



Appeal Decision

Site visit made on 7 September 2020

by R Walker BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2020

Appeal Ref: APP/A2335/W/20/3254192

10 Thornton Road, Morecambe LA4 5PB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Linda McGuire against the decision of Lancaster City Council.
 - The application Ref 20/00230/VCN, dated 28 February 2020, was refused by notice dated 18 May 2020.
 - The application sought planning permission for the change of use of ground floor from property management and sales (A2) to mixed use sandwich shop and café (A1, A3) without complying with a condition attached to planning permission Ref 19/00209/FUL, dated 29 April 2019.
 - The condition in dispute is No 4 which states that: *Notwithstanding the provisions of the Town & Country Planning Use Classes Order 1987 (as amended) (or any other order revoking or re-enacting that Order), the use of the building(s) shall be limited to a mixed A1 and A3 Use Class only and shall not be used for any other purpose without the express planning consent of the local planning authority. In particular, there shall be no hot food sold and taken away from the premises.*
 - The reason given for the condition is: *To ensure that inappropriate uses do not occur within the locality and in the interests of health and obesity in the local community having particular regard to the proximity of the site to Morecambe High School.*
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of ground floor from property management and sales (A2) to mixed use sandwich shop and café (A1, A3) at 10 Thornton Road, Morecambe LA4 5PB in accordance with application Ref 20/00230/VCN, without compliance with condition numbers 3, 4 and 5 previously imposed on planning permission Ref 19/00209/FUL dated 29 April 2019, but subject to the following conditions:
 - 1) The development hereby permitted shall be begun before the expiration of 3 years from 29 April 2019.
 - 2) The development hereby permitted shall be carried out in accordance with the submitted approved plans.

Preliminary Matters

2. The new Lancaster District Local Plan (LP) was adopted by the Council in July 2020. As the main parties have had the opportunity to comment on any implications of this as part of the appeal process no party has been prejudiced by its adoption and I have therefore determined the appeal having regard to the relevant policies within the adopted LP.

3. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (Regulations) came into force, amending the Town and Country Planning (Use Classes) Order 1987 (Use Classes Order). The main parties have had the opportunity to comment on the implications of this for the appeal.

Background

4. At the time of my site visit the mixed-use sandwich shop and café had not commenced operation. However, I'm told that internal works have begun at the appeal property. The appellant wishes to have the ability to enable some hot food to be taken away from the premises which is currently prevented by condition 4. An alternative condition is put forward which would limit the sale of specific food items on the premises.

Main Issue

5. The main issue is whether the condition is reasonable and necessary in the interests of the health of the local community.

Reasons

6. The previous uses of the appeal building indicated by the parties are all, along with the approved mixed-use sandwich shop and café, encompassed within a new broad 'Commercial, business and service' use class (Class E) within the amended Use Classes Order.
7. A change of use within Class E does not involve development and therefore does not require planning permission. Moreover, this would allow for the sale of hot food as an ancillary element to any such use falling within this class. This is a material consideration and given the flexibility introduced through the amended Use Classes Order, it is not necessary or reasonable to restrict the operations of the appeal building beyond something that would not now be considered development.
8. The proposal does not seek a new HFT and any change to such a use would still require planning consent under the amended Use Classes Order. As such, the level of access to hot food to take away at the appeal building would still be managed, to a degree, as it would be an ancillary element of the business.
9. Therefore, even considering the evidence of obesity levels, given the circumstances in this case it would not be reasonable to impose the requirements of Policy DM57 of the LP regarding the distance of the appeal site to the school.
10. The proposal would comply with the requirements of Policy DM29 of the LP, which amongst other things, seeks to create buildings that are adaptable to changing social and economic conditions. Moreover, there would not be conflict with the National Planning Policy Framework when read as a whole, which amongst other things, supports planning decisions which help create the conditions in which businesses can invest, expand and adapt.
11. As such, although there would be some conflict with the LP and the condition was agreed with the appellant during the application prior to the amended Use Classes Order coming into force, I conclude that it is not reasonable or necessary in this instance.

12. Both parties have suggested alternatively worded conditions, were I minded to allow the appeal. There is no substantive evidence that any future adaption of the building within its use class would result in unacceptable effects on the living conditions of nearby residents. For the reasons outlined above, having regard to the amended Use Classes Order, it is not reasonable or necessary to limit the ability to adapt the business or premises within its use class. Nor is it reasonable or necessary to duplicate the restrictions of the amended Use Classes Order.

Conditions

13. Decision notices for the grant of planning permission under section 73 are also required to restate the conditions imposed on earlier permissions that continue to have effect. However, given my findings in relation to the Use Classes Order it would not be reasonable or necessary to restate conditions that restrict the operation of the use of the appeal building. In this respect I have removed conditions 3, 4 and 5 of the original consent retaining a modified commencement condition (1) and the plans condition (2) to provide certainty.

Conclusion

14. For the reasons set out above the appeal is allowed.

Robert Walker

INSPECTOR