



Appeal Decision

Site visit made on 17 January 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01st March 2023

Appeal Ref: APP/A2280/W/22/3299530

310A, High Street, Chatham ME4 4NR

- 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 Delman Mahmoud against the decision of Medway Council.
 - The application Ref MC/21/3518, dated 4 January 2022, was refused by notice dated 2 March 2022.
 - The development proposed is change of use from Class E (Retail) to Sui Generis (Hot food takeaway).
-

Decision

1. The appeal is allowed and planning permission is granted for the proposed change of use from Class E (Retail) to Sui Generis (Hot food takeaway) at 310A, High Street, Chatham ME4 4NR in accordance with the terms of the application, Ref MC/21/3518, dated 4 January 2022, and the plans submitted with it, subject to the conditions in the attached schedule.

Main Issue

2. The main issue is the effect the development would have on highway safety.

Reasons

3. The appeal site is a vacant ground floor unit located on the corner of High Street and The Brook. The unit sits within a three storey building, with another commercial unit in use as a restaurant also at ground floor, and residential flats on the upper floors. This part of the High Street is commercial in character and there are a mixture of restaurants, shops and a public house within the immediate context.
4. The available evidence indicates that the appeal site has previously been used as a retail unit. Whilst it may currently be unoccupied, when in use as a retail unit, it is likely that it would have generated a certain level of comings and goings throughout the day including some type of deliveries. It seems to me that, given the small size of the unit, the appeal proposal is not likely to lead to a significant intensification in the number of comings and goings across the day compared to what the site could be used for.
5. The peak period for both customer and delivery driver visits is likely to extend more than a single hour between 17.00-18.00 hours. It is logical that the busiest period of the day would be throughout early and late evening. These times are likely to be outside of the peak periods of pedestrian activity within the town centre.

6. During my site visit, I noted four other hot food takeaway units which were also located on the High Street within close proximity to the site. The Council has not brought to my attention any known existing highway safety issues related to these nearby takeaway uses. It is unclear how the proposed use would have a more significant impact on highway safety than the existing takeaway uses which are currently in operation.
7. The modern delivery driver trade is generally operated by a small number of drivers who, through frequent repeat visits to the various premises, quickly become familiar with local parking restrictions, as well as locations providing secure, legal parking.
8. It has been put to me that delivery drivers would not use the area to the rear of the premises for parking as it would involve a convoluted route and, as a result, delivery drivers would park at the front of the premises thereby conflicting with pedestrian movement. However, even if delivery drivers did not use the rear parking area, the Council has confirmed that there are parking restrictions in place immediately outside the site. These prohibit parking and waiting outside the premises, and I note that similar restrictions are in place for a number of commercial units on the High Street.
9. For the above reasons, I conclude that the proposed development would not harm highway safety. Accordingly, I find no conflict with Policy T1 of the Medway Local Plan (2003) which, amongst other aims, requires development to create a safe, accessible environment that will not significantly add to the risk of road traffic accidents. I also find no conflict with the principles of the National Planning Policy Framework (2021) (the Framework) that seek to minimise the scope of conflict between pedestrians, cyclists and vehicles, whilst setting out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Other Matters

10. It has been put to me that there is no compelling evidence that the unit is unlikely to be occupied in the future in the event that the appeal is dismissed. Whilst this may be the case, I must assess the proposed development against its planning merits and, in this instance, I have not identified harm to highway safety.

Conditions

11. I have had regard to the various planning conditions that have been suggested. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance (PPG). I have made such amendments as necessary to comply with those documents and for clarity and consistency.
12. In addition to the standard time limit, I have imposed an approved plans condition in the interests of certainty.
13. I have included the Council's suggested conditions to limit the opening hours and requiring a scheme for the extraction and treatment of cooking fumes in order to protect the living conditions of neighbouring residential occupiers. However, I have modified the cooking fumes condition to require the submission of details and implementation of the scheme prior to occupation rather than prior to commencement of the development. This is to ensure that the condition meets the tests in the Framework and PPG.

Conclusion

14. For the above reasons, and having had regard to all other matters raised, I conclude that the proposed development would accord with the development plan and the Framework. The appeal is therefore allowed.

B Pattison

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: A0101 Rev5 (Site Location Plan) and A0102 Rev4 (Existing and Proposed Floor Plans).
- 3) The development shall not be occupied until a scheme for the extraction and treatment of cooking fumes, including details for the control of noise and vibration from the system, has been 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 installed prior to first occupation of the unit and operated and retained thereafter.
- 4) Customers shall only be permitted on the premises between the following hours:
11:00 to 22:00 Mondays to Saturdays inclusive; and
12:00 to 21:00 on Sundays and Public Holidays.

END OF SCHEDULE