



Appeal Decision

Site visit made on 19 November 2019

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2020

Appeal Ref: APP/K0425/W/19/3225142

Next, Crest Road, High Wycombe HP11 1UA

- 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 Next Plc against the decision of Buckinghamshire Council – Wycombe Area.
 - The application Ref 18/07699/FUL, dated 24 September 2018, was approved on 20 November 2018 and planning permission was granted subject to conditions.
 - The development permitted is alterations to external appearance and enclosing of existing area and rear extension to HVAC plant area.
 - The conditions in dispute are Nos 3, 6 and 7 which state that:
[3] Notwithstanding the provision of Class A1 of the Town and Country Planning (Use Classes) Order 2005 (or any Order revoking or re-enacting that Order), the premises shall only sell/display:
 - a) clothing, shoes and fashion on no more than 1,767 sq. m of the floorspace*
 - b) home and garden furniture, lighting, electrical goods, DIY products, furnishings, flooring, garden products and kitchen items on no more than 2,746 sq. m of floorspace.**As such the retail trading floorspace of the building shall be 4,635 sq. m. For the avoidance of doubt, the premises shall not be used for the sale of food and drink to be consumed off the premises.*
[6] No additional retail floorspace, including mezzanine floors shall be created within the retail unit.
[7] The sales area shall remain as one single retail unit and shall not be subdivided and shall remain connected with the main retail sales area by internal doors.
 - The reasons given for the conditions are:
[3] To protect the vitality and viability of High Wycombe town centre as a shopping centre and to ensure that adequate parking provision is available.
[6] To protect the vitality and viability of High Wycombe town centre and to ensure that adequate parking provision is available
[7] To protect the vitality and viability of High Wycombe town centre as a shopping centre; ensure that the sequential test is satisfied and to ensure that adequate parking provision is available.
-

Decision

1. The appeal is allowed and the planning permission Ref 18/07699/FUL for alterations to external appearance and enclosing of existing area and rear extension to HVAC plant area granted on 20 November 2018 by Buckinghamshire Council – Wycombe Area, is varied by deleting conditions 3, 6 and 7.

Main Issue

2. The main issue is whether or not the conditions are reasonable and necessary in the interest of protecting the viability and vitality of the High Wycombe town centre and adequate parking provision.

Reasons

3. The appeal site comprises an existing Next store, set within a large, stand-alone building with associated car parking and delivery and storage areas. Within the store is the main Next clothes and home sales, as well as an outdoor area with some garden furniture, a coffee shop and travel agency. The site forms part of a wider retail park which includes a supermarket, John Lewis, a cinema, and restaurants amongst other things.
4. Paragraph 55 of the National Planning Policy Framework (2019) (the Framework) and the Planning Practice Guidance (PPG) advise that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have considered the disputed conditions against these six tests.

Condition 3

5. Condition 3 seeks to restrict the types of goods sold and the floorspace for such sales. A very similar condition was originally included on the planning permission 14/067491/VCDN, and then amended on the subsequent planning permission to which this appeal relates. The amendment involved the insertion of the word 'only' to further restrict the goods sold within the store. However, since the appeal was submitted, the Council have considered the revised wording of condition 3 and have advised that they will no longer be contesting the inclusion of the word 'only'. They have therefore suggested that the condition reverts back to its original form.
6. The Next store currently operates under the extant permission 14/06791/VCDN which is subject to the condition excluding the word 'only'. The permission that is the subject of this appeal relates to the alterations to the external appearance of the building, the enclosure of an existing area of the store and an extension to the rear. As such, the retail floorspace is not proposed to be increased.
7. Consequently, following the Council's further consideration of the wording of this condition and their suggestion to revert back to the original wording, I find that despite the removal of the word 'only' the imposition of this condition is not proportionate or fair and reasonably related to the level of development proposed which does not increase the trading floorspace and proposes only alterations to the existing store. I therefore consider that this condition should be deleted. Accordingly, the development would comply with Policies CP6 and DM33 of the Wycombe District Local Plan (2019) (Local Plan) and CS3, CS10, DM7, DM8 and DM10 of the Delivery and Site Allocations Plan (2013) (DSA) which seek to secure vibrant and high-quality town centres, avoid adverse impacts on the vitality and viability of the town centre and achieve safe, direct and convenient access and sufficient parking, amongst other things.

Condition 6

8. Condition 6 relates to the restriction of additional retail floorspace including the addition of any mezzanine floors.
9. Whilst the condition seeks to restrict any additional floor space being created in order to ensure that the viability and vitality of the town centre is not harmed, I have had regard to the level of retail floorspace created by the original permission and the existing building. The Council have indicated that they consider that a mezzanine floor could substantially increase the amount of floorspace. In addition, I have considered the Council's appendices however I have not been presented with sufficient evidence that would lead me to conclude that the potential for the introduction of additional floorspace within the store would give rise to an unduly harmful impact on the town centre over and above the existing store and wider retail park.
10. I note that the condition imposed on the decision makes no reference to the relevant Part of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) and that as such the Appellant disputes its preciseness. The PPG indicates that conditions that restrict the future use of permitted development rights need to be precisely defined, by reference to the relevant provisions in the GPDO, so that it is clear exactly which rights have been limited or withdrawn.
11. In this instance, Part 7 Class A is reasonably limited in its scope, allowing for the extension or alteration of a shop or financial or professional services establishment subject to certain criteria and conditions. Accordingly, I find that the intention of the condition is reasonably clear, nevertheless in the interests of clarity and preciseness it would have been advisable to make reference to the specific provisions of the GPDO. However, as I have found this condition to not meet the test of reasonableness or necessity for the above reason it is not necessary for me to further consider the preciseness of the condition in this instance.
12. I find that, should the condition be deleted, the development would still comply with Policies CP6 and DM33 of the Local Plan and CS3, CS10, DM7, DM8 and DM10 of the DSA. Accordingly, for the above reasons I conclude that condition 6 should be deleted.

Condition 7

13. Condition 7 seeks to ensure that the store remains as one unit and is not subdivided into more than one shop. The reason given for the condition is to protect the vitality and viability of the town centre, to satisfy the sequential test and to ensure that adequate parking provision is available.
14. I note that the Appellant advises that there are no similar restrictions on the use of the existing store at present, and I have had regard to the Appellant's statement that there would be no additional floorspace created above the permitted levels. Accordingly, I do not consider that this condition is necessary given that no such condition had previously been imposed. I have been provided with insufficient evidence that in the event that the existing store is subdivided it would result in an unacceptable impact on the vitality and viability of the town centre. Similarly, as the level of retail floorspace would remain, albeit for a separate store, I am not persuaded that this would then result in

the need for additional car parking spaces or have significant implications in terms of the sequential test.

15. I consider that the development would accord with Policies CP6 and DM33 of the Local Plan and CS3, CS10, DM7, DM8 and DM10 of the DSA. Consequently, I find that the justification and reasoning given for this condition by the Council does not demonstrate that it is necessary or reasonable and thereby it fails to meet the six tests. I therefore consider that this condition should also be deleted.

Conclusion

16. For the above reasons, and having carefully considered all matters raised and taking into account the existing level of retail activity on the site and its surroundings, I conclude that the appeal is allowed and planning permission should be varied as set out in the formal decision.

R Norman

INSPECTOR