
Appeal Decision

Site visit made on 11 September 2019

by S D Castle BSC(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2020

Appeal Ref: APP/H4315/W/19/3228033

120-122 Thatto Heath Road, Thatto Heath, St Helens, Merseyside WA9 5PE

- 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 Brothers Burgers St Helens Ltd against the decision of St Helens Metropolitan Borough Council.
 - The application Ref P/2019/0156/FUL, dated 26 February 2019, was refused by notice dated 24 April 2019.
 - The development proposed is change of use from A3 restaurant to mixed use A3 restaurant with A5 takeaway use.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from A3 restaurant to mixed use A3 restaurant with A5 takeaway use at 120-122 Thatto Heath Road, Thatto Heath, St Helens, Merseyside WA9 5PE in accordance with the terms of the application, Ref P/2019/0156/FUL, dated 26 February 2019, subject to the following conditions in the attached Schedule.

Preliminary Matters

2. The change of use proposed has already occurred and therefore I am considering the proposal retrospectively.

Main Issues

3. The main issues are the effect of the proposal on:
 - the vitality, viability and attractiveness of the local shopping centre;
 - the health and wellbeing of local residents, with particular regard to the health of young people.

Reasons

Vitality, viability and attractiveness

4. The site is located on the western side of Thatto Heath Road, at the northern end of a parade of ground floor commercial premises. The parade frontages are well occupied, including a wide range of different shops and takeaways. Thatto Heath train station is located to the north of the site and on-street public parking is located to the front of the commercial parade.

5. The site is located within the Thatto Heath local shopping centre as allocated under Saved Policy RET 1 of the St Helens Unitary Development Plan (2007) (the UDP). Thatto Heath is identified as a district centre by Policy CSS 1 of the St Helens Local Plan Core Strategy (2012) (the Core Strategy).
6. The Council's Supplementary Planning Document Hot Food Takeaways (2011) (the SPD) advises that when a hot food takeaway is to be located within a district or local centre it should not result in (amongst other things): more than 5% of the units within the centre or frontage being hot food takeaways; the proportion of A1 uses in a primary retail frontage falling below 75%. On my site visit I noted that the parade and wider local centre included numerous A5 uses, significantly in excess of 5% of the total number of units. The proposal would, however, comply with the SPD in so far as it would not result in more than two A5 use units being located adjacent to each other. Furthermore it would not result in less than two non-A5 use units between individual or groups of hot food takeaways.
7. The site was granted permission for change of use from retail (A1 Use Class) to a restaurant (A3 Use Class) in 2017¹. As such, the Council has previously accepted the loss of the retail use of the site. The current appearance of the site is one of an attractive active frontage with many customer tables and benches within the premises. At the time of my site visit², a number of the tables were occupied with customers dining on the premises. Whilst there is no guarantee that all future operators of the site would maintain the current layout or daytime opening hours, the retention of a significant element of restaurant use would encourage attractive premises to be provided in order to attract customers to eat on-site. Such on-site dining generally results in a more active frontage and increased natural surveillance of the street than would be the case for a solely takeaway use.
8. I acknowledge that change to the vitality, viability and attractiveness of a local shopping centre can result incrementally from small-scale decisions consistently taken over time. However, the development would not result in the loss of a retail A1 use and would retain a significant element of restaurant use. This is a retrospective application and I have no substantive evidence before me to indicate that vacancy rates or anti-social behaviour have been detrimentally affected by the takeaway element use of the site. There are no objections before me from interested parties, including from other occupiers of nearby commercial or residential properties. Indeed, on my site visit, the parade appeared busy, well occupied and with significant passing trade. Furthermore, I am mindful that many restaurants offer takeaway services ancillary to the main restaurant use. I have no evidence before me to suggest that such sales are restricted by the current A3 use permission for the site. The proposal would not significantly alter the mixed character of the local shopping centre and there would be no significant change to the range of services available to the local community.
9. As such, whilst the proposal would represent a breach of the 5% threshold identified within the SPD, I conclude that the proposal would not detract from the vitality, viability and general attractiveness of the local shopping centre. The Council's first refusal reason does not identify any conflict with specific policies of the statutory development plan and I have no substantive reason to

¹ P/2017/0073/FUL

² 1630hrs to 1830hrs

disagree in relation to this first main issue. Furthermore, with regards to this first main issue, I find the proposal complies with the National Planning Policy Framework (the Framework), including paragraph 80, which requires decisions to place significant weight on the need to support economic growth.

Health and wellbeing

10. Implementation Point 1 of the SPD advises that permission for a hot food takeaway will only be granted provided it is located beyond a 400 m exclusion zone around any primary or secondary school. The reasoned justification advises that takeaways within walking distance of schools are a contributing factor to the rising levels of obesity in the Borough.
11. The 400 m exclusion zone is also a requirement of Policy LPD10 of the emerging St Helens Borough Local Plan Submission Draft (January 2019) (ELP). I understand that the ELP has not yet been found sound. I have not been provided with any details regarding whether, and to what extent, there are unresolved objections to this policy. I note that the Council attaches only limited weight to Policy LPD10. I have no reason to take a different view.
12. Appendix 1 of the SPD shows that the appeal site is within such an exclusion zone due to its proximity to Nutgrove Methodist Aided Primary School, Thatto Heath Primary School and St Austin's Catholic Primary School. In terms of actual walking distance, the boundary of the nearest of these schools, St Austin's Catholic Primary School, is approximately 255m from the site. The site cannot, however, be viewed from any of the schools or from areas where parents would pick up and drop off their children at the schools. It seems unlikely that primary age pupils would be allowed to travel off the school premises to the site during school hours in order to purchase food.
13. I acknowledge that healthy eating and lifestyle policies contained within the SPD and the Framework are important for public health and are material considerations. However, as previously noted, I have no evidence before me to suggest that the current A3 use permission restricts takeaway sales ancillary to the main use. Furthermore, there are many existing takeaways located between the nearest schools and the site. I am not persuaded, therefore, that healthy eating by school pupils, or indeed anyone resident in the locality, is likely to be affected to such a degree in this instance that the appeal should fail in this regard. The Council's second refusal reason does not identify any conflict with specific policies of the statutory development plan and I have no substantive reason to disagree in relation to this second main issue.

Other Matters

14. Saved Policy RET 4 of the UDP sets out a range of criteria in relation to the development of hot food shops, restaurants and cafes. Subject to a condition securing extraction details, the Council does not identify conflict with this policy in its submissions and I have no reason to disagree.

Conditions

15. I have considered the Council's suggested conditions in accordance with the Planning Practice Guidance. Given the change of use has already occurred, it is not necessary to include the standard implementation condition. It is necessary to define the plans in the interest of clarity. In the interest of the living conditions of the occupiers of nearby dwellings, conditions have been imposed

in respect of opening hours taking account of other nearby uses (including the train station), and to secure the construction of appropriate extraction equipment.

Conclusion

16. The development is in accordance with the development plan when taken as a whole. There are no material considerations, taken individually or cumulatively, that indicate that the appeal should not succeed.
17. For the above reasons, I allow the appeal subject to the conditions in the attached Schedule.

S D Castle

INSPECTOR

Schedule of conditions attached to Appeal Decision:

APP/H4315/W/19/3228033

120-122 Thatto Heath Road, Thatto Heath, St Helens, Merseyside WA9 5PE

1. The development hereby permitted shall be carried out in accordance with the following details and plans: Location Plan – Plan 1; Proposed Front Elevation – Plan 2; Proposed Side & Rear Elevations – Plan No.3; Proposed Layout – Plan No.4.
2. Within 6 months of the date of this decision, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the approved use continues.
3. The premises shall not be open for customers outside of the hours of 0700h to 2330h each day.