



Appeal Decision

Site visit made on 14 August 2019

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2019

Appeal Ref: APP/W3520/W/19/3229585

The Newsagent, Bell Hill Cottage, The Street, Rickingham Inferior IP22 1BN

- 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 Mr Yusuf Karakus against the decision of Mid Suffolk District Council.
 - The application Ref DC/19/00336, dated 23 January 2019, was refused by notice dated 25 April 2019.
 - The development proposed is the change of use of ground floor to A5 hot food takeaway, extract equipment internally and flue through roof, internal alterations including provision of sound and fire proofing to flying freehold rooms and party walls and floors.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of ground floor to A5 hot food takeaway, extract equipment internally and flue through roof, internal alterations including provision of sound and fire proofing to flying freehold rooms and party walls and floors at The Newsagent, Bell Hill Cottage, The Street, Rickingham Inferior IP22 1BN in accordance with the terms of the application, Ref DC/19/00336, dated 23 January 2019, subject to the conditions in the attached Schedule.

Procedural Matter

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.

Main Issue

3. The main issue is the effect of the development on the living conditions of nearby occupiers in terms of noise, odour and highway matters.

Reasons

4. The appeal site comprises a road frontage building which is currently in use as a shop at ground floor with residential accommodation at first floor. The access and car park for The Bell Inn public house runs adjacent to the side elevation. An existing residential dwelling adjoins the appeal building and set back in the

rear of the public house car park are additional dwellings. The surrounding area is attractive in appearance with a large number of residential properties present as well as several commercial units, including the public house, the co-op and other takeaways.

5. The ground floor has been in use as a commercial property, being a newsagent previously and now an antique shop. The proposed development seeks to change the use of the ground floor from A1 to an A5 use, to provide a hot food takeaway. The proposal would include internal changes to provide a waiting area, counter, and kitchen and food preparation areas. A flue would be provided within the building, exiting through the roof.
6. The appeal site is in proximity to a number of residential properties, including the first floor flat and the properties adjacent. The proposed use would have the potential to generate noise during the opening hours of the business through the comings and goings of people collecting takeaways. This would also involve the opening and closing of car doors and general noise from people talking.
7. I have had regard to the previous use of the premises as a newsagent, and the use as an antique store, as well as the potential for other A1 uses. Whilst the proposed change of use would operate for longer hours than the existing and previous uses the site is in proximity to a public house which has longer opening hours than an A1 shop, and in the wider area there are other takeaways. Collectively, these give rise to a reasonably high level of commercial activity and the proposal would therefore not result in a significant increase in activity, noise or disturbance to the occupiers of neighbouring properties. The proposed hours of opening would be 11:00 until 22:00 all days of the week which could be secured by condition to ensure the premises were not open outside of these hours. Furthermore, the proposed hours of opening would be comparable with the public house and other takeaways in the surroundings.
8. The proposed use would have the potential to generate odour from the cooking that would take place within the building. The Appellant has provided details of the ventilation and extraction equipment that would be used to minimise odours from the proposed use. From the level of information provided it has been sufficiently demonstrated that the proposed equipment would ensure that odours from the building would be suitably mitigated and I have little evidence before me to suggest that these methods would be unsuitable or ineffective in this regard.
9. The appeal building has no dedicated off-road parking and it is likely that the proposed development would result in some traffic generation. There is existing on street parking available which appears to be used for visitors to nearby premises as well as by the local residents. The adjacent public house has an off-road area for car parking.
10. Whilst the proposed use is likely to generate increased on-street parking, due to the nature of the proposed business this would be likely to be short in duration, limited to the time it takes for people to pick up their takeaway orders. Furthermore, I have had regard to the previous uses of the building, when customers would have needed to park in the vicinity of the building. Whilst I acknowledge that the proposed use would generate traffic and parking at different times to the previous use, I have limited evidence before me to

suggest that this would be significantly more harmful or lead to a substantial increase in traffic generation over and above the previous uses of the building.

11. Consequently, based on the evidence before me, I find that I have been presented with little which would lead me to conclude that the proposed use would be harmful in terms of noise, odour, highway safety or general harm to the living conditions of nearby occupiers. The building is in an area comprised of other commercial premises including other takeaway facilities. Accordingly, I find no conflict with the requirements of Policies E12 and H16 of the Mid Suffolk Local Plan (1998) (Local Plan). Collectively, these seek to ensure that development does not adversely affect neighbouring properties by reason of undue environmental disturbance, amongst other things. It would also comply with the requirements of the National Planning Policy Framework (2019) (the Framework) to ensure a high standard of amenity for existing and future users.

Other Matters

12. The appeal site is located within the Rickinghall and Botesdale Conservation Area. The appeal property and the adjoining property together form a Grade II Listed Building and Listed Building Consent has been given for the proposed development. The proposed change of use would retain the existing traditional shop front and the internal works would preserve and would not result in harm to the character of the Listed Building and its historic significance. As such it would comply with the provisions of Sections 66 and 72 of the Planning (Listed Building and Conservation Areas) Act (1990), the Framework and Policies HB1 and HB3 of the Local Plan.
13. A number of local objections have been received in relation to the proposed change of use concerning, in addition to the above matters, issues with the tenancy and maintenance of the building, provision of waste bins and health concerns regarding the number of existing takeaways.
14. I note the existing number of takeaways present nearby, however the Council have identified that they do not have policies which restrict the number of takeaways in one particular area. Accordingly, whilst having regard to the wider guidance on public health, it has not been demonstrated to me that the proposed change of use would be harmful in cumulative terms. The property would have a dedicated area for commercial waste bins adjacent to the side elevation and the Council have not raised concerns in relation to the disposal of waste. I have little evidence before me that would lead me to conclude otherwise. Matters relating to the tenancy and maintenance of the building are those which would need to be addressed with the property owner and are not for me to comment upon.
15. Consequently, I have little evidence to demonstrate that the proposed use would be harmful in regard to these matters.

Conditions

16. In addition to the standard time limit condition, I have imposed a condition requiring the development to be carried out in accordance with the approved plans as this provides certainty. Conditions for a restriction on occupiers is necessary in the interests of the living conditions of the occupiers of the first floor flat. Conditions for restrictions on hours of use and deliveries and sound

proofing and ventilation systems are necessary in the interests of the living conditions of nearby residents.

Conclusion

17. For the reasons given above, and having had regard to all matters raised, I conclude that the appeal should be allowed.

R Norman

INSPECTOR

Schedule of 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 plans: Drawing Numbers 01B; 04D; and 06A.
- 3) The associated residential accommodation on the first floor shall only be occupied by an employee/supervising staff, working in association with the hereby approved A5 use.
- 4) The hereby permitted use shall only operate between the hours of 11:00 and 22:00 Mondays to Sundays, including Bank and Public Holidays. There shall be no deliveries to the premises outside of these hours.
- 5) The additional sound proofing below the existing shop ceiling and party walls (ground floor) with neighbouring residential premises shall be provided in accordance with the drawings and specification submitted prior to the change of use being first brought into use and shall thereafter be retained.
- 6) The grease and carbon filters, together with noise attenuators to the internal ducting of the ventilation flue shall be provided in accordance with the submitted details and Planning Statement by Roberts Molloy Associates dated January 2019 prior to the change of use being first brought into use and shall thereafter be retained.