



Appeal Decisions

Site visit made on 10 January 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th JANUARY 2023

Appeal A Ref: APP/D5120/C/21/3278316

Ground floor, 52 Sidcup High Street, Sidcup, Kent DA14 6EH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Hoai Van Le against an enforcement notice issued by the Council of the London Borough of Bexley.
 - The notice was issued on 16 June 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the ground floor retail unit (Use Class E) to a nail salon (Use Class Sui Generis).
 - The requirements of the notice are to cease the use of the ground floor premises of 52 Sidcup High Street as a nail bar.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/D5120/W/21/3273727

Ground floor, 52 Sidcup High Street, Sidcup, Kent DA14 6EH

- 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 Hoai Van Le against the decision of the Council of the London Borough of Bexley.
 - The application Ref 20/02397, dated 24 September 2020, was refused by notice dated 26 January 2021.
 - The development proposed is described on the application form as "*change of use from furniture shop (Class E) to a nails salon (Sui Generis). No change to internal structure nor external façade*".
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Decisions

1. Appeal A-The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the ground floor retail unit (Class E) to a nail salon (Sui Generis) at 52 Sidcup High Street, Sidcup, Kent DA14 6EH, subject to the condition in the Schedule at the end of this Decision.
2. Appeal B-The appeal is allowed and planning permission is granted for change of use from furniture shop (Class E) to a nail salon (Sui Generis) of the ground floor, 52 Sidcup High Street, Sidcup, Kent DA14 6EH in accordance with the terms of the application Ref 20/02397, dated 24 September 2020, subject to the condition in the Schedule at the end of this Decision.

Preliminary Matter

3. The description of development in the banner heading for Appeal B is taken from the application form. I have omitted reference to matters which do not involve an act of development from the formal decision.

Appeal A, Ground (a) appeal and Appeal B

Main Issue

4. The main issue in these appeals is the effect of the change of use from a shop to a nail salon on the vitality and viability of Sidcup town centre.

Reasons

Vitality and viability of the town centre

5. The appeal property contains a mid-terrace building. After what I am given to understand was a period of vacancy the ground floor is currently in use as a nail salon, offering services including manicures and nail enhancements. The upper floors of the building are in residential use. The ground floors of adjoining properties are mostly in retail use, with a number of food and drink outlets and premises providing financial and professional services also in the vicinity.
6. The property is located in Sidcup town centre, which is the main shopping destination for the southern part of the Borough and beyond, being identified as a Major District Centre in the Bexley Core Strategy (CS) and the Unitary Development Plan (UDP). The building is shown as being in the core shopping frontage for the town centre on the UDP Proposals Map. Policy SHO4 seeks to resist the change of use of shops at ground floor level within the core frontage to uses that do not enhance the character, vitality and viability of the town centre. A new non-retail use is required to satisfy all seven criteria in Policy SHO4. These include the use being a food and drink outlet or a bank, building society or other use complementary to the retail function of the core shopping frontage; there being no creation of or addition to a concentration of a particular type of non-retail use within an area of core frontage where the cumulative effects could undermine the retail function; the use not resulting in the proportion of average units in non-retail use in the core frontage exceeding 30% or 45% in the town centre as a whole, and; the proportion of units in the core frontage in retail use being significantly higher than that outside.
7. Nail salons are well-established features of modern town centres. The services offered by such businesses often attract customers who will also visit food or comparison shopping premises in the town centre, or who use other services located there such as food and drink outlets and banks. A nail salon can therefore make a positive contribution to town centre footfall. The nail salon in these appeals also maintains an active frontage, with the fully glazed shopfront offering views of customers waiting for and receiving treatments and there are regular incidences of customer comings and goings. In the above respects, the characteristics and effects of the use of the property as a nail salon are not dissimilar to those of other uses found within town centres, such as hairdressers. The nail salon could therefore be viewed as an appropriate use alongside retail activity. It follows that, in my view, it is not unreasonable to regard the nail salon as being complementary to the retail function of the core

frontage; there was little firm evidence before me which might indicate otherwise.

8. The recent amendments to the Town and Country Planning (Use Classes) Order 1987 have brought commercial, business and service uses including shops together in a new Class E. To my mind, the services offered by the nail salon are not significantly different in character to the type of financial, professional or other services appropriate to a commercial, business or service locality now falling in Class E and which could occur within the core frontage without requiring further approval from the Council. This reinforces my findings set out above.
9. Based on what I observed during my visit, there are three other establishments offering services similar to those at the property within the core frontage. These premises are situated throughout the extent of the core frontage. They are not located in a group or close to one another, the nearest being some distance from the property, further along the street. Additional premises in the town centre providing similar services are located outside the core frontage. Therefore, there is little firm evidence of the nail salon contributing to an overconcentration of similar non-retail uses within an area of core frontage which undermines its retail function. The Council did not clearly explain how their findings in this respect were arrived at having regard to the supporting text to Policy SHO4, which sets out how the relevant criterion is to be applied.
10. It is not disputed that at around 44%, the proportion of non-retail uses in the core frontage has exceeded the 30% threshold in Policy SHO4 even prior to the nail salon commencing trading, whilst the amount of such uses in the wider town centre is currently closer to 48%, also exceeding the 45% threshold in that policy. Similarly, there is no dispute that the current proportion of retail units in the core frontage is more or less equal with that of the wider town centre. Nevertheless, the above figures do not necessarily show that there has been planning harm. Retail remains the most frequently occurring use throughout the core frontage and in the wider town centre. The Council did not clearly explain how the loss of an individual unit to retail use further undermined the diversity of uses in the town centre leading to a harmful erosion of its retail function. There was little firm evidence of the nail salon contributing to an unacceptable reduction in the range of retail uses available in the town centre.
11. Moreover, Policy SHO4 is of considerable age. Significant changes have occurred in the pattern of retail and other commercial uses since the UDP was adopted in 2004. The Council's Town Centres Strategy (TCS), published in July 2019, references the structural changes in town centres, largely due to continuing contraction in high street retail activity, which has led to them also becoming places to socialise and spend leisure time as opposed to purely shopping destinations. It also points to recent town centre growth largely being driven by businesses providing experiences and services, such as barbers and cafes. Although the TCS is not part of the Development Plan, as a recent reflection of the issues affecting the town centre it can be afforded some weight. On top of the above, the challenging economic outlook for town centres generally in the aftermath of the COVID-19 pandemic, the continued growth of internet shopping coupled with an imminent threat of recession and declining household incomes cast further uncertainty over their future.

12. Additionally, Policy SHO4 pre-dates publication of the National Planning Policy Framework (the Framework). This advises that planning policies should promote the long-term vitality and viability of town centres by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allowing a suitable mix of uses and reflecting their distinctive character. I am not convinced that the strict focus on resisting most non-retail uses in the core frontage in Policy SHO4 reflects the more positive approach set out in the Framework. The National Planning Practice Guidance, which advises that a wide range of complementary uses can, if suitably located, help to support the vitality of town centres, including residential, employment, office, commercial, leisure/entertainment, healthcare and educational development¹, lends support to my misgivings in this regard. Similarly, the legislative changes already referred to, aimed at providing more flexibility for appropriate uses in town centres, indicates a move away from an over-reliance on retail activity. In my view, taken together the factors described above moderate the weight that should be given to Policy SHO4 in any event.
13. Therefore, whilst there is conflict with two of the criteria in Policy SHO4, overall and on balance I find that the nail salon contributes positively to the vitality and viability of the town centre, being in accordance with criterion in Policy CS06 in that regard. It is also in accordance with Policy CS14, which seeks to safeguard retail as the dominant land use within primary shopping areas whilst also promoting diversification in the mix of town centre uses, as well as being consistent with the Framework.

Conditions

14. It is not necessary to require development to be carried out in accordance with the submitted drawings and documents, as it has already been undertaken. I have however imposed an alternative condition which restricts the nail salon to the ground floor area shown on the submitted drawing, in the interests of certainty. Also, a condition restricting opening hours is not necessary to safeguard the living conditions of occupiers of adjoining residential property, having regard to the nature of the use and the proximity to other town centre uses likely to operate into the evening.

Conclusions

15. For the reasons given above I conclude that Appeal A should succeed on ground (a) and planning permission will be granted. For similar reasons I conclude that Appeal B should be allowed.

Stephen Hawkins

INSPECTOR

¹ Paragraph: 001 Reference ID: 2b-001-20190722.

CONDITIONS SCHEDULE

Appeals A & B:

- 1) The use hereby permitted shall be limited to the ground floor as shown on drawing number MNB/P1.