



Appeal Decision

Site visit made on 22 September 2021

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2021.

Appeal Ref: APP/A2280/W/21/3269403

38 Parkwood Green, Gillingham, ME8 9PN

- 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 Andy Dennett against the decision of Medway Council.
 - The application Ref MC/20/2363, dated 25 September 2020, was refused by notice dated 30 November 2020.
 - The development proposed is change from a cafe/restaurant (Class Eb) to a hot food takeaway (sui generis).
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Decision

1. The appeal is allowed and planning permission is granted for change from a cafe/restaurant (Class Eb) to a hot food takeaway (sui generis) at 38 Parkwood Green, Gillingham, ME8 9PN in accordance with the terms of the application, Ref MC/20/2363, dated 25 September 2020, and drawing Layout ID 01 rev 01 – WIP submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The installed kitchen fume extract system shall be retained in accordance with details provided at paragraphs 6.19 and 6.21 of the appeal statement by Michael Parkes Planning Services (February 2021) and Appendices 3, 5 and 6 of that document. It shall be operated and maintained in accordance with the manufacturer's instructions and specifications.
 - 3) The use hereby permitted shall only take place between 1730 to 2200 hours on Mondays to Fridays, Sundays and Public Holidays and between 1700 and 2300 hours on Saturdays.
 - 4) Deliveries shall be taken at or despatched from the site only between 0700 and 1900 hours on Mondays to Fridays and between 0800 and 1800 hours on Saturdays and not at any time on Sundays or Public Holidays.

Preliminary Matters

2. Planning permissions were given in 2005 and 2016 to allow the unit to operate as a coffee shop and as a café within Use Class A3. Following changes to the Use Classes Order in 2020 the permitted use now falls within Class E(b) and no class is specified for use as a hot food takeaway as proposed.
3. Since February 2021 the premises have operated as a hot food takeaway under the provisions of Class DA of the General Permitted Development Order. However, by virtue of this legislation the use is required to cease in March

2022. The proposal is to enable it to continue on a permanent basis once the temporary use allowed for by the Order comes to an end.

Main Issues

4. These are:-

- The effect of the proposal on the vitality and viability of a local shopping centre with reference to the prevalence of hot food takeaways; and
- The effect on the living conditions of residents above the unit in respect of noise, vibration and odour.

Reasons

Vitality and viability

5. Parkwood Green local shopping centre comprises 26 units. Policy R10 of the Medway Local Plan of 2003 stipulates that the loss of existing shopping facilities including food and drink uses within Class A3 will not generally be permitted. However, at the time the policy was adopted, hot food takeaways were part of Class A3 and so it did not envisage precluding a change from a café to a hot food takeaway. Indeed, the unit would remain in a food and drink use as broadly defined. There would therefore be no conflict with Policy R10.
6. The National Planning Policy Framework promotes healthy and safe communities. The related Planning Practice Guidance indicates that a healthier food environment can be created by limiting the proliferation of particular uses where the evidence demonstrates this is appropriate. Avoiding an excessive concentration of hot food takeaways is therefore potentially part of the response to the national policy of supporting healthy lifestyles.
7. In Medway a guidance note on hot food takeaways was produced in 2014. It sets out the approach to be taken in relation to proximity to schools, concentration and clustering, location and vitality and viability. However, there is no detail about how this document was prepared. It is not adopted development plan policy and is not referred to as a supplementary planning document. This reduces the importance that can be given to this guidance although it is a material consideration. Local Plan Policy R18 refers to the combined effect of any similar uses but only whether such a concentration would be acceptable in terms of environmental impact. That is not the same as the vitality and viability of the centre or the health of the local community.
8. The evidence from a land use survey is that 15 of the units are currently in retail use. This exceeds the proportion of 40% referred to in the guidance note. It suggests that the centre is healthy as confirmed by the activity and absence of vacancies that I observed. Indeed, the centre provides a good range of shops and services to serve the needs of the surrounding population.
9. The note says that takeaway uses should not normally exceed 15% of the linear meterage of the frontage. As a result of the proposal the number of takeaways in the centre would increase from 4 to 5 so the proportion of such uses would be 16% of the total. The expectations in the guidance note would therefore only be marginally exceeded and given its informal status this is not decisive. Indeed, there is no clear evidence that there would be an adverse impact on the health of local residents or that the economic fortunes of

Parkwood would suffer. In practice, because the premises are not part of the main thoroughfare any effect on footfall would be likely to be limited. Furthermore, due to the previous use as a café there would be no loss of retail floorspace and so the valuable functions provided by the centre would remain.

10. Therefore the proposal would not adversely affect the vitality and viability of the local shopping centre and it would not be contrary to Policies R10 or R18.

Living conditions

11. Local Plan Policy BNE2 seeks to protect the amenities enjoyed by nearby and adjacent properties. Specifically for takeaway hot food shops, the criteria of Policy R18 provide that there should be no significant detrimental impact to residential amenity and that particular attention should be paid to the proper extraction and treatment of fumes and smells. There is living accommodation directly above the appeal premises.
12. The appellant has upgraded the existing system by replacing the cooker and hood and including an extraction fan with silencer, internal ducting and discharge grille. A noise impact assessment for the kitchen extract plant concludes that the noise impact is low and within acceptable limits. No discernible vibration impact was detected. Consequently, as accepted by the Council, there would be no negative effects in this respect.
13. It is not possible to extend the flue upwards because of the property above and so the exit grille is positioned at low level. This is similar to the previous catering use at the premises. High level odour control has been incorporated with baffle and carbon filters. The Council considers that this is unsatisfactory and indicates that any system should accord with guidance in *Control of Odour and Noise from Commercial Kitchen Exhaust Systems* by EMAQ+.
14. However, it has provided no indication of what that would entail, how it would be superior to what has been installed and whether an alternative arrangement would be practical. Furthermore, bearing in mind that a takeaway has been operating legitimately since earlier this year, there is nothing to suggest that smells emanating from the premises have been or would be problematic. In addition, the windows of the unit above are set well back from the vent and are not directly facing it. All of this leads to the conclusion that odours would be adequately dealt with.
15. Therefore, based on the evidence provided, the proposal would not harm the living conditions of nearby residents and would comply with relevant development plan policies.

Conditions

16. As the use has commenced the plan is referred to in the decision rather than in a separate condition. To protect the living conditions of those in the vicinity the hours of opening and delivery times should be limited to avoid disturbance in the morning and in the evening. Furthermore, the use should not open when children are likely to be leaving the local primary school. Given the findings above there is no justification for requesting further details of the fume extraction system. However, to safeguard living conditions a condition is necessary to ensure that the existing equipment is retained and operated.

Conclusion

17. The proposal would accord with the development plan and there are no material considerations to indicate that a contrary decision should be taken. Therefore, for the reasons given, the appeal should succeed.

David Smith

INSPECTOR