



Appeal Decision

Site visit made on 20 April 2021

by G Ellis BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 May 2021.

Appeal Ref: APP/M1595/W/20/3256581

53 River View, Chadwell St Mary, Essex RM16 4BJ

- 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 Use Ya Loaf against the decision of Thurrock Borough Council.
 - The application Ref 19/01666/FUL, dated 7 November 2019, was refused by notice dated 27 January 2020.
 - The development proposed is a 'change of use from A1 to A3 use and an extractor to eliminate odour to the rear'.
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Decision

1. The appeal is allowed, and planning permission is granted for change of use from A1 to A3 use and an extractor to eliminate odour to the rear at 53 River View, Chadwell St Mary, Essex RM16 4BJ in accordance with the terms of the application, 19/01666/FUL dated 7 November 2019 subject to the following condition: -
 - 1) The external alterations hereby permitted shall be carried out in accordance with plan 1219-01 P1 – floor plans as existing and as proposed, the report prepared by Kobane Metal Limited and technical details – Helios GB acoustic jacket, Airclean Filter and GigaBox centrifugal fans.

Preliminary Matters

2. As seen on my site visit the café is currently operational and therefore the change of use part of this proposal is retrospective.
3. In addition to the change of use the proposal includes the provision of an extractor flue on the rear elevation and technical details of the system formed part of the application. Therefore, to accurately reflect the proposal the description of development has been taken from the Council's decision notice.

Main Issues

4. The main issue is the effect of the development on the retail vitality and viability of the neighbourhood centre.

Reasons

5. The premises are located at the end of a short retail parade which together with a number of other parades along River View form the Chadwell St Mary neighbourhood centre. No.53 is currently operating as 'Chadwell Café'. At the time of my site visit no tables were set out inside the premises, current Covid

restrictions prevent indoor eating, but outside were a couple of tables. The neighbouring units are takeaways and a home improvements showroom. Within the other parades, which are a short distance from the appeal premises, are a range of retail uses.

6. Core Strategy and Policies for Management of Development DPD policy CSTP7 seeks to maintain the existing retail function of neighbourhood centres. The Council also rely on saved policy SH11 of Thurrock Borough Local Plan which does not permit changes from A1 unless it can be demonstrated that there is no long-term demand for a retail use.
7. The appellant has provided no evidence of marketing or demand for A1 uses but rather indicates that the premises were previously a bakery offering hot food, and that there are no other cafes in the vicinity.
8. From the plans, internally the layout of the unit is unchanged with just the addition of a few tables and chairs. The Council indicate that the change of use would reduce the number of shoppers, however they have provided no specific evidence to support this or why the café would have a harmful effect of the viability of the neighbourhood centre. The indicated opening hours, 7am-4pm Monday to Saturday, are akin to a retail use, an active frontage is maintained, and the seating area is limited in size. Therefore, in my opinion the change to a café is unlikely to have a detrimental impact on the vitality and viability of the neighbourhood centre as a whole.
9. Notwithstanding this, of material consideration is the recent changes to the Use Classes Order. 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).
10. These regulations came into force on 1 September 2020. They stipulate that for any planning application submitted prior to 31 August 2020, which is relevant to this appeal, it must be determined by reference to those use classes which then applied. Nevertheless, since September 2020 a shop and café are within the same use class and therefore any change between these uses is not development requiring planning permission.
11. The Council have no objection to the proposed extractor flue to the rear, and I have no reason to disagree. Whilst it is of a commercial form it would not be visible in the street scene, and other premises in the parade have extractor units. Additionally, it would protect the amenities of the occupiers of neighbouring properties and the details appear to have been agreed with the Council's environmental health department.
12. Therefore, whilst the change from A1 to A3 conflicts with Local Plan saved policy SH11 and DPD policy CSTP7 in terms of evidence to support the change of use, material considerations in this case, and specifically the amended Use Classes Order, indicate that planning permission should be granted.

Conditions and Conclusion

13. The Council has not suggested any conditions that should be imposed in the event of a grant of planning permission. As the café use has been implemented and the change no longer constitutes development it is not appropriate to

impose conditions. However, in relation to the external changes it is necessary in the interest of precision and certainty for the extractor to be implemented in accordance with the submitted plans and technical details and therefore I have imposed a condition requiring compliance.

14. For the reasons given above, and having regard to all other matters raised, it is concluded that the appeal should be allowed.

G Ellis

INSPECTOR