not disputed that the property has been vacant for some 3 years, apart from some temporary Christmas lettings and so it would have been vacant at the time the LP was adopted.
 14. Given the recent adoption of the LP, although I have paid careful attention to the report submitted by the appellant¹, it does not lead me to conclude that the development plan is out of date in this regard.
 15. I acknowledge that there would be some retail activity with bespoke own made cakes/pastries, layered cakes, own made ice cream and ice cream deserts, hand made pralines and chocolate goods. There would be substantial investment, creating some 6 full time jobs and expanding the choice of products available locally. A popular established specialist Polish bakery and cake maker business would expand into Sutton. The landlord is supportive.
 16. LP Policy 3, amongst other matters, seeks to deliver new retail floorspace in the town centre. It seeks to promote the area south of Hill Road for food and

¹ Written evidence submitted by the Association of Town and City Management, with the Institute of Place Management and the Bid Foundation [HST 060]

beverage floorspace as a restaurant and café and cultural centre rather than the St Nicholas Mall. LP Policy 18 is consistent with the approach in Policy 3 and is consistent with the National Planning Policy Framework which promotes such policies. Overall, the benefits of the change of use would not outweigh the conflict with LP policy 18 which seeks to protect the retail centre of Sutton town centre which is central to its vitality and viability.

Conclusion

17. For the reasons given above, I conclude that the appeal should be dismissed.

Julia Gregory

Inspector