



Appeal Decision

Site visit made on 7 December 2022

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Appeal Ref: APP/G5180/W/22/3296136

Unit 1, Springvale Retail Park, Sevenoaks Way, Orpington BR5 3SG

- 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 Aldi Stores Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/21/02556/FULL1, dated 20 May 2021, was refused by notice dated 3 December 2021.
 - The development proposed is the creation of a new unit within the existing unit and change of use to sui generis 'hot food takeaway / restaurant' use.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Aldi Stores Ltd against the Council of the London Borough of Bromley. That application is the subject of a separate decision.

Preliminary Matters

3. Revised plans have been submitted with the appeal, updated to show the Aldi store now operational. The revised plans do not change the nature of the proposal, and therefore no party is prejudiced by them. I have therefore considered the development on the basis of the revised plans.
4. Reference has been made to the draft Orpington Town Centre SPD. With the information before I afford limited weight to it as an emerging document.

Main Issue

5. The main issue is the effect of the development on the vitality and viability of Orpington Town Centre.

Reasons

6. The Springvale Retail Park is located on Sevenoaks Way, part of the A224 which runs north-south through Orpington, and which the Council advises comprises part of the Transport for London Strategic Road Network. In its vicinity, retail and industrial uses are found either side of Sevenoaks Way, with residential uses beyond them. The retail park is located around 2km from the northern end of Orpington Town Centre ("the town centre"), which is designated as a Major Centre in the London Plan.

7. The appeal site is a small part of the larger unit occupied by Aldi. Planning conditions limit it to Use Class E(a), the sale of goods other than hot food, and prevent its subdivision without the Council's approval¹.
8. The proposed unit, with a Gross Internal Area (GIA) of 182sqm, would be a *sui generis* 'hot food takeaway/restaurant' use would be a 'main town centre use' as described in the National Planning Policy Framework ("the Framework").
9. Although an 'Impact Test'² is not required, as the proposal does not exceed 2,500sqm, London Borough of Bromley Local Plan (2019) (BLP) Policy 91 and Paragraphs 87 and 88 of the Framework require proposals for new main town centre uses outside of existing centres to undergo a 'Sequential Test'³. They require that main town centre uses should be located in town centres, then in edge of centre locations and, only if suitable sites are not available in those locations, out of centre. Flexibility should be demonstrated on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.
10. Aldi do not require all the floorspace of Unit 1 and therefore propose to subdivide it to create a small new unit. They also see the opportunity to complement the existing range of occupiers on the retail park with additional food and drink facilities. Although the need for a development may not normally be a planning consideration, the appellant considers the development would meet a specific need generated by customers of the retail park, and those in the local area passing by. In doing so it claims a locational requirement for the use in this location or within a five minute drive.
11. A coffee shop with 'drive-thru' facility was recent allowed on the retail park at appeal⁴. In that case the Inspector agreed "to some extent" that that development would meet a specific need generated by customers who already visited the wider retail park, while noting it may also become a destination. However, on the small Springfield Retail Park a hot food takeaway / restaurant use would have a more limited relationship with its users. Despite the inclusion of the 'drive thru' facility in that case, I consider restaurant/takeaway use would have different characteristics to a coffee shop, particularly in the evenings. The development would face Springfield Way, and I consider a large part of its trade would be from elsewhere, becoming a destination in its own right.
12. The planning practice guidance (PPG)⁵ expects robust justification to be provided for locational requirements which mean that developments can only be accommodated in specific locations. I have not seen robust justification in this case, and there is only limited information about the proposed use. Assertions about the specific requirements for the floorspace proposed and the short travel time from the appeal site are not supported by compelling evidence. I am therefore not satisfied that a locational requirement for the use has been demonstrated.

¹ Conditions 3 and 6 of planning permission 20/04113/FULL1

² Planning Practice Guidance reference IDs: 2b-014-20190722; and 2b-015-20190722

³ Planning Practice Guidance reference IDs: 2b-009-20190722; 2b-011-20190722; 2b-012-20190722; and 2b-013-20190722

⁴ Appeal reference: APP/G5180/W/18/3213039

⁵ Planning Practice Guidance reference ID: 2b-012-20190722

13. The town centre appears to have fared well over recent times. It has a relatively low vacancy rate, and a good mix of uses. There were nevertheless a number of vacant units in the town centre at the time of my visit. With the information before me, 147 High Street and Unit 8 The Walnuts appear potentially suitable for a hot food takeaway / restaurant. They are also of similar sizes to that proposed by the appellant.
14. The appellant has not made a persuasive argument to support its view that an upper floor element of one of these sites would make it unsuitable, particularly given that flexibility should be demonstrated on issues such as format and scale so that opportunities to utilise suitable town centre or edge of centre sites are fully explored⁶. In common with the appeal site, neither unit currently benefits from a sui generis hot food takeaway / restaurant planning permission, but compelling evidence has not been put before me demonstrating that planning permission would not be granted. As sites are available within the designated town centre it is therefore not necessary for me to consider out of centre sites, such as the appeal site or sites in other centres.
15. The appellant considers that the relatively small size of the proposed unit, compared to the size of the town centre as a whole, would not result in a significant adverse impact on the town centre. Whether or not that is the case, the incremental relocation of main town centre uses out of the town centre could cumulatively have an adverse impact on the vitality and viability of the town centre.
16. In the absence of evidence before me that there is an over-abundance of restaurant / takeaway uses in the town centre, additional main town centre uses could contribute positively to its vitality and viability. Furthermore, paragraph 91 of the Framework states that where an application fails the sequential test *or* is likely to have a significant adverse impact (on matters assessed in the Impact Test) it should be refused. As an Impact Test is not required, it is not necessary for me to consider whether the impact of the proposed development would be *significantly* adverse on the town centre.
17. In conclusion, as sequentially preferable sites are available in the town centre, the proposed development would not be an appropriate location for the proposed use and the use would contribute to cumulative negative effects on the vitality and viability of Orpington Town Centre. It would therefore be contrary to BLP Policy 91 and Paragraphs 87, 88 and 91 of the Framework, which are described above.

Other Matters

18. The appellant requests that consideration be given to a fallback position on the basis that retail, restaurant and café uses now all fall within Class E, and that the appeal site, or other uses on the retail park could be used as a cafe. However, the planning permission for Unit 1 limits the use to Class E(a), the sale of goods other than hot food, and a further condition limits its use as an independent unit without further consent. I have not seen the planning permission(s) relating to the retail park as a whole, but even if restaurant use is permitted elsewhere on the retail park, use as a takeaway does not fall within Class E, and planning permission would be required for any such use, which would have different characteristics to purely restaurant uses.

⁶ Paragraph 88 of the Framework

19. The appellant advises that 15 additional job opportunities would be created, but I have not seen a detailed justification setting out how many would be created over and above use as a retail store. There would nevertheless be some support for the local economy in relation to investment in the area during the construction period and use of the currently vacant unit. The proposed use would also provide a complementary use to other uses on the retail park and in the locality, and would result in an additional unit (albeit without additional floorspace). However, with the information before me these benefits carry only limited weight, and would not outweigh the harm I identify in relation to the main issue.
20. The absence of a significant adverse impact on the town centre, or harm to residential amenity and highway safety are neutral matters in the planning balance.

Conclusion

21. For the reasons above, I conclude the development would conflict with the development plan as a whole and the approach in the Framework. There are no other material considerations that would suggest a decision other than in accordance with the development plan would be appropriate, and the appeal should therefore be dismissed.

Peter White

INSPECTOR