

Appeal Decision

Site visit made on 21 September 2021

by C J Leigh BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2021

Appeal Ref: APP/D5120/W/21/3267531
41A Bellegrove Road, Welling, Kent, DA16 3PB

- 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 A Shahbaz against the decision of the Council of The London Borough of Bexley.
 - The application 20/02813/FUL, dated 31 October 2020, was refused by notice dated 22 January 2021.
 - The application form description of the development is 'to convert the existing ground floor A1 retail unit into an A5 pizza takeaway providing a takeaway service to the local area and people. The shop will operate in the week from 11:00am – 24:00pm in line with other local takeaway outlets. To accommodate the conversion the proposal includes the installation of a new steel extraction system which will be connected to the new pizza oven on the ground floor. The new extraction ducting will internally run from ovens located on the middle of the ground floor and feed out on to the rear elevation as per the drawings'.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from the existing ground floor retail unit (Class E) to a pizza takeaway shop (Sui Generis) with installation of an extract flue to the rear elevation at 41A Bellegrove Road, Welling, Kent, DA16 3PB in accordance with the terms of the application Ref 20/02813/FUL, dated 31 October 2020, 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 use hereby permitted shall not be open to customers outside of the following times: 1100–2300 on Mondays to Saturdays inclusive, and 1100–2200 on Sundays and public holidays.
 - 3) Prior to the commencement of the use full details of the equipment for the extraction of cooking odours shall be submitted to and approved in writing by the Local Planning Authority. The approved extraction equipment shall be installed before the use hereby permitted is commenced and shall thereafter be retained and maintained for the life of the development in accordance with the manufacturer's specifications.
 - 4) Prior to the commencement of the use details of sound insulation measures between the hot food takeaway and the residential accommodation above shall be submitted to and approved in writing by the Local Planning Authority.
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The scheme approved by the Local Planning Authority shall be implemented before the use commences and shall be retained for the life of the development.

- 5) The development hereby permitted shall be carried out in accordance with the following approved plans: site location plan, 01 and 02.

Procedural matters

2. On 1 September 2020 – prior to the making of the planning application – the Town and Country Planning (Use Classes) (Amendment) Regulations 2020 came into force ('the 2020 Regulations'), amending the Town and Country Planning (Use Classes) Order 1987. This revoked Class A and, amongst other matters, created a new Class E covering a broad Commercial, business and service use, and removed the former Class A5 Hot food takeaway use, meaning that such use did not fall within any class (and would therefore be a '*sui generis*' use).
3. The Council in their decision notice described the proposal as the 'change of use from the existing ground floor retail unit (Class E) to a pizza takeaway shop (*Sui Generis*) with installation of an extract flue to the rear elevation'. The Appellant has also utilised this description on their appeal form. Given that this revised description accurately describes the proposal I have determined the appeal on the basis of the revised description.

Main issue

4. The main issue is the effect of the proposed development on the vitality and viability of Welling town centre.

Reasons

5. The appeal site lies within Welling town centre and within the defined Core Shopping frontage of the Welling Major District Centre. Policy CS07 of the Bexley Core Strategy 2012 (CS) seeks sustainable growth in and around the town centre. Policy CS14 of the CS designates primary shopping areas within town centres where retail will be safeguarded as the dominant land use, along with promoting diversification in the mix of town centre uses to avoid an over concentration of any sign land use other than retail.
6. Policy SH04 of the London Borough of Bexley Unitary Development Plan 2004 (UDP) seeks to resist change of use of shops (stated in the Policy as being Use Class A1) at ground floor level to other uses that would not enhance the character, viability and vitality of the centre. To achieve this, in terms of the Policy, seven criteria are set out against which proposals will be assessed, all of which have to be satisfied in order to achieve compliance with the Policy and a change of use from Class A1 allowed.
7. The Council have set out that the proposal would conflict with criterion 3 of Policy SH04, in that the proposal would result in five continuous widths of building frontage of non-retail use. This is not disputed by the Appellant and from the evidence before me, I agree with that finding. To that end, I find some conflict with Policy SH04.
8. However, as noted above, Class A1 has now been superseded by Class E as a result of the 2020 Regulations. Whilst the objectives of Policy SH04 are still relevant today, it is clear that comparisons of land use solely in respect of Class

A1 uses is no longer the most appropriate basis for an assessment of the criterion set out in the Policy. To my mind, such criteria should be assessed on the basis of current land use categories, i.e. Class E.

9. I am also conscious that the new Class E was in existence before the application was made. The Explanatory Memorandum to the 2020 Regulations stated that the Government considers that the Use Classes Order 1987 required a complete overhaul to better reflect the diversity of uses found on high streets and in town centres and to provide the flexibility for businesses to adapt and diversify to meet changing demands. This is a significant material consideration to which I attach substantial weight.
10. Furthermore, Paragraph 86 of the National Planning Policy Framework (2021) (the Framework) states that planning policies and decisions should take a positive approach to the growth, management and adaptation of town centres. The Framework continues to say that policies should allow defined town centres to grow and diversify in response to change, and to make clear the range of uses permitted in town centres and primary shopping areas.
11. However, I do recognise that Policy SH04 seeks to ensure broader control over the use of premises within core shopping frontages: ensuring there is no harm to the character, viability, and vitality of the centre, and in that regard the Policy remains consistent with the Framework. This is also broadly consistent with the objectives of Policy CS07 of the CS.
12. The appeal premises are currently vacant and were formerly occupied by a shop. The appellant states that the proposal will lead to the employment of 3-4 people, and this is not disputed by the Council.
13. The main parties have confirmed the use of the premises adjoining and close to the appeal site, by means of a schedule of occupiers that was provided after my site visit. This explains that the premises to either side are in the former Use Class A1 or A3 (i.e. those premises are now Use Class E). The Schedule sets out that there are three Class E uses to the east, one mixed Class E/*sui generis* use, and then a takeaway at No. 35B. To the west of the appeal premises, beyond the adjoining Class E use, is a double unit of a Pre-School in Class F1 (Learning and non-residential institution) and then further Class E uses continue to No. 47B.
14. It is therefore apparent to me that the appeal premises lies within a frontage where Class E is predominant. Those premises in the vicinity that are not in Class E use appear to me to assist in the diversity in character and vitality of the centre (the Pre-School will lead to footfall, activity and linked visits to the area, whilst the existing takeaway in the row of units is not excessive).
15. Taking this into account, the change of use would not create or add to a concentration of takeaways in this area. It would be a diversification of the existing range of uses in the area and bring vacant premises back into use, providing increased employment. The proposal would also increase choice for residents in hot food takeaway to the area, which is a matter in favour of the scheme.
16. For the above reasons, I conclude that the change of use to a hot food takeaway would maintain and enhance the vitality and viability of the town centre. It would also be consistent with the objectives of the Framework and with Policies CS07 and CS14 of the CS. Whilst there is a technical conflict with

Policy SH04 of the UDP the proposal would nevertheless accord with the overarching objective of the policy in respect of character, vitality and viability of the centre.

Other considerations

17. I have also had regard to the matters raised in the representations including issues such as the amount of fast-food outlets, delivery drivers/scooters and health and obesity issues. However, none of the issues raised provide for a compelling reason why planning permission should not be granted in this case.

Conditions

18. The Council has suggested a number of conditions that it considers would be appropriate and I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.
19. Other than the standard time limit condition, it is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty.
20. In the interests of the living conditions of the occupiers of nearby residential properties conditions are required in relation to the opening hours of the business, the installation and maintenance of the extraction equipment, and noise insulation measures.
21. Whilst the opening hours proposed by the Council are slightly shorter than that shown on the original planning application form, I agree with the Council that the shorter hours would be appropriate for this area in order to ensure activities from customers would not occur at unreasonable hours close to residential properties.

Conclusion

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

C J Leigh

INSPECTOR