



Appeal Decision

Site visit made on 5 November 2020

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2020

Appeal Ref: APP/M1595/W/20/3249241
17 Grover Walk, Corringham, SS17 7LP

- 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 Vakkas Gilgil against the decision of Thurrock Borough Council.
 - The application Ref 19/01834/FUL, dated 12 December 2019, was refused by notice dated 3 March 2020.
 - The development proposed is a change of use from A1 (retail) to A3 (café) use.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from A1 (retail) to A3 (café) use at 17 Grover Walk, Corringham, SS17 7LP in accordance with the terms of the application, Ref 19/01834/FUL, dated 12 December 2019, and the plans submitted with it, subject to the following condition:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

Main Issue

2. The main issue in this case is the retail vitality and function of the shopping area.

Reasons

3. The Council's position is that the proposed change of use from a retail (A1) use to a cafe (A3) use would result in two non-A1 uses next to each other and take the overall level of non-A1 shops to 50% of the total of shops in the designated Central Shopping Parade.
4. The most recent policy document is the Council's adopted Core Strategy and Policies for the Management of Development (Development Plan Document), as amended, 2015. This document includes Policies CSTP7 'Network of Centres' and CSTP8, the latter seeking to ensure the viability and vitality of the existing town centres. In addition, and most directly related to the issues in this appeal, is Policy SH10 – 'Non-Retail Uses in District and Local Shopping Centres' (saved from the 1997 Local Plan). It is part B of this policy that is relevant, since it deals with 'Central Areas' and stipulates that "*Changes of use to ... Class A3 (Food and Drink) ... will be permitted providing the following criteria are adhered to and normal development control standards are met: (i) The proposal does not result in more than two non-Class A1 (shops) uses together;*

(ii) No more than 30% of uses in each designated frontage are other than Class A1 (Shops)."

5. In determining that the appeal proposal is contrary to Policy SHG10, the Council refers to the designated parade of 1 - 25 Grover Walk (odds), in which there are 14 units. At present 8 of these units are used as an A1 use class (57%), and currently the parade retains a level of 43% of non-A1 uses. Should 17 Grover Walk be changed to an A3 use, it would result in 50% of units (7 of the 14 units) in the parade being in non-A1 use. The proposed change of use would also result in two non-A1 uses next to each other (No.17 and Greggs at No.19). Given this, the proposed change of use would breach part i) and ii) of the criteria for Central Shopping Parades in saved policy SH10 and thereby not comply with Policies CSTP7 and CSTP8.
6. For the appellant it is argued that the unit at No.19 is currently an A1 shop operating as Greggs pastry store, whilst the other side of the appeal site is a passageway followed by 2 A1 retail units. Greggs Plc operates its shops as A1 uses, in accordance with the business model of that company. Therefore, on both sides of the appeal property are A1 Units and the change of use will not result in there being two non-A1 units together. It is also stated that over a period of eighteen months two businesses that have occupied the premises have been unsuccessful, and unable to maintain rent payments. The owner has advised that she has been unable to find new tenants which is reflective of the difficulties of the current retail economy.
7. I am aware that a number of national operators with a primary retail offer, that includes an element of take-away food and drink, seek to occupy shop premises on the basis that they are Use Class A1 businesses. This often includes an element of indoor seating. In the case of Greggs at No.19, at my site visit I observed what appeared to be a bakery business that included hot and cold snacks that would be taken away to eat. In addition, I saw through the window that there was a table and chairs, although they were clearly out of use in the present Covid pandemic. No doubt in more normal times, this seating was available for very limited consumption on the premises. It appeared to me that Greggs use of this particular unit is primarily a shop use and not a A3 café use, any more than it would be regarded as a 'takeaway' Use Class A5.
8. Therefore, in terms of the policies to which I have referred, the appeal proposal would not breach the criterion of no two non-shop uses being occupied next to one another. Thus, the Part B criterion (i) of Policy SH10 does not stand against the proposal. However, it is accepted by the appellant that the proposed use would bring the total of non-shop uses in the frontage to more than 30% allowed under Criterion (ii) of Policy SH10. To that extent there is a Local Plan Policy objection to the appeal development.
9. However, I drew the attention of the parties to the recently enacted Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. These regulations came into force on 1 September 2020, although they stipulate that for any planning application submitted prior to 31 August 2020, that planning application must be determined by reference to those use classes which then applied. This obviously applies to this appeal. However, the provisions of the amending regulations of 2020 are material matters for me to consider.

10. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, among other things, create a new 'Commercial, business and service' use class (Class E), which incorporates the previous shops (A1), financial and professional services (A2) and restaurants and Cafés (A3) (and other uses that need not concern me here). This means that, irrespective of the outcome of this appeal, after 1 September 2020, the appeal premises, being in use as a shop, can change to a use as a café or restaurant, because both uses will be in Class E and that change will not be development requiring planning permission.
11. Thus, the situation that I am dealing with is that the appeal proposal is, to a degree, in breach of the Local Plan Policy SHG10, but the intended change of use of the appeal premises, if carried out at the time of writing this decision, or subsequently, would not require permission from the Council. In this situation I must place significant weight on the Local Plan policy, but I conclude that the material considerations arising from amending Regulations that I have referred to, and the factual implications for the intended use of the premises, outweigh the conflict with the development plan that I have identified, indicating that permission should be granted.
12. In responding to my reference to the parties of the amending regulations (see paragraph 9 above), the Council made particular reference to paragraph 4 of these regulations, indicating that to determine the appeal on the basis of these regulations would be contrary to that paragraph. To be clear; I am determining this appeal on the basis of the Use Classes Order on 31 August 2020. In that context the appeal unit is a shop Class A1 and a change of use to an A3 use requires permission. I have considered this proposed change against the development plan policy. I have found that the appeal proposal is contrary to 1 element of the policy, but I have also taken account of a material consideration that indicates that the decision should be made otherwise than in accordance with the development plan.

Conclusions

13. For the reasons that I have set out above, I allow the appeal and grant the planning permission sought.

Conditions

14. The Council has not suggested any conditions that should be imposed in the event of a grant of planning permission, and indeed I do not see the need for any, other than the statutory limit on the time for commencement of the development.

Terrence Kemmann-Lane

INSPECTOR