



Appeal Decision

Site visit made on 21 April 2021

by C J Leigh BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2021.

Appeal Ref: APP/A2280/W/20/3262858

Hempstead Valley Shopping Centre, Hempstead Valley Drive, Hempstead, Gillingham, ME7 3PD

- 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 BAPT Ltd against the decision of Medway Council.
 - The application Ref MC/20/0028, dated 3 January 2020, was refused by notice dated 8 July 2020.
 - The development proposed is the erection of a drive-thru restaurant, reconfiguration of car park and closure of multi-storey car park exit ramp.
-

Application for costs

1. An application for costs was made by BAPT Ltd against Medway Council. This application is the subject of a separate Decision.

Preliminary matter

2. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into effect on 1 September 2020 and amended the Town and Country Planning (Use Classes) Order 1987. The application form as submitted to the Council was for a Use Class specified as 'A5 - Hot food takeaway', and the Committee Report makes clear that the proposal was assessed on the basis of being for a hot food takeaway use.
3. The amendment to the 1987 Order removed the A5 Use Class and states that a hot food takeaway use does not fall within any Use Class. Thus, at the time of making this appeal, the proposal did not fall within any Use Class ie it would be *sui generis*. The appellants and local planning authority both had the opportunity to comment on this matter and it is clear to me that the proposal remains that for a hot food takeaway. I have therefore continued to assess the appeal on the basis of that *sui generis* use. I shall therefore clarify this matter in the description of development, namely the erection of a drive-thru restaurant (*sui generis* use), reconfiguration of car park and closure of multi-storey car park exit ramp

Decision

4. The appeal is allowed and planning permission is granted for the erection of a drive-thru restaurant (*sui generis* use), reconfiguration of car park and closure of multi-storey car park exit ramp at Hempstead Valley Shopping Centre, Hempstead Valley Drive, Hempstead, Gillingham, ME7 3PD in accordance with the application MC/20/0028, dated 3 January 2020, subject to the conditions set out on the attached schedule.

Main issues

5. The main issues in this appeal are the effect of the proposed development on, firstly, the character and appearance of the area and, secondly, highway safety and the freeflow of traffic. A further issue is the effect on the amenities of the area with reference to potential littering and disturbance.

Reasons

Character and appearance

6. The proposed development is located in an existing area of surface car parking, close to a multi-storey car park attached to the M&S store that is part of the wider Hempstead Valley Shopping Centre (HVSC). The proposal would not be prominent in the wider area: the site is at a lower level than Hempstead Valley Drive, and the good landscaping along that road – on a bank above the development site – would largely be retained with very limited removal of trees. New planting is proposed. These physical features would adequately screen the proposed building and so, although it would be closer to the Shopping Centre entrance than other buildings, it would effectively be no more prominent in the wider area than other buildings seen from Hempstead Valley Drive. The building would be seen against the backdrop of the tall multi-storey car park, which is in itself a dominant building when looking towards this part of the HVSC.
7. The design of the proposed building is simple in appearance and form. Policy BNE1 of the Medway Local Plan 2002 requires the design of new development to be appropriate to the character and appearance of the built environment, in terms of scale, mass, proportion and details. I saw at my site visit that the HVSC has been altered and extended over the years since what is evidently its original core, including the area where the appeal site lies. Most notable is the large multi-storey car park that is an extension to the shopping centre: that is a large building where form evidently follows function, with parking areas, extract vents and other utilitarian features facing the appeal site. I also saw that close by, to the east, are modern buildings with food outlets. These are of a different architectural approach, which is an approach also seen in the remodeled frontage of a large store that is part of the original shopping centre. These buildings and extensions to the HVSC are dominant in views entering the HVSC and from Hempstead Valley Drive, as well as being dominant when seen from Sharsted Way to the east.
8. It is my judgement that the design and scale of the building proposed in this appeal would be compatible with the established character of this part of the HVSC. The suitability of the design for its context, and the lack of harm to the area, is reinforced by the restricted visibility of the building due to the change in levels, the boundary screening, and the location set next to the multi-storey car park.

9. On the first main issue it is therefore concluded that the proposed development would not be harmful to character and appearance. It would therefore be consistent with the guidance in Policy BMNE1 of the Local Plan and paragraphs 124 and 127 of the National Planning Policy Framework that seek good design, and developments that add to the overall quality of the area and are visually attractive.

Highway safety

10. There would be a circular service lane used by patrons of the development using the drive-thru facility, with entry and exit to the road that also provides access to the multi-storey car park. The appellants' Transport Statement explains that can accommodate 11-12 vehicles. That Statement continues to assess the capacity of the proposed facility to serve customers and the forecast demand. These studies conclude that the service lane would be of sufficient size to accommodate vehicles waiting for drive-thru service. Surveys of similar operational facilities have been presented to support these conclusions.
11. The evidence presented by the appellant and the application stage and with this appeal is comprehensive in demonstrating to me that there would be sufficient capacity on the appeal site to accommodate users of the proposed drive-thru. I have not seen any robust evidence to the contrary, and I am mindful of the fact that the Highways Authority did not raise any objection to the planning application (nor at the appeal). Based on what I have read and seen I am satisfied there would not be queuing of traffic off the appeal site in a manner that may impact upon other users of the HVSC or the wider highway network.
12. The Committee Report for the planning application refers to evidence submitted by the appellants demonstrating there is sufficient capacity on the highway network for the proposed use, and that capacity also exists within the HVSC car park to cater both for the loss of the existing parking and the proposed development. The Highways Authority again agreed with these findings, and I have not seen any robust evidence at the appeal stage that comes to different conclusions.
13. On the second issue it is therefore concluded that the proposed development would not be harmful to highway safety or to the freeflow of traffic. Thus, no conflict would occur with Policy T1 of the Local Plan, which permits development proposals provided that, amongst other matters, there is adequate highway capacity and there would not be a significant risk of road traffic accidents.

Effect on amenity

14. The Council's second reason for refusal raises a concern that patrons of the proposed facility will cause littering in attractive areas away from the appeal site and HVSC. I appreciate that littering can be a problem, particularly in attractive areas where those visiting the facility might go. But, equally, they might not go to those areas.
15. I cannot identify a clear causal link that would occur from the appeal proposal and a material increase in littering at various locations. The HVSC already contains a number of facilities where taking food to eat off the premises is possible, and I equally cannot say with any certainty one way or the other if those facilities cause litter elsewhere. The appellants have also drawn my

attention to a drive-thru facility recently permitted by the Council at Horsted Retail Park where it appears no concern was raised regarding off-site littering; again, I cannot say whether that facility causes off-site littering or not. Thus, based on what I have seen at the site, I find no firm evidence to persuade me that the proposal would lead to a material increase in littering in the wider area away from the HVSC.

16. The distance of the proposal from the closest residential properties, and the existing commercial environment of the surroundings, means that there would not be an appreciable impact upon the living conditions of residents. The opening hours would be limited by planning condition.
17. On the basis of what I have read and seen, I conclude on the third main issue the proposal would not be harmful to amenity, and so would comply with Policy BNE2 of the Local Plan, which seeks to ensure all new development protects the amenity of nearby and adjacent properties.

Other considerations

18. The proposal would provide a new food outlet within the HVSC, which I am informed is identified as a 'district centre' in the Local Plan. The Committee Report stated that the proposal will support the function of the HVSC as a whole. Paragraph 80 of the Framework states that significant weight should be placed on the need to support economic growth, and hence I attach significant weight to this matter.
19. I note comments from some residents regarding health concerns arising from the provision of a fast food restaurant. The Committee Report for the application confirmed that the proposal is within an established shopping centre and more than 400m from the closest school, and so satisfies the Council's requirements on this matter.

Conclusion and conditions

20. The proposed development is consistent with the development plan and the Framework and so the appeal is allowed.
21. The Council have suggested a number of conditions in the event of the appeal being allowed. I have attached those concerning the use of materials to the building and the implementation, and maintenance, of landscaping to achieve a satisfactory appearance to the development. I have attached conditions relating to ecological works during construction (including clearing the site) and mitigation as these are in response to the statutory consultee's requests to ensure ecological considerations are fully taken into account. A condition relating to the protection of trees is also necessary to ensure the satisfactory landscape provision. A condition is attached specifying the approved drawings, as confirmed by the appellants, as this provides certainty.
22. Conditions relating to car parking and servicing of the development are attached, in the interests of highway safety. I have attached conditions relating to hours of use, acoustic assessment of plant (and maintenance of approved installation), and the provision of litter bins all in the interest of the amenity of the area. A condition relating to the possibility of contamination is necessary to ensure this matter is adequately addressed, should that prove necessary.

23. As the Use Classes Order has been amended so the proposed use does now not fall within any Use Class there is no need for conditions referring to the possibility of change of use: any change from the approved use will be subject to full local consideration through the planning application process

C J Leigh

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of planning permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 4356_PL 001, 4356_PL 002, 4356_PL 003 rev 01, 4356_PL 004 rev 08, 4356_PL 006 rev 02, 4356_PL 007 rev 02, 4356_PL 008 rev 02, 4356_PL 009 rev 02, 4356_PL 010 rev 03, BMD.19.055.DR.P101, BMD.19.055.DR.P201 rev C, BMD.19.055.DR.P301, 190142 E 200 P01.
- 3) All materials used externally shall be as detailed on approved elevation drawing numbers 006 rev 02, 007 rev 02 and 008 rev 02.
- 4) Prior to the first use of the unit herein approved, an acoustic assessment shall be undertaken to determine the impact of noise arising from mechanical plant. The cumulative noise rating level (L_Ar,Tr) of mechanical plant shall be at least 10dB below the background noise level (L_A90,T) at the nearest residential facade. All measurements shall be defined and derived in accordance with BS4142: 2014. The results of the assessment and details of any mitigation measures shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented before the development is brought into use and thereafter be retained and maintained in accordance with the approved details.
- 5) Prior to the first use of the unit herein approved, the area shown on the submitted layout as vehicle parking space shall be provided, surfaced and drained in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed prior to the first use of the development and be retained and maintained as such thereafter. Thereafter the vehicle parking and manoeuvring area shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to these reserved parking spaces.
- 6) Deliveries and the servicing associated with the unit herein approved shall be carried out only in accordance with the Delivery Service Management Plan as set out in Appendix B of the Transport Statement (dated December 2019).
- 7) Prior to the first use of the unit herein approved details of the location and appearance of litter bins have been submitted to and approved in writing with the Local Planning Authority. The litter bins shall be implemented in accordance with the approved details prior to the first use of the unit herein approved and thereafter retained, and the management of litter shall be implemented in accordance with the 'Litter Strategy' received by the local planning authority on 1 April 2020.
- 8) Within six months of works commencing, details of how the development will enhance biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The biodiversity enhancement measures shall be implemented in accordance with the approved details prior to the first use of the unit herein approved and shall thereafter be retained.
- 9) Prior to the first use of the unit herein approved, all hard landscaping detailed in the approved drawings shall be completed and all planting

detailed in the approved scheme of landscaping, as detailed in drawing numbers BMD.19.055.DR.P201 rev C (Planting Plan) and BMD.19.055.DR.P301 (Tree Pit Details) and "Landscape Specification (BMD.19.055.SP.001)" shall be implemented by the latest of the first planting season following first use of the development hereby approved. The landscaping shall be managed and maintained in accordance with the document "Green Infrastructure : 5 year Landscape Management and Maintenance Plan (BMD.19.055.SPP002, dated 09.10.19)" and any trees or plants which within 5 years of planting are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

- 10) The works shall be carried out in accordance with the tree protection measures detailed in the document Arboricultural Impact Assessment (Wharton, reference 191025 0944 AIA V2, dated 25 October 2019).
- 11) No vegetation clearance or development shall take place during the bird nesting season (March to September inclusive) unless a suitably qualified ecologist has first confirmed that no nests or dependent young are present (nesting bird checks within 24 hours of work commencing).
- 12) No works shall take place including site clearance until all precautionary mitigation measures and/or works for hedgehogs has been carried out in accordance with the details contained in section 1.1.38 of the BMD Ecological Constraints Review reference BMD.19.055.RPE/TN.801.EcoConstraints (dated October 2019).
- 13) If, during development, contamination not previously identified is found to be present at the site, no further development shall take place until a method statement has been submitted to and approved in writing by the Local Planning Authority. The Method Statement must detail how this unsuspected contamination shall be dealt with. The development shall thereafter be implemented in accordance with the approved Method Statement.
- 14) The use hereby permitted shall only operate between the hours of 07:00 to 23:00 hours Mondays to Saturdays inclusive and between the hours of 09:00 and 22:00 hours on Sundays and Public Holidays.
- 15) No commercial goods shall be loaded, unloaded, stored or otherwise handled and no vehicles shall arrive or depart, within the application site outside the hours 07:00 to 19:00 Monday to Friday, 08:00 to 18:00 Saturday or at any time on Sunday or Public Holidays.