
Appeal Decision

Site visit made on 1 February 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2022

Appeal Ref: APP/E9505/W/21/3276150

Ye Olde Saddlery, The Street, Neatishead NR12 8AD

- 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 & Mrs Thompson against the decision of Broads Authority.
 - The application Ref BA/2020/0453/FUL, dated 3 December 2020, was refused by notice dated 8 February 2021.
 - The development proposed is Change of use of outbuilding to cafe (Class E(b)) & pizza takeaway (Sui Generis)
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Decision

1. The appeal is allowed and planning permission is granted for Change of use of outbuilding to cafe (Class E(b)) & pizza takeaway (Sui Generis) at Ye Olde Saddlery, The Street, Neatishead, NR12 8AD in accordance with the terms of the application, Ref BA/2020/0453/FUL, dated 3 December 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 development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan (Scale 1:125), Site Location Plan (Dated 18 November 2020).
 - 3) The premises shall be used as a cafe (Use Class E(b)) & pizza takeaway (Sui Generis) and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
 - 4) During opening hours, one on-site car parking space shall be made available for use by customers only.
 - 5) The uses hereby permitted shall only take place between 01 May and 31 October in any given year between the following hours on Thursdays and Fridays only:
 - 10:00hrs – 14:00hrs
 - 17:30hrs - 20:00hrs

Preliminary Matters

2. The evidence before me indicates that the use commenced some time in 2020 but ceased later that year. Given that the use has ceased, the application is not retrospective.
3. I have taken the description of development from the Council's decision notice and the appellant has agreed to this description.
4. On 20 July 2021, the Government published a revised version of the National Planning Policy Framework (the Framework). However, the revised Framework does not materially alter the national policy approach in respect of the issues raised in this appeal.

Main Issues

5. The main issues in this appeal are:
 - The effect of the development on highway safety.
 - The principle of the development with specific regard to its location.

Reasons

Highway Safety

6. The proposed development includes the change of use of a residential outbuilding to a café and pizza takeaway, with a small number of benches providing outdoor seating (up to 25 covers). The appeal site is located at Ye Olde Saddlery, which is a residential property located within the village of Neatishead.
7. The appellant proposes that the café and takeaway would operate between 01 May and 31 October in any given year on Thursdays and Fridays only (for limited time periods). The appellant suggests that the proposed development would generate between 1 and 2 visits by motor vehicle per hour during the operation of the café and up to 5 vehicles per hour during the operation of the pizza takeaway. The planning application form indicates that there would be four part-time and two full-time members of staff.
8. The evidence before me indicates that the appellant proposes to utilise one car parking space within their ownership to serve the development, with other vehicles parked on-street or utilising other car parks in the locality. However, given that the other car parks would not be within the ownership of the appellant, for the purposes of this appeal, I will assume that customers arriving by motor vehicle would need to park on-street (if the single parking space was occupied). Local Plan¹ Policy DM23 requires parking to be provided 'in accordance with the relevant adopted standards'. However, neither the Council nor the Highway Authority has referred to or provided a copy of any such standards.
9. Notwithstanding this, the evidence before me demonstrates a significant level of local support for the development. Indeed, the appellant has provided dozens of letters from local residents and other members of the public in support of the proposed development, the vast majority of which outline that

¹ Local Plan for the Broads – Plan period: 2015 to 2036 (Adopted 17 May 2019)

there have not been significant numbers of vehicles parked on the highway whilst the business has been in operation. This evidence also demonstrates that many customers would be drawn from the immediately surrounding local area and therefore they would be much more likely to access the development on foot. Conversely, they would be less likely to travel by car to access a similar service in another location further afield.

10. Furthermore, other customers would visit as a result of passing trade, having accessed other local facilities, including the Public House and Local Shop. As a result, these customers would be unlikely to place any significant additional strain on the highway network (in terms of the number of parked vehicles). In addition, other customers may well access the development by bicycle from surrounding villages, as is indicated in a number of the representations in support of the development. Finally, there are free boat moorings within a short walk of the appeal site and it is likely that some custom would be associated with these moorings.
11. Given these considerations and the relatively small scale of the enterprise (with a maximum of 25 covers provided, accommodated on a small number of garden benches), the proposed development would not lead to a significant number of vehicle movements or vehicles parked on the highway, either from staff or customer journeys. The proposed takeaway use would generate a small number (up to 5 per hour) of visits by motor vehicle, but these vehicles are unlikely to be parked for prolonged periods given the very nature of a takeaway business.
12. In any case, vehicle speeds travelling through the village, particularly in the vicinity of the appeal site, are likely to be lower than the 30mph speed limit, given the built-up residential characteristics of this part of the highway and the winding nature of the road in this location. As such, even though there are no footways within the vicinity of the appeal site, the development is unlikely to lead to any significant increase in danger to pedestrians, including more vulnerable users. Indeed, the highway authority has confirmed that there have been no recorded personal injury accidents on either The Street or Irstead Road in the vicinity of the Appeal Site in the last five years (including whilst the business has been operating). For these same reasons, customers would be unlikely to be discouraged from walking short distances along the highway to access the development. Indeed, much of the village is devoid of footways in any case.
13. Norfolk County Council (the Highway Authority) has objected to the development and has raised particular concerns in relation to the limited junction visibility, lack of designated footways, obscured forward visibility and limited carriageway widths. Whilst the appeal site is located adjacent to a junction, there is no reason why customers would need to park their vehicles in such a way which would result in an obstruction. Indeed, whilst fairly narrow, Irstead Road does provide some capacity for on-street parking and there are other areas where vehicles can park on-street within the village. In addition, the aforementioned road characteristics and likely slow vehicle speeds are such that it is not likely that vehicles parked on street would lead to any significant increased risk of conflicts between road users.
14. For these reasons, the proposed development would not lead to an adverse impact upon highway safety. The proposed development would therefore

comply with Local Plan Policy DM23, which requires in part that development proposals are assessed in terms of their impact on the highway network and highway safety.

15. The proposed development would also comply with Framework Paragraph 111, which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. It also complies with Framework Paragraph 112, which states in part that development should create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles.

Principle of development

16. Two policies cited in the Council's reasons for refusal relate to the principle of development. Local Plan Policy DM29 relates to sustainable tourism and recreation development, whilst Local Plan Policy DM44 relates to visitor and community facilities and services. Both are relevant insofar as the development provides a community facility which would also serve tourists.
17. It is not clear to what extent the Council alleges conflict with these policies. Indeed, the evidence provided by the Council and Highway Authority for this appeal centres on highway safety. Policy DM29 states in part that there should be proven sufficient capacity of the highway network (Criterion vi) and sufficient car and cycle parking provided on site (Criterion vii). However, the proposed development complies with these criteria for the reasons outlined in relation to the first main issue.
18. The Council's reasons for refusal also refer to the site being located 'in a countryside location where there is limited access by public transport and users of the takeaway/café are likely to arrive by private motor car.' Criterion (f) of Policy DM44 requires that community facilities are located in a sustainable location, accessible by a choice of transport modes. There is no substantive evidence before me to demonstrate that the site is served by regular public transport links. However, for the reasons already outlined, the site is accessible on foot from residential properties in the local area, by cycle and from nearby boat moorings. Furthermore, the evidence demonstrates that the development would primarily serve the local community, including the village of Neatishead. Indeed, it would reduce the need for local residents to travel further afield to access similar facilities elsewhere. For these reasons, the proposed development would comply with criterion (f).
19. The Council has not outlined that the development conflicts with Policies DM44 or DM29 in any other regard. For the reasons outlined above, the site would be a suitable location for the proposed development and it would not therefore conflict with Local Plan Policies DM44 and DM29.

Other Matters

20. An interested party has raised concerns with regard to noise and odour and queried whether the outbuilding meets building regulations requirements. With regard to noise, the small scale of the development is such that any noise is likely to be limited during hours of operation. Furthermore, a planning condition controlling hours of operation will ensure that the development does not lead to any increase in noise to nearby residents in the late evening or early morning hours. Again, the small scale of the enterprise is such that odour nuisance is

unlikely to exceed what might be expected in a residential area and there is no substantive evidence to suggest that there would be any significant harm arising in this regard. Finally, building regulations are controlled by a separate regulatory regime.

21. The appeal site is located within the Neatishead Conservation area. Under section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I am obliged to pay special attention to the desirability of preserving or enhancing the character and appearance of the Conservation Area. The Conservation Area derives its significance primarily from its quiet character, historic architecture and association with the Broads waterways.
22. Given the limited scale of the proposed development and the presence of other community uses within the nearby vicinity, I am satisfied that it would preserve the character and appearance of the Conservation area.

Conditions

23. I have considered the Council's suggested conditions in light of advice contained in the Planning Practice Guidance and the tests within the Framework. As a result, I have amended some of the conditions so that they are enforceable, precise, relevant, necessary and reasonable in all other respects.
24. Conditions relating to timeliness [1] and the identification of plans [2] are necessary to provide certainty.
25. A condition controlling the use of the outbuilding [3] is necessary such that alternative uses which fall within the same use class cannot be implemented without a full consideration of the impacts associated with any such use (including on neighbouring living conditions), through consideration of a planning application. The appellant has queried whether a storage use would be acceptable during the period in which the café/takeaway is not in operation. However, that is a matter between the parties, taking into account whether any such storage use would amount to a material change of use requiring planning permission.
26. A condition requiring that the single parking space is utilised by customers during operation [4] is necessary to reduce the number of vehicles parked on-street during opening hours.
27. It is necessary to condition the months and hours of operation [5] in the interest of the living conditions of neighbouring residents. For the avoidance of doubt, these are also the operating hours as described in the Council's suggested list of conditions.

Conclusion

28. The proposed development complies with the development plan taken as a whole and there are no other material considerations of sufficient weight which indicate that a decision should be made other than in accordance with it. As such, the appeal is allowed, subject to conditions.

Luke Simpson

INSPECTOR