



Appeal Decision

Site visit made on 17 October 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 02 November 2023.

Appeal Ref: APP/A2280/W/3320413

7 Skinner Street, Gillingham, ME7 1HD

- 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 Ozker Serifoglu against the decision of Medway Council.
 - The application Ref MC/22/2724, dated 17 November 2022, was refused by notice dated 2 February 2023.
 - The development proposed is change of use from dry cleaners to fast food restaurant and flue.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application form described the proposed development as "From dry cleaners to fast food restaurant (with some seating) - flue to also be added". The council changed this to the description used in the heading above. I have adopted it as it more clearly identifies the development proposed.
3. Whilst the proposal is described as a fast food restaurant, the word restaurant generally connotes a predominance of eating in. I note that the application form used the words 'with some seating', but it appears to me that the proposal would be more aptly described as a hot food takeaway, which is the terminology previously used in the Use Classes Order. This is also suggested by the limited size of the unit and the layout plan included in the documentation.

Main Issue

4. The main issue in this case is the effect of the proposal on the vitality and viability of Gillingham's Core Retail Area and the health of local residents.

Reasons

5. The appeal site is located within the Core Retail Area of Gillingham, designated under the Medway Local Plan 2003, supporting the retention of shopping facilities. Policy R5 : Retailing in Gillingham states: "*The Core Area of Gillingham town centre is defined on the proposals map. Within the Core Area Use Classes A1, A2, and A3 and other uses appropriate to a District Centre will be permitted, provided they support the vitality and viability of the centre as a*

6. *whole. Land at High Street/Skinner Street/Jeffery Street/James Street is allocated for a retail development to include a new foodstore (up to 2000 square metres gross floorspace) as the principal floorspace element subject to: [not relevant here].*
7. Owing to its location and proposed change of use, the appeal site also comes within the guidance in the council's 'Hot Food Takeaways in Medway' Guidance Note of 2014 (Guidance Note). The Guidance Note aims to mitigate the impact of the previously categorised A5 use class¹ upon local obesity levels by setting a threshold for such uses within Core Retail Areas.
8. I have been provided with an extract from this guidance, that given in paragraph 5.12. This states: *"Determine the proportion of each main frontage in terms of each main town centre use class (A1, A2, A3, A4, A5, D1 and D2). This will normally be expressed in linear metres converted to an overall percentage; A1 should normally account for at least 60% of the total and preferably more; A5 uses should not normally exceed 10% unless there is a clear issue with units being vacant for 12 months or more. No more than two adjoining units will normally be allowed. This is to avoid fragmentation of the main retail function and avoid an undue concentration of A5 units"*.
9. For the appellant it is stated that the council has not applied this guidance correctly, arguing that the test should not be based on the quantity of units, but rather the 10% should be the linear measurement of unit frontage; whereas the council put the situation as *"there are 5 shops that would fall under Sui Generis use and 12 that would be classified as Use Class E, equating to a saturation of 41.6%, which is significantly greater than the threshold of the HFT Guidance Note"*. However, the appellant has not presented any evidence in terms of the number of metres of frontage, simply noting that *"there is a pizza shop and kebab shop on the same side as 7 Skinner Street with a kebab shop and pasta shop on the opposite side – that hardly seems to represent an oversaturation"*. The appellant also mentions that there is a double shop frontage which would skew the council's measurement.
10. However, the appraisal in the officer's report, not only uses unit numbers rather than metres of frontage, but also quotes numbers of Sui Generis uses, which are not necessarily units in the former A5 category. Equally unhelpful is the council's set of measurements given in its appeal statement. In this it records the total linear frontage of all the Core Retail Area, and derives a percentage of hot food takeaways relative to other uses. This does not accord with the approach in the Guidance Note, which requires the determination of the proportion of each main frontage.
11. Turning to the actual situation in Skinner Street, as I have already noted, the appellant quotes a pizza shop, 2 kebab shops and a pasta shop, spread across both sides of the street, and also points out that a double fronted unit across from the appeal premises 'has been empty for years'. The council, in its Appendix 2, identifies 6 hot food takeaways on Skinner Street. My own observation at my site visit was that, on the east side of Skinner Street (the side of the appeal site) there are 3 existing takeaways, 2 of which are next-

¹ The references to Use Classes A1, A2, A3 and A5 are to classes that were in the Use Classes Order prior to The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 being made. These Regulations altered the first 3 A classes and brought them into a new Class E, whilst the A5 Class 'Hot Food takeaways' became a Sui Generis Use – a use outside of the Use Classes.

- door and next door-but-one to the appeal site. The use of No.7 would make 3 in a row. On the west side of the street, there are 5 units that appear to be, or were, takeaways, including a large unit that is closed and to let.
12. My reading of the Guidance Note, is that 'each main frontage' relates to 1 side of a street or parade. If that is correct, my approximate calculation for the appeal site side (the eastern) is that currently takeaways account for 17% of linear frontage, and if the appeal site became a takeaway, the percentage would rise to 22%. The figures for the western side are that, taking all of the units that are or were (and still available to trade) trading as hot food takeaways, the percentage is 50, and even if ignoring the currently closed unit, it would still be 45%. I emphasize that these are not precise figures, but my best estimations. However, the scale of the extent of frontage in hot food takeaway use is clearly well above the guidance, added to which, the appeal site would break the norm of *"No more than two adjoining units will normally be allowed"*.
13. The appellant states that the appeal unit has been empty for 7 months, but again the guidance seeks evidence of 12 months or more. The Guidance Note, is not a development plan policy, but is a material consideration to be taken into account. Since it supports the policy set out in the National Planning Policy Framework (the Framework) paragraph 92c), "enable and support healthy lifestyles, especially where this would address identified local health and well-being needs, including access to healthier food...", it carries weight, although less than a development plan policy.
14. I have some doubt about whether another hot food takeaway in this location would play any significant part in giving support to the vitality and viability of the centre as a whole, which is an aim of Policy R5. At the same time, empty units within a shopping centre do not present a favourable image, and detract from the sought after vitality and viability.
15. I have been given no evidence about local obesity levels, but the appellant has not raised an objection to the Guidance Note, and it is reasonable to assume that the adopted guidance was produced on the basis of evidence.

Conclusions

16. Bringing all these matters to a conclusion, Policy R5 clearly has the emphasis on encouraging shops, financial/professional services and restaurants/cafes (the former Use Classes A1, A2 and A3). Whilst the Medway Local Plan 2003 is now over 20 years old, and pre-dates the first version of the Framework, Policy R5 is not in conflict with the current version of that document.
17. The Guidance Note, as far as I have information, does not stem directly from the policies of the 2003 plan but, as I have mentioned above, does reflect policies in the Framework. The one matter that does support the appeal proposal, is the fact that empty units are damaging to the vitality and viability of the town centre, although no evidence, as opposed to a statement, has been brought forward about how long the appeal unit has been on the market, let alone to satisfy the 12 months vacancy requirement of the Guidance Note. In any event, the harm of an empty unit does not outweigh the fact that the appeal proposal would contravene the development plan policy, and the restrictions of the Guidance Note.

18. Therefore I conclude that another hot food takeaway in this location would not support the vitality and viability of the centre as a whole, would not meet the requirements, or further the aims, of the Guidance Note, and would thus be contrary to the aims of the development plan and the policies of the Framework. Therefore I will dismiss the appeal.

Terrence Kemmann-Lane

INSPECTOR