



Appeal Decision

Site visit made on 14 May 2020

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th June 2020

Appeal Ref: APP/N1540/W/19/3241893

1a Cawley Hatch, Harlow CM19 5AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Part 3, Schedule 2, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Maciej Banasiewicz against the decision of Harlow District Council.
 - The application Ref HW/PRAP/19/00115, dated 11 March 2019, was refused by notice dated 4 June 2019.
 - The development proposed is "to expand my business by serving cooked meals"
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development has been taken from the application form; I have omitted accompanying text which provides supporting reasoning for the application. I note that the Council's description on the decision notice referred to the use as temporary. However, the application was made under Part 3 and therefore I have determined the appeal in accordance with the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

Background and Main Issues

3. Schedule 2, Part 3, Class C of the GPDO permits, amongst other things, development consisting of a change of use of a building from a use falling within Class A1 (shops) of the Schedule to the Use Classes Order to a use falling within Class A3 (restaurants and cafés). This is a qualified right in that exceptions apply whereby development is not permitted by Class C if the cumulative floorspace of the existing building changing use under Class C exceeds 150 square metres. Other conditions also apply however these are only applicable if the development is able to comply with the floorspace requirements.
4. There is no dispute that the appeal site currently constitutes a Class A1 use and the proposed change of use does not exceed the floorspace. As such it is not disputed that the appeal proposal constitutes permitted development.

5. Under the provisions of the GPDO, development is permitted under Part 3, Schedule 2, Class C subject to Condition C.2 (1) that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to a range of potential impacts. In this case, it relates to (b) odour impacts of the development, (c) impacts of storage and handling of waste in relation to the development and (f) whether it is undesirable for the building to change to a use falling within Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order because of the impact of the change of use – (i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or (ii) where the building is located in a key shopping area, on the sustainability of that shopping area.
6. Having regard to the GPDO and the reason for refusal for the Prior Approval the main issues are:
 - Whether it is undesirable for the building to change the use to Class A3 (cafes and restaurants); and
 - Whether proposed measures for odour, storage and handling of waste would be acceptable.

Reasons

Effect of the change of use

7. Cawley Hatch originally comprised 5 units, but 2 units have subsequently been combined to provide a single unit, leaving 4 units in total. There is no dispute between the parties with regard to the existing use of the appeal site, which is referred to as Class A1 and from the evidence before me and observations at the time of my site visit I see no reason to disagree.
8. Hatches are small parades of shops which are identified to fall below neighbourhood centres in the hierarchy of shopping facilities and the site is located within a designated employment area. Therefore, I am of the opinion that it does not constitute a key shopping area as set out within paragraph C.2(f)(ii).
9. However, paragraph C.2(f)(i) indicates that consideration can also be given as to whether there is an adequate provision of services of the sort that may be provided by a building falling within Class A1, where there is a reasonable prospect of the building being used to provide such services.
10. Development plan policies may be relevant in prior approval cases, but only insofar as they relate to the matters to be considered. If and where the plan contains material that is relevant to the planning judgement to be made, it may be taken into account as a form of evidence for that prior approval matter. In this instance the development plan policies are a relevant material consideration as to whether there is an adequate provision of Class A1 services.

11. Policy RTCS15 of the Adopted Replacement Harlow Local Plan 2006 (ARLP) states that within the neighbourhood centres and hatches, Class A1, A2, D1 and D2 uses will normally be permitted. However, in hatches with 4 or less original units a minimum of 2 units in Class A1 use must be maintained. The supporting text to the policy sets out that the existing provision of Class A3 uses in hatches is adequate, and no further provision is required. Policy RTCS17 requires that proposals must not result in the loss of key facilities that contribute to the range of offer provided.
12. The appeal site and the shop next door remain in Class A1 use with the other two units being within Class A3, operating as restaurants. The proposal would result in the loss of an A1 unit within Cawley Hatch, and the overall provision of A1 would be reduced to 25% of the overall hatch.
13. Policies RTCS15 and 17 are a clear indication of the level of A1 uses necessary to provide adequate provision of services and I have had regard to this policy in concluding that the loss of the A1 use would be detrimental to the range of offer provided. The appellant has not demonstrated that the property is no longer viable for A1 purposes. At the time of my visit the unit was occupied, advertising freshly baked sandwiches, coffee, cakes, soups and salads. Due to its continuing A1 use, I am not persuaded that the unit has no reasonable prospect of being used to provide such services should the change of use not occur. I appreciate that the sale of hot chicken, alongside the sale of cold food, would not constitute a major difference to the existing operation but there is no mechanism before me to prevent the unit being used by another operator who would not be obliged to sell cold food should I allow the appeal.
14. In view of the above the proposed change of use would have a harmful effect on the provision of A1 services. As such it would be undesirable for the building to change use to Class A3 (cafes and restaurants). It therefore conflicts with paragraph C2 (f)(i) of the GPDO. Furthermore, it would be in conflict with Policies RTCS14; RTCS15 and RTCS17 of the ALRP which collectively seeks, amongst other things, to strengthen, maintain and retain key facilities and an adequate number of shops in the neighbourhood centres and hatches.

Odour & the storage and handling of waste

15. With regard to the storage and handling of waste in relation to the development, I consider that having regard to the limited size and capacity of the unit, and the existing use, the existing provision for waste handling is likely to be sufficient for the proposed use.
16. The development would introduce the cooking of chicken within the existing unit and the appellant has not submitted any details of the extraction equipment, which either currently exists as part of the site's use or would be required as part of the proposed development. These are prior approval matters and it is generally expected that details would be submitted with the application. However, I have no evidence before me that the current extraction system is not suitable or could not be upgraded to mitigate any additional odour generated by the proposal.

17. Part W(13) of the GPDO notes that prior approval may be granted subject to conditions reasonably related to the subject matter. I am content that these matters could be adequately controlled by the conditions suggested by the Council within their appeal statement relating to extraction details and a waste management strategy. I also note that the Council's Environmental Health Officer had no objections to the proposal, and this adds to my consideration that these matters could be satisfactorily controlled by condition.
18. Therefore, neither of the matters set out at Paragraph C.2(1)(b) or (c) in the context of this appeal indicate that prior approval should be withheld.

Conclusion

19. For the reasons given above, notwithstanding that the odour and the storage and handling of waste could be addressed through a condition, the appeal is dismissed in the context of Paragraph C.2(f)(i).

G. Pannell

INSPECTOR