
Appeal Decision

Site visit made on 10 October 2022

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2022

Appeal Ref: APP/A2280/W/21/3288236

117 Watling Street, Gillingham ME7 2YX

- 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 Britannia Fish Bar against the decision of Medway Council.
 - The application Ref MC/21/1502, dated 19 May 2021, was refused by notice dated 5 August 2021.
 - The development proposed is described as the change of use from Class E (opticians) to Sui Generis (hot food takeaway) with alterations to front facade for increased glazing.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from Class E (opticians) to Sui Generis (hot food takeaway) with alterations to front facade for increased glazing at 117 Watling Street, Gillingham ME7 2YX in accordance with the terms of the application, Ref MC/21/1502, dated 19 May 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. On 1 September 2020, 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 (the Use Class Order). 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 Hot Food Takeaways in Medway, Guidance Note 2014 (the HFTGN) refers to these pre-September 2020 uses as set out above. However, in coming to my decision I have had regard to the changes in the Use Class Order.

Main Issue

4. The main issue is the effect of the proposed development on whether or not the site is a suitable location for the development with particular reference to health impacts and the vitality and viability of centres.

Reasons

5. The appeal site sits outside but close to a defined retail core area or local centre. Policy R18(ii) of the Medway Local Plan 2003 (the Local Plan) sets out, amongst other things, that hot food take-away uses will be permitted outside core areas provided the presence of any similar uses in the locality, and the combined effect that any such concentration would have, would be acceptable.

- Both the Council and appellant draw my attention to paragraph 5.12 of the HFTGN which states that hot food takeaway uses should not normally exceed 15% of the overall linear meterage in neighbourhood or larger local centres.
6. The appellant states that commercial uses along Rainham Road and Watling Street cover approximately 600 linear metres and hot food takeaways, including the proposal, would not exceed 15% of this overall linear meterage. I also note that the Council's planning officers undertook their own similar assessment and while it was found to extend to nearer 540 linear metres, would also not exceed 15%.
 7. The Council, however, have used a different method to calculate the linear meterage using a reduced frontage extending from the junction with Derby Road to the Post Office/convenience shop. This reduced frontage would result in the concentration of hot food takeaway uses exceeding the 15% threshold, at 23%.
 8. There is no clear evidence before me as to how the main frontage should be calculated in this case, or even if paragraph 5.12 applies to the appeal site given it sits outside a designated centre. However, I note that the application site is situated between the designated local centres of Rainham Road/Watling Street and Watling Street.
 9. Even though the appeal site is not itself designated as a centre, it is an established commercial use which is surrounded by several other mixed commercial uses which are located between two established centres. This layout means the appeal site would influence these existing designated centres in terms of visiting members of the public, particularly as they are all within walking distance of each other at approximately 540 metres to 600 metres in total length.
 10. The Council has not provided detailed reasoning to challenge the appellants calculation and I am more persuaded, in this case, that the commercial uses within the frontage, as a whole, should be assessed given their proximity to each other. Consequently, I find that the proposed development would not exceed 15% of hot food take away uses within the main frontage therefore retaining a diverse balance of uses.
 11. I acknowledge that concerns have been raised regarding health, wellbeing and obesity. These concerns are well understood, and I consider this to be a matter of great importance. The HFTGN was produced to protect town centre viability and vitality and help tackle the issue of obesity.
 12. The HFTGN, therefore seeks to strike a balance between hot food choice and tackling obesity by locating hot food takeaways in appropriate areas while avoiding over-concentration of these uses. As I have found above, when taken as a whole, there would not be an unacceptable cumulative impact or concentration of hot food take away uses therefore maintain a diverse and balanced range of uses.
 13. I therefore find the site would be a suitable location for the development with particular reference to health impacts and the vitality and viability of centres. Accordingly, there would be no conflict with the relevant provisions of Policy R18 of the Local Plan or paragraph 5.12 of the HFTGN all of which, amongst

other things, seek to ensure that development is appropriate within these areas.

Other Matters

14. While the proposed development would generate vehicular activity and demand for parking, there is no substantive evidence before me to suggest this would be unacceptably harmful either on its own or when compared to the previous use. Consequently, the proposal would not result in an adverse impact on the safe operation of the highway including parking.
15. Interested parties have raised concern about increased light pollution and anti-social behaviour, including littering and noise. I have imposed conditions to control opening hours and manage noise from the premises. I do not consider, on the limited information before me, that light pollution and more broader anti-social behaviour would be solely attributed to the appeal premises, however, there is other legislation in place to control these matters.
16. The proposed drawings show the extraction flue to be of modest design and appearance, sitting significantly under the ridge line of the existing roof. Given this modest appearance, the flue would not be unacceptably harmful when viewed in its context.
17. The need for a hot food takeaway has been questioned as well as competition with existing business. I have found no policy objection to the proposed use, and it is not the role of the planning system to restrict competition between different commercial interests.
18. It has also not been clearly demonstrated, from the evidence before me, that a school exists within 400m of the proposed development. Consequently, I do not consider paragraph 5.13 of the HFTGN is engaged.

Conditions

19. The Council has suggested 5 conditions. Where necessary and, in the interests of precision, I have amended the wording of some conditions to accord with Planning Practice Guidance (PPG) and the Framework.
20. In addition to the standard time limit for commencement, conditions are necessary specifying the approved plans [2] in the interests of certainty. It is also necessary, in the interests of the character and appearance of the area to control materials [3]. To protect the living conditions of neighbouring occupiers in respect of noise and odour [4 and 5] are also necessary.

Conclusion

21. For the above reasons, having regard to the development plan as a whole, the approach in the Framework and all other relevant material considerations, the appeal should succeed subject to the conditions in the attached schedule.

N Praine

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing numbers 1002-00-ZZ-DR-A-0001, 1002-00-ZZ-DR-A-0010 and 1002-00-ZZ-DR-A-3002 and 1002 -00-ZZ-DR-A-3601.
- 3) All materials used externally shall match those set out in the planning application form dated 19 May 2021.
- 4) The use hereby permitted shall only operate between the hours of 11:00 to 22:00 Mondays to Saturdays inclusive and between the hours of 12:00 to 21:00 on Sundays and Public Holidays.
- 5) Prior to the first use of the unit as a hot food takeaway, a scheme for the extraction and treatment of cooking fumes, including details for the control of noise and vibration from the system, shall be submitted and approved in writing by the Local Planning Authority. Noise from the extraction system (LAeq,T) shall be at least 10dB(A) below the background noise level (LA90,T) at the nearest residential facade, when assessed in accordance with BS4142:2014. The approved scheme shall be implemented before the development is brought into use and thereafter be retained in accordance with the approved details.

End of Schedule