



Appeal Decision

Site visit made on 19 November 2020

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 18 December 2020

Appeal Ref: APP/B1605/W/20/3257736

Land adjoining 39 High Street, Cheltenham, GL50 1DX

- 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 Richard Hancock (La Pizzeria) against the decision of Cheltenham Borough Council.
 - The application Ref 20/00890/FUL, dated 6 June 2020, was refused by notice dated 23 July 2020.
 - The development proposed is a change of use from undeveloped land to a food street trading site.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from undeveloped land to a food street trading site at Land adjoining 39 High Street, Cheltenham, GL50 1DX in accordance with the terms of the application, Ref 20/00890/FUL, dated 6 June 2020, subject to the conditions in the attached schedule.

Main issue

2. The main issue is the effect of the proposed development on the character and appearance of the Central Conservation Area.

Reasons

3. The appeal site is part of a small strip of land lying between the High Street and a large car park, which it shares with an outdoor drinking establishment. The appeal site was empty at the time of my site visit, although had recently been surrounded by a new close board timber fence. A yard containing overgrown shipping containers can be seen immediately behind.
4. The site is in Cheltenham's Central Conservation Area (CA) and part of the 'Old Town Character Area'. The Old Town Character Appraisal & Management Plan – Adopted February 2007 (the 'appraisal') states that the Central CA includes the whole town centre and most of the Victorian, Edwardian and later 20th century suburbs. The appraisal refers to the importance of views from and across the CA, both of the skyline and in creating a connection with the rural landscape beyond. During the Regency period the town expanded on either side of the High Street, including along St James Street where the site is located, and these developments played an important role in shaping the appearance and layout of the town. St James Street is specifically mentioned for its panoramic views of the rural surroundings, glimpsed through gaps between buildings.

5. I am satisfied that the scale and siting of the proposal means that the street layout would not be altered, nor would there be an effect on the skyline or interference with views of the rural landscape.
6. The area around the site is dominated by the large car park and busy road. The other side of the street hosts a line of 1, 2 and 3 storey dwellings of mixed age and style. These are generally of commercial character at ground level, with residential units above.
7. The development is small in scale and would be adjacent to a similarly sized enterprise of similar nature, in a commercial area, and for these reasons I do not consider that it would be intrusively out of character. The site is currently vacant and has a neutral effect on the CA; loss of the empty site is therefore not in itself intrinsically harmful. For these reasons, I do not consider that the development would detract from the character and appearance of the CA.
8. The proposal is for a pizza van of small size overall, and the plans show that this would be comfortably accommodated on the site. I note that details regarding refuse storage have not been provided but, given the size of the site and the scope of the operation, I am satisfied that this can be controlled via a condition. On this basis, I do not consider the proposal to comprise overdevelopment of the site.
9. I acknowledge that this development would be in addition to the recently built drinking establishment next door and that cumulatively they have a greater impact on character and appearance of the area. However, I do not consider that a second low-level, small scale development would make a significant difference to the character and appearance of the CA overall. I am also satisfied that the strip of land is well constrained by the car park, road and other buildings, which preclude further spread of such development.
10. No nearby listed buildings at risk of harm from the development have been brought to my attention by either party.
11. Policy SD8 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy, 2017 ('JCS') states that development should conserve and enhance designated heritage assets and their setting. I do not find that there would be any harm to Cheltenham's Central Conservation Area, nor its setting. In coming to this conclusion, I have considered the duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
12. For the reasons above, I also do not find conflict with Policy SD4 of the JCS which requires that regard is had to the historic environment, or Policy D1 of the adopted Cheltenham Plan (July 2020), which requires that proposals complements neighbouring development and the character of the locality.

Other matters

13. I entirely sympathise with the objection from an interested party regarding competition in the food industry during an understandably difficult trading time. However, I must determine the appeal on the merits of the case before me in line with local and national policies.

Conditions and Conclusion

14. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary I have amended the wording of the suggested conditions, in the interests of precision and clarity, and in order to comply with advice in the Planning Practice Guidance.
15. Planning permission is granted subject to the standard 3-year time limit condition (1). Condition 2 specifies the relevant plans in the interests of certainty for all parties.
16. Condition 3 is necessary in the interests of sustainable waste management and recycling, and to protect the character and appearance of the area.
17. Conditions 4, 5 and 6 restrict the hours of opening to protect the living conditions of residents of nearby properties, with particular respect to disturbance from noise and light.
18. I have not imposed a condition requiring compliance with the Clean Air Act (1993) because conditions cannot be used to control matters that are subject to other primary legislation.
19. I have also not imposed a condition relating to a delivery and servicing plan, which requires that no deliveries should occur on the public highway. The operatives may not be able to control how deliveries from other companies should be routed or the times such deliveries would arrive. In addition, I noted at the site visit that the road is clearly marked with double yellow lines and, given that there is a large car park immediately adjacent, I am satisfied that it is not necessary to impose additional controls in the particular circumstances of this case.
20. For the reasons above, and having regard to all other matters raised, the appeal is allowed.

B Davies

INSPECTOR

Schedule of 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: 'Site location plan' at Scale 1:1250 ('Cheltenham Model Centre, 39 High Street, Cheltenham, GL50 1DX') and 'Proposed site layout' at 1:200 ('39 High Street, Cheltenham, GL50 1DX').
- 3) Prior to use commencing at the site, a scheme for the provision of refuse and recycling storage facilities shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and shall be retained as such thereafter.
- 4) Customers shall only be permitted on the premises between the following hours: 0900 – Midnight.
- 5) Amplified or other music may only be played in the premises between the following hours: 0900 – 2100.
- 6) No external lighting shall be used after the premises has closed to customers.