



Appeal Decision

Site visit made on 3 August 2020

by James Taylor BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th August 2020

Appeal Ref: APP/D1780/W/20/3250381
144 Butts Road, Southampton SO19 1BJ

- 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 A Ozdemir against the decision of Southampton City Council.
 - The application Ref 20/00010/FUL, dated 20 December 2019, was refused by notice dated 12 March 2020.
 - The development proposed is described as the 'proposed change of use from retail (Class A1) to hot food takeaway (Class A5) with installation of rear extraction flue'.
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Decision

1. The appeal is allowed and planning permission is granted for the 'proposed change of use from retail (Class A1) to hot food takeaway (Class A5) with installation of rear extraction flue' at 144 Butts Road, Southampton SO19 1BJ in accordance with the terms of the application, Ref 20/00010/FUL, dated 20 December 2019, subject to the following 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: Location plan, Site Plan/Block Plan, DWG NO:001, DWG NO:002, DWG NO:003, DWG NO:004A and Extraction and canopy.
 - 3) The use hereby permitted shall not be open to the public outside of the following hours:
1700 - 2200 Mondays - Sundays.
 - 4) The development shall be implemented and operate in accordance with the details outlined in the 'Ventilation System Proposal Including Noise and Odour Control' (reference 1174) by Wheeler Design, 'Internal Noise Assessment' (reference SA-6383) by Sound Advice Acoustics Ltd, and 'Additional Details' documents. The details outlined in these documents shall be installed prior to first use and thereafter retained in working order for the lifetime of the development.
 - 5) Prior to the first use of the development the storage for refuse and recycling shall be provided in accordance with the hereby approved plans and thereafter shall be maintained for the lifetime of the development.

Procedural matters

2. I have taken the development description from the appellant's appeal form as this most accurately describes the nature of the proposed development.
3. Third-party concern has been expressed that the on-going Coronavirus restrictions have prevented the community from meeting to discuss the appeal. However, I am mindful that other means of communication have been commonly adopted through the pandemic, such as virtual meetings. Moreover, no individual has been prevented from making their representations. As such, I have proceeded to determine the appeal based on the evidence before me.
4. Finally, I am mindful of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 as a material consideration. However, this does not come into force until 1 September 2020. Moreover, the proposal would still need planning permission under the new provisions.

Main Issues

5. The main issues are the effect of the proposal on:
 - i) the living conditions of the occupiers of nearby residential properties having particular regard to noise and disturbance from associated movements; and
 - ii) highway safety having particular regard to the level and nature of associated traffic movements.

Reasons

Living conditions

6. Policy REI7 of the City of Southampton Local Plan Review – Adopted Version 2nd Revision (2015) (LP) sets out that, uses such as that proposed, will be permitted in specified locations subject to set criteria. However, the policy does not exclude hot-food takeaways outside of these locations. The appeal site is located within a parade of commercial premises on Butts Road, including another hot-food takeaway, a convenience store, and a bookmakers. These uses help to serve the day-to-day needs of the local housing and form a part of the area's character and appearance.
7. Furthermore, the premises, whilst currently vacant, have a lawful A1 use. This fall-back would result in comings and goings associated with customers and service deliveries, with a consequent degree of noise and disturbance to local residents. The existing commercial activity is varied. In this context, a further takeaway within the parade is unlikely to intensify comings and goings to such a degree as to cause unacceptable or undue effects on local resident's living conditions, including during the evenings.
8. Whilst the appeal site is the last unit within the parade, it is separated to the side and rear by a private access. To a degree, this further mitigates any potential disturbance to the nearest residential properties.
9. Therefore, in conclusion on this main issue the proposal would not harm the living conditions of the occupiers of nearby residential properties having particular regard to noise and disturbance from associated movements. As such, the proposal would not conflict with Policies SDP1, SDP16 and REI7 of the LP. These policies and guidance seek amongst other aims to avoid

unacceptable effects on the living conditions of the city's citizens, including through protection from undue noise and disturbance.

Highway safety

10. Anecdotal evidence from local residents indicates existing highway safety issues and parking problems from the commercial activity at the parade. This includes two significant traffic accidents within 200 metres of the site. However, I have not been provided with accident data and can therefore afford this limited weight. I have observed that Butts Road is a local thoroughfare with bus services and within convenient walking distance of potential customers. However, a proportion would still be likely to drive to the site and generate a context of traffic movements that result in demand for parking. However, I also consider that the extent of movements and parking would be naturally limited by the modest scale of the unit.
11. Parking restrictions are in place for much of the day nearby to the appeal site. Whilst the appellant does not propose on-site parking, restricted parking during the day exists in a parking bay immediately outside the site. This has been provided to help meet the needs of the commercial activity at the parade on Butts Road. Additionally, unrestricted parking is available in nearby residential streets. Moreover, I consider that demand for a hot-food takeaway use is likely to be greater in the evenings, coinciding broadly with parking restrictions being relaxed. This context justifies a below standard parking provision.
12. Furthermore, whilst the unit has been vacant for a period of time, with no traffic movements or parking, an operating A1 use would result in movements and parking from customers and service vehicles. This fall-back position is material. The highway authority states that the change of use would likely generate less trips than the existing lawful use. I place significant weight on their expert opinion.
13. Therefore, in conclusion on this main issue the proposal would not harm highway safety having particular regard to the level and nature of associated traffic movements. As such, the proposal would not conflict with Policy SDP1 of the LP or Policy CS19 of the Local Development Framework - Core Strategy Development Plan Document, Adopted Version 20 January 2010 as supported by the Council's Car Parking Standards Supplementary Planning Document 2011. These policies and guidance seek amongst other aims to avoid unacceptable effects on the safety of the city's citizens and to control parking.

Other matters

14. I have had careful regard to the concerns of third parties, including potential litter, vermin, odours and anti-social behaviour. However, these matters do not form part of the Council's reasons for refusal and I have no evidence to reach a contrary conclusion.
15. Finally, I also note the support for the proposal, including that a use may bring further trade to the parade and support other business. I find that the occupation of a vacant unit weighs positively in any planning balance.

Conclusion and conditions

16. Within the Council's original committee report a number of conditions were suggested. The appellant has reviewed these and provided comment on them.

17. I have imposed the standard implementation and approved plans conditions in order to define the terms of the permission. Furthermore, I have imposed the suggested conditions in relation to opening hours, ventilation equipment and refuse storage. These are necessary in order to protect the living conditions of nearby residents and the character and appearance of the area. Within their final comments, I note that the appellant has agreed to the opening hours stated within the Council's suggested condition. Furthermore, this is consistent with the closing hours of the adjacent hot-food takeaway. Finally, I have not imposed a condition to require a litter bin finding it unnecessary. The use indicates that food shall be consumed off the premises and I have noted a number of bins within the vicinity already.
18. For the reasons given above I conclude that the appeal should be allowed.

James Taylor

INSPECTOR