



Appeal Decision

Site visit made on 26 April 2022

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2022

Appeal Ref: APP/Z4310/W/21/3289349

Former TSB Bank, 287 Speke Road, Woolton, Liverpool L25 0NN

- 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 Starboard Dining Limited against the decision of Liverpool City Council.
 - The application Ref 21F/1944, dated 4 June 2021, was refused by notice dated 17 November 2021.
 - The development proposed is described as: Change of use of currently vacant, former bank (formerly Use Class A2, now Use Class E(c)(i)) premises to a hot food takeaway (*sui generis* use), incorporating the installation of a plant and extraction system, and the display of halo illuminated fascia signage and internally illuminated projecting sign.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of proposed development given on the Council's Decision Notice differs to that given on the planning application form. As I have not been provided with any evidence that the appellant agreed to the change, and as the description provided adequately describes the proposal (except for reference to advertisements, which I have removed), I have retained the original description. An application for advertisement consent was dealt with separately. I have therefore made my decision based on the following description: Change of use of currently vacant, former bank (formerly Use Class A2, now Use Class E(c)(i)) premises to a hot food takeaway (*sui generis* use), incorporating the installation of a plant and extraction system.
3. Since the appeal was submitted, the Emerging Local Plan referred to by parties has been adopted by the Council. Consequently, rather than Policy SP4 being an emerging policy it is now a development plan policy within the Liverpool Local Plan 2013-2033 (January 2022), (the LLP), and is therefore afforded full weight. The main parties agree that the proposal would conflict with Policy SP4 of the LLP.

Main Issue

4. Bearing in mind the above and the evidence before me, the main issue is whether the conflict with the LLP is outweighed by other material considerations.

Reasons

5. Paragraph 2 of the National Planning Policy Framework advises that planning law requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. As the main parties agree that the proposal does not accord with Policy SP4 of the LLP the appellant contends that there are material considerations which outweigh the policy conflict.
6. The site is located within the Hunt's Cross Local Centre (HCLC). Part 1 of Policy SP4 supports the development of hot food takeaways in centres, subject to meeting the criteria outlined in 1 (a), (b), and (c). Part 1 (a) supports the development of a hot food takeaway, providing it would not result in more than 10% of units within the centre being hot food takeaways. The reason the proposal does not accord with part 1 (a) of the Policy is that it would result in 13.3% of all units in the centre (ie 4 of the 30 units) being hot food takeaways. The centre provides, and characterised by, a balanced mix of commercial units.
7. In addition to the composition of units within a centre, the appellant suggests that the vitality and viability of centres should be taken account of when assessing proposals for hot food takeaways. I accept these are undoubtedly factors to be considered when appraising development proposals within local centres. However, the explanation of Policy SP4 states that "*Part 1 of the policy seeks to protect the vitality and viability of centres...*". Hence, the explanation of the Policy makes it clear that this is the essence of what Part 1 seeks to do. As such, the logical conclusion is that the Council will have considered vitality and viability in reaching its Decision.
8. Notwithstanding, the appellant contends that of the 30 units within the centre 4 are vacant, one of which is the appeal site. It is claimed that these premises have been vacant for some time (which I have no reason to doubt), ie ranging between around 1-4 years, with the appeal premises being vacant for over 2 years. In the appellant's view, units being vacant for such periods provides a clear signal that there have been difficulties finding occupiers for the premises. On this basis, the appellant suggests that the vitality and viability of the centre, including increasing footfall and providing employment opportunities, would be enhanced if the proposal was granted permission.
9. I note that of the 4 vacant premises only one has been vacant for around 4 years, the other 3 have been vacant for between around 1-2 years. Nevertheless, I accept that in certain circumstances commercial units that have been vacant for such periods in centres may indicate that there are difficulties, and therefore use of the premises in some form (which may not accord with development plan policies) would be better than the premises remaining vacant. However, due to the Covid 19 pandemic, the past 2 years or so have not been usual circumstances, and it is difficult to say at this stage what the long-term effect of the pandemic on centres will be.
10. Additionally, it is also too early, given the timing of the pandemic, to form a clear picture of what effect the creation of Class E in the Use Classes Order, introduced in September 2021, will have on centres.
11. The location of each of the vacant premises within the layout of the centre also needs to be borne in mind. The premises that make up the HCLC are spread around 4 corners of a crossroad, and the vacant units are spread around 3 of

the corners. The unit the subject of the appeal is the only vacant unit within the stretch of units located on the corner of Speke Road and Hillfoot Avenue. As a result, the impression I formed when visiting the site, which admittedly is simply a snapshot of the centre as seen on one Tuesday afternoon, was not one of the centre struggling with regards to vitality and viability.

12. Bearing the above factors in mind, I consider that a clear picture of the vitality and viability of the HCLC needs to be formed over a suitable period, in circumstances other than exceptional ones like the Covid 19 pandemic. At this point in time, I am therefore not persuaded that granting permission for the proposal, contrary to the development plan, would benefit the vitality and viability of the centre in the long-term, or to an extent that would prompt me to reach a decision other than in accordance with the development plan.
13. I accept that the proposed opening times would provide an active frontage within the premises throughout most of the day; and that the proposal would provide some employment opportunities, to which I attach moderate weight. However, I consider these benefits and the other considerations outlined do not outweigh the significant harm I have found with regard to the proposal eroding the balanced mix of commercial uses within the HCLC, thereby detrimentally altering its character, and the conflict with Policy SP4 of the LLP.

Conclusion

14. For the reasons outlined, I conclude that the appeal is dismissed.

J Williamson

INSPECTOR