



Appeal Decision

Site Visit made on 18 May 2021

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 June 2021

Appeal Ref: APP/A0665/W/21/3269174

17A Delamere Street, Chester CH1 4DS

- 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 Smart Cars Ltd against the decision of Cheshire West and Chester Council.
 - The application Ref 20/03541/FUL, dated 29 September 2020, was refused by notice dated 8 January 2021.
 - The development proposed is change of use from sandwich shop (Class E) to private hire taxi office (Sui Generis).
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Decision

1. The appeal is dismissed.

Procedural Matter and Main Issues

2. The appellant submitted a noise impact assessment¹ with the appeal. The Council has agreed with the conclusions of this report and there would be no harm to living conditions to local residents, subject to a suitably worded condition relating to a management plan for customer waiting, and operation of the office at night-time. I have no reason to disagree with this assessment, and as such, the second reason for refusal falls away. Therefore, the remaining main issue is:
 - The safe and efficient operation of the highway network in the vicinity of the appeal site.

Reasons

3. The appeal site is a vacant single storey building within the City Centre Chester Conservation Area (CA) and located within the Chester city inner ring road (A5268). The area consists of a mix of commercial and residential properties. Delamere Street is a one-way street with traffic in an eastbound direction that joins onto Victoria Road. There are parking restrictions, which include 'no waiting at any time' and bus stops with marked bus bays along the street. Towards the eastern end of the road there is a public car park with 9 spaces with a maximum parking time of 30 minutes.
4. The proposals would entail the change of use of the building with no external alterations, for the use as a private hire taxi office. It would operate 24 hours a day, seven days a week with an envisaged fleet of 20 to 30 vehicles, with only 5 to 10 predicted to be out on the road at any one time.

¹ Hepworth acoustics, report no. P21-030-R01v1, 4 February 2021

5. The appellant indicates that the vast majority of bookings would be made by telephone, website or using a booking app, but customers would have the option to book directly at the taxi office. This would then result in vehicles being contacted remotely and the drivers would then drive to the relevant pick-up location for customers. It is therefore envisaged that there is no need for a taxi to park up outside the office, and if indeed it would not require a great waiting time as it is pre-arranged.
6. I have had regard to the appellant's 'Technical Note 01' (TN). The TN is lacking in detail and appears to repeat most of the content from within the 'Planning Statement'. The TN places great emphasis on the utilisation of the private car park to the east to reduce the impact on highway safety and disruption on the operation of the road network. The use of anticipated operations and vehicles is not backed up by substantive technical evidence. Particularly, that the number of in person bookings would be low due to the nature of the business, the majority of pickups would take place in the evening / night, the proposed use would not generate any demand for any new taxi journeys, over and above the existing market and why there is a comparison of traffic flow with a small convenience store.
7. Nonetheless, the appeal site has no associated parking or parking facilities without restrictions. Furthermore, there is no parking along Delamere Street directly adjacent to the appeal building. The small public car park is not within the appellant's ownership and despite vehicles being able to use this facility, there is no guarantee that spaces would be available at any one time for waiting/collection. Moreover, the use of the car park facility for up to 5 or 10 vehicles, would cause significant disruption for anyone wanting to use the public car park, which would not be in the best interests of the purpose of the car park being for a wider public benefit.
8. I acknowledge, that the appellant would use a remote system for contact, but this does not necessarily mean that people would not personally use the taxi office inside directly to book. There would be no guarantee or sufficient mechanisms, including planning conditions that would meet the tests set out in the PPG², that could be put in place to prevent taxis being able to congregate outside of the premises. Including, waiting to pick up, collections, even if this is for a short spell of time. As such, the absence of any parking to serve the proposed business would likely lead to illegal parking, obstructions and disruption for other vehicles using the highway, which would not be in the best interests of highway safety.
9. There are a number of bus stops along Delamere Street including one almost directly outside the appeal building. The appellant indicates that this is redundant and no longer in use. However, as I observed at the time of the site visit the other bus stops were frequently used, and there was more than one bus at any one time stopping along the highway, resulting in the overlapping bus bays along the road. This was immediately adjacent to the appeal site.
10. Moreover, I have no substantive evidence that this bus stop is surplus to use or that it would not perform an integral role for public transport in the future. Therefore, any loss or obstruction of this bus stop would impact on the ability for the use of public transport. Even, if the bus stop and bus markings were

² Planning Practice Guidance, Paragraph: 003 Reference ID: 21a-003-20190723, Revision date: 23 07 2019

removed there would still be no parking due to the restrictions on Delamere Street to facilitate parking for the proposal.

11. I have been referred to the history of the site and previous use of the building at No.19 in 1992³. I have been provided with limited details of the actual use and activities that took place at No.19 and what the situation would have been in regard to highway restrictions on Delamere Street at that time. Nonetheless, this was some many years ago and the development plan for the area has since changed. In any event, the appeal needs to be determined on its individual merits and on the evidence before me.
12. For the reasons given above, I conclude that the proposal would cause significant harm to the safe and efficient operation of the highway network in the vicinity of the appeal site. It would be contrary to Policy STRAT10 of the Cheshire West and Chester Local Plan (Part One), 2015 and Policy T5 of the Cheshire West and Chester Local Plan (Part Two), 2019. Taken together these policies require development to demonstrate additional traffic can be accommodated safely and satisfactorily within the existing, or proposed highway network; make safe provision for access to and from the site for all users of the development; not create unacceptable impacts on amenity or road safety and provide sufficient parking facilities to serve the needs of the development.
13. The proposal would also be at odds with the guidance contained within the National Planning Policy Framework, paragraph 109 where development should be refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Matters

14. I have a 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. The immediate area is mainly characterised by medium to high rise buildings within blocks, both of a commercial and residential nature. The appeal site constitutes a low-rise building with two storey buildings directly adjoining and to the rear with the appeal site on the urban fringe of the city centre. The proposal would not alter this character and there would be no external alterations to the building itself. I therefore find that it would preserve the character and appearance of the CA.
15. I have been referred to other developments and an appeal⁴ for commercial premises, including private taxi hire businesses. Although there are similarities to the appeal proposal, Bridge Street was given consent some years ago in 2011, and it would appear that consent was granted as it was opposite the main city centre taxi rank. The 'Ipswich' appeal provided onsite parking and there were limited parking restrictions, outside of the premises. As such I do not consider they represent a direct parallel to the appeal proposal, including in respect of location, parking availability and development plan policy. In any case, I have determined the appeal on its own merits.

³ 6/2541

⁴ APP/R3515/A/14/2218128

16. The appellant's evidence heavily relies on the existing use of the building and that this falls within the amended class of 'Class E' of the Regulations⁵ and considers this is a genuine fallback for the site. Although, a 'Class E' use could be reinstated at the premises, in this case, the building has been empty / vacant for some 3 years. I have not been provided with any evidence to suggest that an alternative use in 'Class E' of the premises is forthcoming, so I cannot be certain of the precise details of any 'fallback scheme' being a real prospect. Neither, can I be satisfied that an alternative change of use of the building would not be development, in the absence of a Lawful Development Certificate.
17. Notwithstanding the above, even if I were to accept the appellant's position and afford significant weight to the fallback position, and that there is a greater than theoretical possibility that such a use might take place. The appeal building would be of a use, that would likely have a lesser impact on the area in regard to highway safety and would not conflict with the safe and efficient operation of the highway network along Delamere Street, unlike the appeal proposals before me. Consequently, the fallback position advanced does not outweigh my findings.
18. I recognise the appellant's desire to start a new business to serve both residents and tourists. The appeal proposal would have benefits with regard to bringing the empty property back into use within the city centre, be within a sustainable location and would contribute to the local economy and create jobs. These matters, however, do not outweigh my findings in respect of the main issue nor the conflict I have found with the development plan read as whole. There are no material considerations that indicate that the appeal should be determined other than in accordance with the development plan.

Conclusion

19. For the reasons given above I conclude that the appeal should be dismissed.

K A Taylor

INSPECTOR

⁵ Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) came into force, amending the Town and Country Planning (Use Classes) Order 1987 (the Use Classes Order)