The Planning Inspectorate

Appeal Decision

Site visit made on 11 May 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2021

Appeal Ref: APP/J1725/W/21/3267062
157 Stoke Road, Gosport, Hampshire PO12 1SE

- 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 Serhat Ali Mehmed against the decision of Gosport Borough Council.
- The application Ref 20/00269/FULL, dated 20 July 2020, was refused by notice dated 23 September 2020.
- The development proposed is change of use from A1 shop to A5 takeaway and installation of extractor flue pipe.

Decision

1. The appeal is allowed, and planning permission is granted for the change of use from A1 shop to A5 takeaway and installation of extractor flue pipe at 157 Stoke Road, Gosport, Hampshire PO12 1SE in accordance with the terms of the application Ref 20/00269/FULL, dated 20 July 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: 1/1000 scale plan titled "site plan", 1/500 scale plan titled "block plan", drawing no. EP001, drawing no. EP002, and drawing no. EP003.

   3) Before the use hereby permitted takes place, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with the details contained within the Extraction Impact Report by Akart Limited submitted with the planning application. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with the approved details and retained for so long as the use hereby permitted continues.

   4) The premises shall only be open for customers between the following hours:

      0800 - 2300 Mondays – Thursdays

      0800 – 0000 (midnight) Fridays and Saturdays

      0900 – 2300 Sundays and Public Holidays

Procedural Matters

2. On 1 September 2020, the 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). As a result of these changes, the existing retail use of the premises falls within Class E and the proposed hot food takeaway use is a Sui Generis use under Schedule 2 of the Use Classes Order.

3. Having regard to regulation 4 of the Regulations, I have considered this appeal on the basis of the use classes specified in the Schedule to the Use Classes Order on 31 August 2020.

Main Issue

4. The main issue is the impact of the proposed change of use on the variety and vitality of the Secondary Frontage of Stoke Road.

Reasons

5. The appeal site lies on the southern side of Stoke Road within a terrace of two-storey properties comprising ground floor commercial uses with residential accommodation above, which runs between the road junctions with Molesworth Road and Alver Road. The opposite side of this part of the road comprises three storey residential development and a two-storey medical centre. The Officer Report confirms that the site lies within the Secondary Frontage of the Stoke Road District Centre.

6. Policy LP28 of the *Gosport Borough Local Plan 2011 – 2029* (2015) (the Local Plan) distinguishes between primary and secondary frontages in order to allow flexibility of uses in parts of the centre to address vacancy rates. It recognises that the secondary frontage of Stoke Road has a significantly lower proportion of retail and financial services than the primary centre, and applies a different threshold to determine change of use applications to allow greater flexibility and thereby encourage greater vibrancy and vitality within this frontage. This policy approach aims to take account of current retail trends, and a requirement to refocus centres to provide a broader range of services.

7. Policy LP28 seeks to ensure that the centre has an appropriate and balanced mix of uses to reflect its function in the retail hierarchy, by including frontage policies to determine proposals for changes of use. Within the Stoke Road Secondary Frontage, the policy allows for A3, A4, A5, C1, D1 and D2 uses, as well as other appropriate town centre uses, provided that these uses do not either individually or cumulatively exceed 50% of the total frontage.

8. The Council has confirmed that, on the basis of its latest survey undertaken in March 2020, the percentage of non A1/A2 uses within the Stoke Road Secondary Frontage amounted to 50.9%, and that approval of the appeal scheme would increase this number to 51.6%.This figure is disputed by the appellant, having regard to the Council's survey methodology. The appellant considers that the appeal proposal would result in 51.9% of the Secondary Frontage remaining in A1/A2 uses. The Council has not commented on the appellant's revised figure, and I do not have sufficient detailed survey evidence before me to come to a definitive conclusion as to which figure is correct.

9. Notwithstanding this, even if the Council's figure is correct, this would only result in a very small exceedance of the Policy LP28 threshold. In addition to the simple percentage figure of Policy LP28, Local Plan Policies LP27 and LP28 refer to the potential adverse impact on retail vitality and viability in the shopping frontage. Therefore, the pertinent question is whether the proposed further A5 use would cause any decline in that retail vitality and viability.

10. The Council has confirmed that it generally takes a flexible approach in respect of the Policy LP28 threshold, in recognition that a range of uses can potentially outweigh any harm arising from the further loss of retail uses. In this instance, the Council's primary concern is that the increase in the amount of non A1/A2 uses would be as a result of an additional hot food takeaway use, and the associated proliferation of such uses in Stoke Road. In this respect the Council states that there are 12 existing A5 units within Stoke Road as a whole, and 6 occupied takeaway units within the Secondary Frontage area.

11. Local Plan Policy LP27 seeks to maintain the vitality and viability of the Borough's Principal, District and Neighbourhood Centres, supporting proposals which contribute towards creating a competitive environment, including allowing a greater diversity of uses and enhancing the evening economy of the Stoke Road Centre.

12. The supporting text to Policy LP28 acknowledges that whilst retail (Class A1) and financial and professional services (A2) will remain the significant focus for each centre it is considered that centres need to be flexible and allow greater choice of the services and facilities they can provide in order to make them more responsive to meeting the needs of the communities they serve. It notes that other 'A' uses, including restaurants, bars and takeaways, also have a role in creating a vibrant centre.

13. Policy LP28 seeks to ensure that there is a balanced mix of uses to ensure the vibrancy of centres, and that other uses do not become over-dominant due to potentially detrimental consequences such as prominent frontages being unused during the day which can affect the appearance and performance of a centre.

14. I saw during my site visit, that the appeal property is not currently in A1/A2 use, and the evidence before me is that the unit has not been operating as a retail premises for at least 5 years, and has been used as a storeroom in association with the adjacent hot food takeaway premises at 155 Stoke Road. As such, the unit is not currently making any contribution to retail vitality, and has not done so for a number of years, although I do recognise that it is available for A1 use.

15. I observed during my site visit, that there is an existing variety of ground floor uses within the vicinity of the appeal site, including retail shops, funeral care and a day care centre, and that the only vacant commercial unit between Molesworth Road and Alver Road is the appeal property.

16. Whilst the appeal scheme would result in a group of 4 hot food takeaway units adjacent to each other, the appeal proposal would add to the existing variety of hot food takeaway choice, by providing a Pizza takeaway in addition to the kebab, steak/burger and Chinese food options in the existing A5 premises.

17. The proposal would provide local employment for 6 full time equivalent staff, and it has the potential to make a positive contribution to the vitality and viability of the District centre, as opposed to the negative effects of having an empty/store property. The proposed opening hours would benefit both the day-time and night-time economies of the centre.

18. For the above reasons, I conclude that, whilst there may be a technical breach of criterion 1 (c) of Local Plan Policy LP28, in the particular circumstances of this appeal, the proposed additional A5 use would not reduce the A1/A2 use within this secondary shopping frontage to an unacceptably low level, and would not have a demonstrably harmful impact on the variety and vitality of the Secondary Frontage of Stoke Road. As such, the proposal would not be contrary to the aforementioned objectives of Local Plan Policies LP27 and LP28.

Other Matters

19. There are residential properties within close proximity of the appeal proposal, including above the commercial premises within this stretch of Stoke Road, and within Alver Road and Molesworth Road. The Council is satisfied that the proximity of the proposed use to residential properties is acceptable. Following my site visit, I see no reason to disagree, subject to planning conditions to ensure appropriate fume and smell extraction facilities, and opening hours of the premises.

20. I have noted third party objections in respect of waste burning and external storage in the rear garden. However, these are not matters for my consideration under this appeal.

Conditions

21. The Council has not suggested any conditions, and I have considered the need for conditions in accordance with Paragraph 55 of the National Planning Policy Framework 2019 and the National Planning Practice Guidance. In addition to the standard implementation condition (1), it is necessary to define the plans in the interest of clarity (2). In the interest of the living conditions of the occupiers of nearby dwellings, conditions are required to ensure the installation and operation of fume extraction facilities in accordance with the details submitted with the planning application (3), and to restrict the opening hours of the business (4). In respect of the latter, I have adjusted the appellant's proposed opening hours on the application form, having regard to the avoidance of night-time noise disturbance impacts to nearby residential properties.

Conclusion

22. For the reasons given above, I conclude that the appeal should be allowed.

S Leonard

INSPECTOR