



Appeal Decision

Site Visit made on 29 October 2020

by R Morgan BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2020

Appeal Ref: APP/C3240/W/20/3255778
43 High Street, Telford TF4 2EX

- 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 Mohammed Tanvir against the decision of Telford and Wrekin Council.
 - The application Ref TWC/2019/0944, dated 25 November 2019, was refused by notice dated 21 January 2020.
 - The development proposed is change of use to A5 use with counter for takeaway, flue system at the rear.
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Decision

1. The appeal is allowed and planning permission is granted for change of use to A5 use with counter for takeaway and flue system at the rear, at 43 High Street, Telford, TF4 2EX in accordance with the terms of the application, Ref TWC/2019/0944, dated 25 November 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:
 - Drawing A102 (Location Plan)
 - Drawing A101 (existing plan)
 - Drawing A101 (proposed plan)
 3. Before the use hereby permitted takes place, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.
 4. The use hereby permitted shall only take place between the following hours:
 - 16:00 – 23:00 hours on Sunday to Friday (including bank holidays)
 - 16:00 – 00:00 hours on Saturdays

Preliminary Matters

2. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment)(England) Regulations 2020 came into force, and have made significant amendments to the previous system of use classes. Under the new system, Class A has been revoked and a new Class E has been created which incorporates a number of the previous use classes, including shops (Class A1); financial and professional services (Class A2) and restaurants and cafes (Class A3). Hot food takeaways (formerly Class A5) no longer fall within any use class.
3. As the application was submitted before the new regulations came into force, it must be determined in accordance with the previous Use Classes Order. I have therefore treated the shop unit as being in A1 use and the proposed takeaway as being an A5 use. However, in determining this appeal proposal, I have also had regard to the implications of the changes that have since taken place, including their effect on relevant development plan policy.
4. The Council and appellant were invited to comment on the effects of the changes for the appeal proposal, but chose not to do so.

Main Issue

5. The main issue is the effect of the proposed change of use on the vitality and viability of Dawley District Centre.

Reasons

6. The appeal site is a vacant shop unit with a residential unit above. The site is centrally located within the Primary Shopping Area of the Dawley District Centre, as defined through Policy EC6 of the Telford and Wrekin Local Plan 2018 (Local Plan).
7. High Street is a long, fairly narrow street lined on both sides by shops and other businesses. Traffic is restricted, providing an attractive environment for pedestrians. At the time of my site visit, I noted that there were a good range of town centre uses along the length of the street, including shops; hair and beauty salons; pubs and restaurants; health related uses and legal services. There were also a few existing takeaways, I counted five, including the appellant's existing premises on Burton Street. A number of vacant units were evident, including the appeal site. My general impression was that, despite the significant difficulties which face many town centres, this particular high street seemed to be relatively healthy.
8. Local Plan Policy EC6 aims to retain the predominately retail role of the borough's market towns and district centres. The policy sets out circumstances in which changes from shops (class A1) to other non-retail uses within Class A will be permitted within Primary Shopping Areas. These include, in criterion iii., instances where a proposal would not create a concentration of more than three adjacent similar non-retail uses.
9. In this case, the proposal would result in a continuous row of six non retail-uses. However, a number of these are residences, and the Council has confirmed that some have been in non-retail use for a considerable length of

time. As such, this particular stretch of the High Street has never met the requirements of the policy. Furthermore, there are no other hot food takeaways in the immediate vicinity, so although the proposal would extend the run of non-retail uses, it would not result in a concentration of more than three similar uses. The proposal would not, therefore, conflict with the requirements of Policy EC6 criterion iii.

10. The explanatory text to Policy EC6 highlights the potential harm to health, wellbeing and local amenity which can be caused by an over-proliferation of hot food takeaways. However, whilst there are already takeaway premises within Dawley District Centre, they are not excessive in number, and are well distributed amongst the other town centre uses. As such, I am satisfied that the proposal would not result in an over-proliferation within the centre.
11. It is unclear how long the appeal site has been vacant for, but it is not currently contributing to the vitality of the high street, and its re-use would not cause harm to the retail character of the centre. Although the proposed pizza place would not be open until 16:00 each day, it would attract customers onto the high street at a time when shops and other uses would still be open. The proposal would, therefore, complement the shopping function of the centre, albeit only during the late afternoon. The proposed use would have a shop front and signage, so would provide a more active frontage than is currently the case, including outside of opening hours. As such, the proposal would be consistent with the requirements of Policy EC6 parts i. and ii.
12. Although the proposed takeaway would be adjacent to existing residential uses, the Council has not raised any concerns about potential harm relating to the living conditions of neighbouring occupiers. Whilst I note the Council's comment that the proposed extraction system is of a type approved elsewhere in the borough, there are limited details of this provided within the application. In order to ensure that any potential impacts resulting from odour and noise can be fully addressed, I have imposed a condition requiring that details of the extraction system be submitted to, and approved by, the Council prior to the use commencing. Subject to this safeguard, I am satisfied that the proposal would not cause unacceptable harm to surrounding amenity, and would be consistent with Policy EC6 criterion iv.
13. The proposal would not conflict with Policy EC6, but the policy has been overtaken by the changes which have subsequently been made to the Use Classes Order, in particular the revocation of Class A and its partial replacement with Class E. The reason for these changes are described in the accompanying Explanatory Memorandum as being to better reflect the diversity of uses found on high streets, and to provide flexibility for businesses to adapt and diversify to meet changing demands. By creating a broader use class for town centre uses, the revised Order recognises the importance of a flexible approach, and the need for a wider range of uses to sustain the vitality and viability of high streets.
14. Concerns about potential harms associated with an over-proliferation of hot food takeaways, and recognition of the need for local control to be retained, is reflected in the exclusion of former A5 uses from the new Class E. However, hot food takeaways are a use that can be suitable in town centres, subject to adequate safeguards.

15. In this case, the proposal would enable the appellant to relocate his existing business from its current location on Burton Street, just outside of the main shopping area, to a larger premises with more space to prepare food and serve customers. It would enable an existing local business to grow, with positive benefits for the local economy and the town centre. It would not lead to an over-proliferation of takeaways or an unacceptable effect on local amenity. The proposal would be consistent with the requirements of paragraph 85 of the National Planning Policy Framework (the Framework), which is concerned with ensuring the vitality of town centres and the need for a positive approach to their growth, management and adaptation.
16. I conclude that the proposed change of use would not cause harm to the vitality and viability of Dawley District Centre. For the reasons set out above, it would be consistent with Local Plan Policy EC6 and Framework paragraph 85.

Conditions

17. In addition to a condition specifying plans, which is required in the interests of certainty, a condition limiting opening hours is necessary to safeguard the living conditions of neighbouring occupiers. A condition requiring details of the kitchen extraction system to be submitted and approved is necessary for similar reasons.

Conclusion

18. For the reasons given, I conclude that the appeal is allowed and planning permission granted, subject to the conditions.

R Morgan

INSPECTOR