



Appeal Decision

Site visit made on 7 December 2021

by C Shearing

an Inspector appointed by the Secretary of State

Decision date: 20 December 2021

Appeal Ref: APP/A2280/W/21/3274592

153 Fairview Avenue, Wigmore, Gillingham, Kent ME8 0PX

- 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 D Kaur against the decision of Medway Council.
 - The application Ref MC/20/3082, dated 30 November 2020, was refused by notice dated 16 February 2021.
 - The development proposed is change of use from butcher's shop to takeaway pizza shop together with the provision of a rear yard area for staff parking and deliveries.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the appeal the revised National Planning Policy Framework (the Framework) was published. There are no substantive changes relevant to the appeal before me and therefore no interested parties would be prejudiced by my consideration of the 2021 version of the Framework.

Main Issue

3. The main issue is the effect of the development on highway safety.

Reasons

Highway Safety

4. The appeal site lies within a parade of 5 properties with commercial uses on the ground floor. The parade is served by an area of off-street parking to the front which provides 8 parking spaces limited to 20 minute stays between the hours of 8am and 6pm Monday to Saturday. Parking restrictions similarly exist on Fairview Avenue, which is also a bus route, and for some distance around the site.
5. At the time of my site visit at midday the area of off-street parking outside the site was in frequent use primarily for short visits, and there were several parking spaces available at any one time. I appreciate that this was a snap shot of the parking conditions at that time. The appellant has also submitted photographs of the parking bays at various times during the day, demonstrating varying levels of occupancy. However these are similarly snap shots of those particular times photographed by the appellant.
6. Despite this, there is little evidence before me about the likely impact of the proposed use on those parking bays or the nearby highway. The appellant has

compared the existing and proposed uses to the Council's parking standards. Parking standards should, inevitably, be interpreted with reference to specific proposals and I note that neither the existing nor proposed uses benefit from the quantum of parking reported in those standards. The comparable parking standards alone however, in my mind, do not demonstrate that vehicle movements and the use of parking spaces close to the site would be the same for the proposed use as the existing.

7. Since the earlier refusal of planning permission (reference MC/19/2316) and the subsequent appeal decision (appeal reference W/4000391) the appellant has undertaken changes to the rear of the site and a plan has been provided to demonstrate how this area could accommodate 3 parked cars. During my site visit I saw the area being used for this purpose. However the parking area is heavily constrained due to the width of the site resulting in some substandard sized parking spaces and the need to reverse for a length of the track before turning is possible. These features, in combination with the length of the access track, its in-part narrow width and unmade surface are, in reality, likely to deter the use of this area by customers and deliveries where parking to the front of the site is more convenient. As discussed within the appellant's Transport Assessment, this area to the rear of the site is more likely to be used by staff who wish to park for longer periods of time. Based on the information before me I am not therefore satisfied that the creation of this parking area would acceptably alleviate or mitigate the impacts of the new use on the highway to the front of the site.
8. The appellant has been explicit in stating that the use proposed would not entail direct home delivery services. This is in response to concerns raised by the earlier Inspector and this change would, inevitably, have an impact on the highway. While such a condition may be enforceable, I do not consider that its imposition would satisfactorily resolve the issue at dispute here and to the contrary the restriction on home deliveries could mean more visits to the site by customers to collect. Regardless of whether the vehicle movements are for collections or deliveries, it is ultimately the uncertainty surrounding the quantum and frequency of those movements, and how they will operate on the highway, which causes concern.
9. I note that during some of the proposed opening hours several of the other uses in the parade would be closed, however the opening hours are likely to be similar to that of the other hot food takeaway to the eastern end of the parade. The cumulative impact of both these uses together has not been addressed and I note that this concern was similarly raised by the previous Inspector. As such it is not possible to conclude that the proposal complies with policy R18 of the Medway Local Plan 2003 which requires that development including takeaway hot food shops outside defined retail core areas, among other things, would be acceptable in terms of highway safety taking into account the combined effect of any similar uses in the locality.
10. While the appellant states that the Council have not provided detailed technical information to support its refusal, I consider the onus to be on the appellant to demonstrate the impact of the proposed use. The absence of evidence from the Council relating to accidents, congestion or the availability of parking does not necessarily suggest that these issues would not arise from the use proposed.

11. In light of the above concerns, I am not satisfied that the concerns raised by the earlier Inspector have been satisfactorily overcome by the revised proposals. Based on the evidence, there is unlikely to be adequate parking provision within a short and convenient walking distance of the appeal premises. Having considered all matters above, the proposed change of use could result in significant additional parking pressures around the site, which in turn could result in conditions prejudicial to highway safety.
12. The provision of off-street parking at the rear of the site (and the associated improved access and parking for other units in the parade) is a benefit of the scheme and reduces the local parking pressures created by staff of the premises. Similarly I agree the site has access to public transport and that it is close to residential properties that may use its services and that may reduce associated vehicle movements to some degree. However I find that these circumstances would not adequately mitigate nor outweigh the potential harm of the development on the local highway.
13. It therefore follows that I am unable to conclude that the impact of the development on the highway would be acceptable. The development is contrary to policies R18 and T1 of the Medway Local Plan 2003 which in summary seek to ensure that developments have an acceptable impact on highway safety taking into account the capacity of the highway network and combined effects with similar uses. The proposals would also conflict with paragraph 111 of the Framework insofar as it aims to prevent development where there would be an unacceptable impact on highway safety.

Conclusion

14. In light of the information available about the nature of the proposed use and its surrounding context, I conclude that the development would be contrary to the development plan as a whole. This conflict is not outweighed by other material considerations in this instance and the appeal should therefore be dismissed.

C Shearing

INSPECTOR