



Appeal Decision

Site visit made on 14 May 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2020

Appeal Ref: APP/D5120/C/19/3242647

62 Bellegrove Road, Welling, Kent DA16 3PY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Miss Nguyen against an enforcement notice issued by the Council of the London Borough of Bexley.
 - The enforcement notice was issued on 4 November 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the ground floor of the premises shown in the approximate location outlined in red on the attached plan to a nail bar.
 - The requirements of the notice are: Cease the use of the ground floor of the premises shown in the approximate location outlined in red on the attached plan as a nail bar.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by the deletion of 2 months as the period for compliance and its substitution with 6 months. Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

The ground (a) appeal

2. The appeal site is in the non-core frontage of Welling Town Centre, defined in the Unitary Development Plan (2004) (the UDP) and so the main issue in the ground (a) appeal is the effect of the change of use on the viability and vitality of Welling Town Centre.
3. Evidence indicates the ground floor of the appeal site was a Class A1 shop, up until its current use as a nail bar began. A nail bar is not a Class A1 shop. Policy SHO5 of the UDP resists changes of use of shops (Use Class A1) at ground floor level in the defined non-core shopping frontages. Six criteria are specified in the policy, all of which it states are expected to be satisfied.
4. The third criterion of Policy SHO5 is that (a) the use is not located next to three or more average units in non-retail use or with planning permission for a non-retail use; and (b) together with any adjacent existing or permitted non-retail uses, the use should not create a continuous length of frontage in non-retail uses exceeding three average widths.

5. In this case, as I saw on my site visit, to the left of the nail bar is a tattoo/piercing studio. To the right of the nail bar is a tanning salon and then further to the right a hot food takeaway. The appeal development therefore creates a run of four consecutive non-retail uses. Consequently, it does not comply with (a) or (b) noted above and the third criterion of Policy SH05 is therefore not satisfied.
6. As the wording of Policy SH05 is clear that all of its criteria are expected to be satisfied, the appeal development does not comply with Policy SH05 notwithstanding its performance in respect of any other of the five criteria in the policy.
7. The appellant considers the use complements and contributes to the diversity of services provided in the centre and does not result in an overconcentration of such facilities. But nail bar services are already available 4 doors away at No 70, and, as I saw on my site visit, at several other properties close by, including Nos 6A, 32, 46, 73, 103 and 115 Bellegrove Road. On this basis, the provision of another unit providing nail bar services does not complement or contribute to the diversity of services provided in the centre.
8. My attention has been drawn to a survey undertaken by the appellant's agent on 30 November 2019. It is said this survey found the proportion of A1 uses in the area is more than 60% and the proportion of non-retail uses is under 40%. But no copy of this survey has been provided and so there is no evidence which supports the appellant's view that the use does not increase the proportion of average units in non-retail use in the centre as a whole to more than 45%, which would accord with another criterion of Policy SH05.
9. Moreover, the findings of the above survey do not accord with the Council's most recent survey of Autumn 2019 where it was found 53.7% of average shop widths are of non-retail use in the centre as a whole. In the absence of details setting out precisely how the figures referred to from the November 2019 survey were achieved I am not satisfied that survey is a basis for granting planning permission for the appeal development.
10. The appellant states the use supports economic growth and productivity, assists in regeneration and provides the opportunity for meetings between members of the community. But there is no evidence the appeal development achieves these objectives to a greater extent than the authorised use of the premises would.
11. The appellant also states the use does not have an adverse effect on the area's character and environment, or the amenity of occupiers, or parking, traffic conditions or safety. But these are neutral points and so I give them limited weight in this decision.
12. The use has a shop style fascia with a ground floor window display and so presents an active frontage to the street and generates pedestrian movement. But the same would apply for the authorised use and so this is not a specific benefit of the appeal development.
13. My attention has been drawn to Policy SD6 of 'the London Plan 2018'. However, no evidence has been provided that this wording of this policy has achieved development plan status or that it will be published in the form I have been referred to so I give it limited weight in this decision.

14. Considering all of the above points I conclude the change of use harms the viability and vitality of Welling Town Centre and does not comply with Policy SHO5 of the UDP noted above. Accordingly, the appeal on ground (a) fails.

The ground (f) appeal

15. Under section 173(4) of the above Act, when serving an enforcement notice the Council may seek to (a) remedy the breach of planning control, or (b) remedy any injury to amenity which has been caused by the breach. It is self-evident from section 5 of the enforcement notice that its purpose is to resolve the breach of planning control.
16. The appellant states the Council could have negotiated with the appellant. But there is no evidence this would achieve the purpose of the notice and no lesser steps have been suggested which would achieve the purpose of the notice. As such, the appeal on ground (f) fails.

The ground (g) appeal

17. The appellant states that at least 9 months would be required to source a reputable builder to undertake physical alterations. But no physical alterations are required by the notice so I do not accept this as a reason to allow more time.
18. The appellant suggests 9-12 months should be allowed to enable the appellant to search for another shop without the interruption of the business. Whilst there is no evidence to support this length of time, since the appeal was lodged a public health emergency relating to COVID-19 has begun. I am therefore extending the compliance period to 6 months and I consider this is reasonable in the circumstances to comply with the single requirement of the notice. As such the appeal on ground (g) succeeds to this extent.

Conclusion

19. For the reasons given above I conclude that the appeal does not succeed. I uphold the enforcement notice as varied and refuse to grant planning permission on the deemed application.

L Perkins

INSPECTOR