



Appeal Decision

Site visit made on 4 July 2022

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2022

Appeal Ref: APP/W2845/W/22/3291931

34-36 St Giles Street, Northampton NN1 1JW

- 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 Chandra Bommidica, on behalf of Fireaway Northampton, against the decision of West Northamptonshire Council.
 - The application Ref WNN/2021/0508, dated 16 July 2021, was refused by notice dated 17 January 2022.
 - The development proposed is Change of use from retail (Class E) to takeaway (Sui Generis) and erection of extraction flue.
-

Decision

1. The appeal is allowed, and planning permission is granted for the change of use from retail (Class E Use) to takeaway (Sui Generis Use) and the erection of an extraction flue at 34-36 St Giles Street, Northampton NN1 1JW in accordance with the terms of the application, Ref WNN/2021/0508, dated 16 July 2021, and the plans submitted with it, subject to the conditions within the attached schedule.

Applications for costs

2. An application for an award of costs has been made by Mr Chandra Bommidica against West Northamptonshire Council. This matter is the subject of a separate decision.

Preliminary Matters

3. The Emerging Northampton Local Plan Part 2 (2011-2029) (ELP) has been submitted to the Secretary of State for examination. Paragraph 48 of the National Planning Policy Framework (The Framework) allows me to ascribe weight to the policies of an emerging plan dependant on its stage of advancement. The Council has identified that policy 8 is of particular relevance to the proposal which seeks to support development that would make a positive contribution to the town's regeneration. Whilst the ELP is only at submission stage policy 8 it is not subject to objection. As such, I have afforded this policy significant weight.
4. The proposal, the subject of this appeal, seeks to occupy two of the three shops within a larger building. The surrounding building was recently approved, above and to the side of the site, for residential development. This appears to be unimplemented but remains extant. As such, I shall consider the effect of the proposed use on future residential occupiers within neighbouring parts of the building as part of this appeal.

5. The description of development has changed on the Decision Notice from that shown on the application form, adding reference to the flue and making other minor changes. The appellant has declared, at section 4 of the appeal form, that the description has not changed. Nonetheless, I find the changes made to the description by the Council to more accurately reflect the extent of the proposal. I have therefore used the revised description, which would not materially alter the scheme.
6. The proposed hours of use were amended during the course of the Council's consideration of the planning application. This altered the hours of closing from 03:00 to Midnight. As these have been reduced from the initially proposed hours, I shall take the reduced hours into account without prejudice being caused to any party.

Main Issues

7. The main issues are:
 - the effect of the proposed use on the vitality and viability of the commercial area,
 - whether the proposed development would preserve or enhance the character or appearance of the Derngate Conservation Area (DCA),
 - the effect of the proposal on highway safety, and
 - the effect of the proposed development on the living conditions of neighbouring occupiers, especially 20 Castilian Street (No 20), with respect to noise and smell disturbance.

Reasons

Vitality and viability

8. The premises is a corner shop unit within a Secondary Retail Frontage (SRF). Policy 13 of the Northampton Central Area Action Plan (AAP) identifies that a change of use from retail (Class A1) would be allowed subject to certain restrictions. These include where a proposal would not result in a significant decline in the total length of identified retail frontage below 60%, or, where this is already below 60% reduce further the retail frontage. The policy enables units within a SRF to accommodate a higher level of non-retail activity than in a Primary Retail Frontage.
9. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into effect on 1 September 2020. The appeal site would now fall within Class E of Part A, Schedule 2. As such, reference to Class A1 within the AAP has been subsumed by the above change and results in a small inconsistency in policy language. Nevertheless, the broader policy objectives of AAP policy 13 are echoed by the Framework. This seeks, at paragraph 86, to promote the long-term viability of town centres, allowing them to grow and diversify in a manner that responds to rapid changes in the retail and leisure industries, allows for a suitable mix of uses and respects their distinctive characters.
10. As a consequence, the policy's reference to 60% would not fully align with the changing form of high streets and the greater variety of activity sought by the Framework and the broader objectives of ELP policy 8. As such, the percentage

restriction of AAP policy 13 has only limited weight in the consideration of the merits of this appeal.

11. The appeal site has been vacant for a prolonged period and is within a row that includes a number of other empty units. The proposed development would result in the exclusion of the appeal premises from a 'Class E Use'. Nevertheless, the proposal would reoccupy a vacant unit and retain an active commercial use. This would provide a service to customers that would be commensurate with existing local commercial activity and would support the retail function of the SRF.
12. Moreover, the proposal would employ around 20 staff, creating a new employment activity helping to revitalise the high street and employment opportunities in the town. Furthermore, attending customers could potentially undertake linked trips, spending within the wider area, further enhancing the area's economic activity. Accordingly, the proposal would also generate moderate economic benefits for the area.
13. As a result, the proposed development would support the vitality and viability of the SRF and the surrounding commercial area. Accordingly, the proposal would comply with AAP policy 13 and ELP Policy 8. These policies seek, among other matters, for development to contribute towards the town's regeneration. Policy 12, of the AAP, refers to the primary shopping area and therefore this policy weights neither for nor against the proposal.

Character and appearance

14. The appeal site is within a commercial setting, the street consists of buildings with a variety of styles and heights. However, these share a common front building line, reinforcing the street and the function of the retail frontage. There are some nearby vacant units within the frontage, with roller shuttered shopfronts, that detract from the character of the area. The building is a tall two-storey flat-roofed structure with a traditional brick façade and decorative first floor windows. The shop units within the building have relatively modern shopfronts, that whilst maintaining pilasters and low stall risers, are simple in form and lack the decorative style of many local examples. Nevertheless, the building is of scale that is in keeping with the local area and makes a positive contribution to the character and appearance of the area.
15. The site is within the DCA. My statutory duty¹, requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Furthermore, paragraph 199 of the Framework requires great weight to be given to an asset's conservation when considering the impact of the proposal on its significance. The DCA is the historic core of the town centre. It includes the retail and cultural quarters of the town with buildings that are a variety of styles and scales.
16. The predominant character of the area consists of its terraced built form, and sense of enclosure, with buildings built back of footway forming a strong urban character. The Council's DCA Appraisal (2006) identifies that most of the units along the south side of St Giles Street play an important role in the retail character of the area. It is also recognised that St Giles Street won a national award, in 2015, as 'Best British High Street' for its quality and range of

¹ section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990

independent specialist retailers. The significance of the DCA seems to derive from its medieval origins, largely coherent form of buildings and their inter-relationship.

17. The proposed hot-food-takeaway would provide a counter service and waiting area. It would retain the existing shopfronts, enabling it to display activity, through the windows, of both customers and the open plan kitchen beyond the counter adding variety and interest to the street. Furthermore, being within a prominent corner location, the open views into the premises would add new interest to the streetscene from relatively distant views. As such, the proposed use would positively contribute to the character and function of the retail frontage.
18. Consequently, the proposed development would preserve and enhance the character and appearance of the DCA. As a result, the proposal would comply with policy BN5 of the Joint Core Strategy 2014 (Part 1)(JCS), AAP policy 13, ELP Policy 8 and the Framework. These policies seek, among other matters, for development to contribute towards the town's regeneration and to sustain and enhance the significance of heritage assets.

Highway safety

19. The appeal site is within a town centre location. Access to local parking consists of metred parking, with a maximum two hour stay, and single yellow lines. There are also several local public car parks, and the site is well served by public transport. The site therefore provides a range of options for customers and employees to either travel to the site in a sustainable manner or park in safe locations close to the site.
20. The proposed use would be likely to lead to a small increase in customer traffic, in comparison to the previous retail use of the site. Nonetheless, the Council has not demonstrated that such activity would be materially greater than the customer numbers associated with the former use. In any event, being within a town centre, increased customer activity could be accommodated within this location.
21. The use would be likely to attract some short-term parking demand while customers attend to collect food. However, local parking would be likely to be readily available in the evenings when the use would probably be at its busiest. St Giles Street, Hazelwood Road and Castilian Street are one-way Roads. Therefore, traffic would be likely to be subject to fewer conflicting traffic movements to the benefit of highway safety. It seems unlikely that local evening businesses result in a shortage of local parking provision and the Council has provided no evidence to substantiate this assertion.
22. I am therefore unconvinced that customers in vehicles, looking to park in the area, would need to queue in the highway waiting for a parking space. Even if they did, there is no evidence that such queueing would result in an adverse impact on highway safety. Accordingly, the proposal would not result in an impact, severe or otherwise, on highway safety. I also note that the Local Highway Authority takes a similar view.
23. Consequently, the proposal would comply with the Framework which seeks, at paragraph 111, to refuse development if there would be an unacceptable impact on highway safety.

Living conditions – neighbours

24. The appeal site is adjacent to parts of the building that have recently gained planning permission to be converted to flats. This includes above the shop units and to its rear that faces onto Castilian Street. Other residential properties also appear to be within close proximity of the site. Nevertheless, the site is primarily within a commercial area where a number of existing businesses operate into the evening.
25. The unit is proposed to operate from 07:00 to Midnight daily. Customers and delivery activity associated with the proposed use would be likely to be relatively frequent in the evenings. Nevertheless, such activity during this period, would be appropriate and consistent with the operation of the wider town centre. Moreover, the proposal includes a large area inside the premises for customers to wait for their orders. This would limit the time patrons would spend outside, reducing the frequency of noise associated with customer's voices.
26. The proposed use would require a flue to be installed through the building. The flue would emerge onto the rear elevation and follow a chimney to vent. It would be close to several windows that would serve habitable rooms of approved but unbuilt flats. Despite its proximity to some of these windows, the flue would be unlikely to result in noise or smell nuisance. This matter could be regulated through a planning condition requiring it to be installed in accordance with the appellant's odour control and noise control specifications. This conclusion is also supported by the Council's Environmental Health Officer, and I see no reason in evidence to disagree with this view.
27. As such, the proposal would not result in an adverse effect on the living conditions of existing residential occupiers, or the future occupiers of the approved flats at No 20, with respect to noise and disturbance. Consequently, the proposal would accord with JCS policies BN9 and S10 and the Framework. These seek, inter alia, for development to minimise pollution from noise and to include mitigation for proposals that are likely to cause adverse noise effects.

Other Matters

28. Concerns have been raised by interested parties with respect to waste management and litter. The premises is of sufficient size to accommodate waste storage and management within its demise. As such, I am satisfied that the effects of the premises on the creation of waste and litter would be limited. As a result, a waste management strategy could suitably address this, secured by condition.
29. I have had regard to concerns raised with respect to the number of food outlets already within the town. ELP Policy 20, relating to health matters, seeks to prevent hot food takeaways being located within the close proximity of schools. Once adopted, this policy would provide an applicant with clear guidance with respect to unsuitable locations for 'unhealthy' eating facilities. As the site is not within such a zone, it would accord with this emerging policy.
30. The proposed use would operate up to Midnight. Whilst this may attract some late-night custom there is no substantive evidence that this would result in

anti-social activity. I am also cognisant that no objection has been raised by Northamptonshire Police in this regard.

Conditions

31. I have considered the use of conditions in line with the guidance set out in the Government's Planning Practice Guidance (PPG). I shall take the Council's suggested conditions into consideration and impose these with some amendments and adjustments for clarity. Conditions with respect to timeframe and approved plans are necessary to comply with the PPG in terms of clarity and certainty. Conditions are also required with respect to hours of use and to comply with the noise and odour assessment in the interests of resident's living conditions. It is also necessary for details of waste storage and management to be submitted in the interests of the character and appearance of the area.

Conclusion

32. The proposal would accord with the development plan, when taken as a whole, and there are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. As such, the appeal is allowed, and planning permission granted subject to the attached conditions.

B Plenty

INSPECTOR

Schedule of 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: Block/Site Plan; layout plan drawing ref: 021-085-002-rev B; and proposed elevations drawing ref: 021-085-004 rev A.
- 3) The noise and odour technology shall be implemented fully in accordance with the submitted details received on 29 September 2021 and be retained in that form throughout the lifetime of the approved development as a hot food takeaway.
- 4) Customers shall only be permitted on the premises between the following hours: 07:00 – Midnight, Mondays – Sundays.
- 5) Prior to the commencement of use and notwithstanding the submitted details, full details of the storage of refuse and materials for recycling on site and a waste management strategy shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the first occupation or bringing the approved development into use and thereafter retained.

End of Conditions