



Appeal Decision

Site visit made on 4 January 2021

by Chris Couper BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2021

Appeal Ref: APP/M3645/W/20/3258013

46 Station Road East, Oxted RH8 0PG

- 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 Adel Perseh against the decision of Tandridge District Council.
 - The application Ref TA/2020/531, dated 13 March 2020, was refused by notice dated 10 June 2020.
 - The development proposed is the change of use of a vacant A1 shop to an A3 restaurant.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of a vacant A1 shop to an A3 restaurant at 46 Station Road East, Oxted RH8 0PG in accordance with the terms of the application, Ref TA/2020/531, dated 13 March 2020, 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: OS location plan at 1:1250 scale, block plan at 1:200 scale, drawing nos. 341_1, and 341_2.
 - 3) The premises shall only be open for customers between the following hours: 0800 to 2330 on Mondays to Saturdays and 0800 to 2200 on Sundays and Bank Holidays.
 - 4) Before the use hereby permitted takes place, equipment to control the emission of fumes, smell and noise from the premises as described in the details from Nationwide Ventilation, ELTA Fans and JASUN Filtration PLC; and as illustrated on drawing number NWV7678/1 (other than the noise level information on that drawing), shall be installed. All equipment installed shall thereafter be operated and maintained in accordance with those details, and shall be retained for so long as the use continues.

Procedural Matter

2. On 1 September 2020 the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force ('the 2020 Regulations'). These amended and simplified the system of Use Classes in order to better reflect the diversity of uses found in town centres and to meet changing demands, particularly so at present due to the need to recover from the economic impact of the Coronavirus.
3. Amongst other things, the 2020 Regulations amended the Use Classes Order to

revoke Class A, and to create a new Class E which includes the previous shops (A1) and restaurants (A3) use classes. A change of use within a single use class does not involve development and therefore does not require planning permission. However, where applications were submitted prior to 1 September 2020, appeals must be decided with reference to those use classes as specified in the Schedule to the Use Classes Order on 31 August 2020.

Main Issues

4. The main issues are the effect of the development on:

- the vitality and viability of the Oxted Town Centre; and
- the living conditions of nearby occupiers.

Reasons

Vitality and viability

5. The site comprises a vacant former retail unit, which falls within the Oxted town centre as identified in the Tandridge District Core Strategy 2008 ('TCS'). TCS Policy CSP 23 seeks to protect town centres and ensure that the function of their primary shopping frontages is not impaired.
6. The Tandridge Local Plan Part 2: Detailed Policies 2014 - 2029 (2014) ('TLP') sets out at Policy DP2 that proposals must not adversely affect the viability and vitality of the shopping area, and that within the primary frontage ground floor changes of use from Use Class A1 to A3 will be permitted only where criteria at Part C 1 to 3 are all met.
7. As no more than two non-retail units would be located adjacent to one another Part C 2 of that policy would be satisfied. However, having regard to Part C 1, the main parties agree that, as a result of this proposal, the percentage of the primary shopping frontage in Class A1 use would reduce from 69% to 67%, thus just below the 70% threshold.
8. Turning to Part C 3, the property has been marketed by SHW Partnership – a local property real estate advisory business - since June 2019. As set out in the appellant's statement, and in SHW's letter dated 10 August 2020, despite strong demand from the independent market in secondary towns, there have been no substantive expressions of interest in this property from Class A1 occupiers.
9. The Council maintains that it is unclear whether the premises were offered at a realistic price, having regard to necessary internal alterations. However, notwithstanding a recent decline in demand for retail premises nationally, the Council acknowledges that Oxted town centre has remained relatively robust, with few vacancies.
10. As a consequence, and given SHW's professional opinion regarding supply and demand; the evidence at paragraphs 3.8 to 3.9 of the appellant's statement regarding the limited increase in this property's proposed rental value since 2014; and the broadly comparable figures per sq. ft for some other properties in Station Road East, I am satisfied that the rental value sought was realistic and reasonable. Part C 3 of the policy is therefore satisfied.

11. Although the current Coronavirus restrictions meant that most premises were closed at the time of my visit, the Experian Goad Plan supports my observations that there are a diverse range of uses and unit sizes in this part of Oxted town centre. I have no reason to doubt SHW's view that demand remains high in locations such as this. That said, given that this particular property has been appropriately marketed, it may well remain empty if the appeal is dismissed. That outcome would not benefit the town centre's vitality and viability, nor assist in its recovery after the pandemic.
12. Summing up, the scheme would bring back into active use a small unit which has been vacant for at least 12 months. The percentage of retail units in the primary frontage would remain only just below 70%, and there would continue to be a diverse range of uses.
13. Consequently, whilst there would be a slight conflict with TLP Policy DP2, the property's use as a restaurant would not harm the vitality and viability of the Oxted town centre, and the scheme would not conflict with the general thrust of that policy, nor of TCS Policy CSP 23. It would also fully accord with TCS Policy CSP 22's objective of developing a sustainable economy.

Living conditions

14. The Council states that it has not been demonstrated that the air extraction system would adequately safeguard the amenities of neighbouring residents. According to an email from Environmental Health, the noise levels for the system 'seem quite high'.
15. However, that assessment is vague, and it is unclear from the Council's statement or the officer report which properties it considers could be adversely affected. According to the appellant's calculations, the nearest neighbouring rear window at 48 Station Road East is about 3.5m from the scheme's external ducting. On my visit I observed that the window is above a loading bay, and that it appears to serve a commercial property. The nearest windows at 44 Station Road East are further away, and also appear to serve a commercial property.
16. Even if I am wrong regarding the use of these adjoining premises, having regard to the submitted technical details and background noise levels in this town centre location close to car parks and delivery areas, I have no cogent evidence that the noise generated by the proposed extraction system would give rise to a harmful impact on the occupants within them.
17. The scheme would not therefore conflict with those parts of TCS Policy CSP 18, or TLP Policies DP2 and DP7, which seek to prevent an adverse effect on the amenities of neighbouring properties by reason of matters including noise.

Conditions and Conclusion

18. I have imposed the standard time limit condition. In the interests of certainty, a condition requiring that the development be carried out in accordance with the approved plans is necessary. Given that requirement, the Council's suggested condition requiring the construction of external surfaces in accordance with the application particulars is unnecessary.

19. To ensure appropriate living conditions for any nearby residential occupiers, I have imposed a condition limiting the hours of use to those set out in the application details.
20. I have found no cogent reason to conclude that the submitted air extraction system, and the noise emanating from it, would be unacceptable. Consequently, and for the same reason as the previous condition, I have imposed a condition requiring it to be installed, maintained and retained for so long as the use continues. I have no detailed evidence to indicate that other noise mitigation measures would be necessary.
21. For the above reasons, the scheme would not adversely affect the vitality and viability of the town centre, nor impact the living conditions of nearby occupiers to a harmful degree. Having regard to all other matters raised, the appeal is therefore allowed.

Chris Couper

INSPECTOR