



Appeal Decision

Site visit made on 24 January 2023

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 17 February 2023

Appeal Ref: APP/V1260/W/22/3307534

189 Lower Blandford Road, Broadstone, Poole BH18 8DH

- 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 Hamptons PH Ltd against the decision of Bournemouth Christchurch and Poole (BCP) Council.
 - The application Ref: APP/21/01273/F dated 3 August 2021, was refused by notice dated 20 May 2022.
 - The development proposed is proposed change of use to A5/ Sui Generis hot food takeaway with new shop front and associated plant and extraction equipment.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from Class E Retail to Sui Generis hot food takeaway with new shop front and associated plant and extraction equipment at 189 Lower Blandford Road, Broadstone, Poole BH18 8DH in accordance with the terms of the application, Ref: APP/21/01273/F dated 3 August 2021, subject to the conditions set out in the schedule at the end of this decision letter.

Preliminary Matters

2. The Council amended the description of development to reflect the new Use Classes Order introduced in September 2020, whereby the proposed change of use would be from Class E, including the former retail use (A1) to sui generis hot food takeaway, the former Class A5. The amended description used by the Council is *Proposed change of use from Class E Retail to Sui Generis hot food takeaway with new shop front and associated plant and extraction equipment*. The Appellant used this description at the appeal stage, and I have therefore also used it in my decision.
3. The Council recognises that it is the former Use Classes Order which is referenced under Policy PP22 of the Poole Local Plan 2018 (Local Plan) and that the weight that may be afforded to this part of the Plan may be lessened, in so far as this policy does not fully reflect the new Uses Classes Order. Nonetheless the relevant policy seeks to support the role that town and local centres play at the heart of local communities to accord with Paragraph 86 of the National Planning Policy Framework (Framework) and it is my view that significant weight can therefore still be afforded to the policy.

Main Issue

4. The main issue in this appeal is the effect of the proposal on the vitality and viability and diversity of the existing District Centre.

Reasons

5. The appeal property is on the south-west side of the Lower Blandford Road and within a defined Primary Retail Frontage within the Primary Shopping Area of the Broadstone District Centre. At the time of my site visit, the unit was vacant and when last in use, I understand that it had been subdivided into two Class E uses (a shop and a café/ deli). I am further advised that there is a hairdresser at first floor with residential flats above and to the side (at first and second floor level). I observed that the centre was well used and included a wide range of retail related uses, including shops, services and food and drink uses including hot food take away shops.
6. The proposal would introduce a hot food take away unit in place of the former shop. The Council's statement of case states that the proposal would result in the loss of an existing Class E unit within the Primary Shopping Frontage and by reason of its nature would fail to contribute to the vitality and viability and diversity of the existing centre, contrary to Policy PP22 and PP23 of the Poole Local Plan.
7. There is no dispute that the proposal would result in the loss of a Class E use. However, Paragraph 7.45 of the Local Plan lists out those uses which the Council considers to be town centre uses and this list includes, amongst other uses, hot food takeaways. I have been provided with no other information to indicate that, in principle, the use would not therefore be an appropriate use within the Broadstone District Centre. The reason for refusal simply states '*because of its nature*' but this is not explained further.
8. Furthermore, Policy PP22 of the Local Plan and in particular sub sections 2 and 3 indicates that changes of use away from retail and other town centre uses will be permissible subject to a number of criteria, including that it will not result in or exacerbate an over concentration of units in the non-A1 Use Class. Paragraph 7.50 indicates that an over concentration would be where more than 50% of the units were not in the former A1 use Class within a primary shopping frontage. The introduction of the new Use Class E in 2020 widens the number of uses that might be found within any town centre or district centre although the proposed sui generis use would still require planning permission.
9. The Class A1 use referenced under Policy PP22 (3) of the Local Plan has been superseded with the new Use Classes Order. However, there is no evidence before me to suggest that the introduction of the proposal would materially alter the range and balance of town centre uses within this shopping frontage and District Centre. The loss of a former Class A1 use would not, in itself and without further evidence be in conflict with the policies and objectives of national and local policy.
10. I have taken into account the concerns of the local community but there is no detailed evidence to suggest that the proposal would, by itself, or together with other similar uses, harm the character of the District Centre, or residential amenity in terms of noise, light or other emissions or result in a harmful concentration of such uses. Moreover, a number of these issues would be

addressed by condition including in terms of opening hours, details of extraction equipment and provision of appropriate waste collection facilities.

11. I have been provided with no evidence to conclude any material harm to the vitality, viability and diversity of the existing District Centre. Given that the use is identified in the Local Plan as a town centre use, I am satisfied that there would be no conflict with Policies PP22 and PP23 of the Local Plan and the Framework in this regard.

Other Considerations

12. I have noted the objections from those within the local community, including from the Ward Councillor for the Broadstone Ward and the Broadstone Neighbourhood Forum. It is acknowledged that the type of use being promoted here is sui generis and does not fall within a specific use class. However, the planning system does not seek to regulate specific occupiers of a retail unit and a hot food take away is an identified town centre use under the Local Plan. Furthermore, it is not for the planning system to try and regulate market competition.
13. The reason for refusal is not explicit in its concerns but it has not indicated specific concerns in relation to highways, parking and deliveries, which has been raised in a number of objections. However, I see no reason why the proposed use would be any different in its requirements and the effect on highways and pedestrians to other existing users within the Centre. Concerns relating to potential parking on a zebra crossing or at bus stops would be addressed under other legislation.
14. Concerns in respect of environmental matters can be addressed by conditions, including in respect of the refuse collection arrangements and heating, ventilation and air conditioning and extraction equipment. I have sympathy with the concerns regarding litter, but whilst it would be hoped that individual retailers would take such steps as they are able to, this seems to me to be an issue which would need to be addressed across the whole of the District Centre rather than falling solely under the remit of any one retailer or occupier.

Conditions

15. The Council has proposed a number of conditions in the event of a grant of planning permission; the Appellant has not indicated any concerns with the conditions proposed. I agree that conditions should be imposed in relation to the heating ventilation and air conditioning and extraction equipment, as well as hours of operation and waste facilities to protect the amenities of surrounding residents. I shall list the approved plans for the avoidance of doubt and in the interests of good planning. As the proposed equipment is shown on the approved plans and referenced in the approved Noise Impact Assessment, I do not consider that the individual pieces of equipment need to separately listed. The external materials shall be as shown on the approved plans to protect the street scene.

Conclusion

16. For the reasons given above and having regard to all other matters raised, including in representations, I conclude that the appeal should be allowed.

L J Evans

INSPECTOR

Schedule of Conditions (Nos 1 – 6 inclusive)

- 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: OS site plan; 1.0; 1.2; 1.4; 2.0; 2.1; 3.0; 0000/M/100 REV C
- 3) The materials to be used for the external faces of the development shall be as specified on the approved plans.
- 4) The use hereby permitted shall not operate and no deliveries shall be taken at or despatched from the site other than between 08:00 - 23:00 hours on any day of the week.
- 5) The HVAC (Heating, ventilation and air conditioning) and extraction equipment hereby approved shall be implemented in full and in accordance with the details provided on the approved plans and support information, including the Acoustic Report by Ned Johnson Acoustic Consultants Ref: 422122 dated 21 12 21, prior to the first use of the premises as a hot food takeaway and shall thereafter be maintained in accordance with the manufacturers' instructions for the duration of the approved use of the premises as a hot food takeaway.
- 6) Prior to the first use of the hot food takeaway hereby approved, a lockable commercial bin store shall be provided in accordance with plans and details (including a Waste Management Plan) that have first been submitted to and approved in writing by the local planning authority. The bin store shall thereafter be retained in accordance with the approved details and the use of the hot food takeaway hereby approved shall not operate other than in compliance with a Waste Management Plan that has been approved in writing by the local planning authority.