



Appeal Decision

Site visit made on 1 July 2024

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2024

Appeal Ref: APP/D5120/W/23/3335249

1 Albert Road, Belvedere, Kent DA17 5LQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr T Nagatheepan against the decision of the Council of the London Borough of Bexley.
 - The application Ref is 23/01236/FUL.
 - The development proposed is change of use of a building from commercial, business and service (Use Class E) to a hot food takeaway (Use Class Sui Generis) and provision of extraction flue and shop front change.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the appeal, at my request, the Council provided a copy of its latest biannual shopfront survey of Upper Belvedere town centre¹. The appellant was given an opportunity to comment on this information but no comments were received. I have taken this survey into account in determining the appeal.

Main Issues

3. The main issues are:
 - whether the site is an appropriate location for a hot food takeaway having regard to the existing concentration of such uses in the Upper Belvedere town centre and the proximity of the Lessness Heath Primary School; and
 - the effect of car and scooter movements associated with the proposed use on parking and the free flow of traffic and highway safety.

Reasons

Location for a hot food takeaway

4. The site is a vacant, ground floor Class E premises in Upper Belvedere town centre. It was last in use as the old village (convenience) store and would become a hot food takeaway. Policy DP9 of the Bexley Local Plan April 2023 (BLP) acknowledges the importance of a diverse mix of uses in town centres but in part 4(c) seeks to avoid an overconcentration of non-Class E uses. This includes in part 4(e) by controlling changes of use so that no more than 5% of

¹ Spring 2024

premises are used as takeaways and not more than 10% are collectively in 'harmful uses' (defined by the Council as a takeaway, betting shop, payday loan shop or pawnbroker). In this case, both thresholds are already exceeded in the Upper Belvedere town centre, but this does not justify a laissez-faire market led approach; rather, it endorses the need for control. The proposal would, therefore, exacerbate an imbalance of non-Class E uses and further increase the proliferation of takeaways and harmful uses in this town centre. This would not maintain its vitality and viability as is envisaged by the BLP.

5. Policy E9 of The London Plan March 2021 (LP) also seeks to ensure a successful, competitive and diverse retail sector in town centres. However, amongst other things, the supporting text of this policy sets out that hot food takeaways generally sell food high in calories, fat, salt and sugar that is appealing to children and associated with obesity. The hot food takeaway would be within 400m walking distance of an entrance and exit to the Lessness Heath Primary School. This policy does not distinguish between primary and secondary school age children or size of school. Even if a majority of children are taken to and from this school by means other than walking (though there is no objective evidence of this) the proposal would increase the number of hot food takeaway premises near this school, so not help to create a healthier food environment for these children.
6. Takeaway businesses contribute to the local economy, especially the night time economy. The proposal would no doubt provide a convenient means to meet certain of some people's living needs. The site is urban brownfield previously-developed land, owned by the appellant and has been vacant for over 18 months. It is suggested that the premises is underutilised because there has been difficulty in finding a long-term tenant. But there is no objective evidence, such as a marketing report, to explain why or to demonstrate that there is no realistic prospect of a suitable and effective alternative use of the site.
7. The proposal would re-locate an existing hot food takeaway use already in this town centre to this larger premises. However, there is no mechanism before me to ensure that the existing premises would no longer be used as a takeaway, so result in no net increase in the number of takeaways. Nor is there any objective evidence that the proposal would result in more employment than the last use of the site or than is generated by the existing takeaway use, including delivery drivers.
8. Considering all the above, I find that the site is not an appropriate location for a hot food takeaway having regard to the existing concentration of such uses in the Upper Belvedere town centre and the proximity of the Lessness Heath Primary School. As a result, the proposal is contrary to BLP Policy DP9(c) and (e) and LP Policy E9(D).

Parking, free flow of traffic and highway safety

9. Spaces at the Sainsbury's Local store, including in a forecourt next to the site, are not part of the site. There is no evidence this parking is intended for use other than by customers of that business or that it is available for public use, including outside of that store's opening hours. The public on-street car parking bays in Albert Road and Nuxley Road and the Nuxley Road public car park include some frequent comings and goings but are well-used, serving the many retail and commercial uses in this town centre. There is no parking survey to demonstrate occupancy levels of this parking or other objective evidence about

to what extent the proposal would increase demands on such parking and if this could be accommodated. The hours of use sought include the evening and night time when the takeaway is most likely to be busiest. There is no evidence that these on-street and car park spaces would not be more permanently occupied by local residents' cars outside of chargeable or controlled hours, including overnight.

10. The site is a triangular shaped corner plot facing the acute angled junction of Albert Road and Nuxley Road, bordered by these busy Borough Distributor Roads on two sides. Albert Road is one way south to north past the site and Nuxley Road is one way north to south past the site. There are zebra crossings on all three sides of the junction and the associated zigzag road markings extend across the entire frontages of the site. Single and double yellow line restrictions extend beyond these along the site side of Albert Road and both sides of Nuxley Road. There is a bus stop with a yellow line bus stop marking a long bay on the western side of Albert Road opposite the site. Southbound traffic on Nuxley Road turns this abrupt corner, northbound into Albert Road on a bend with little advance forward visibility or notice to other road users entering or already in Albert Road. Albeit with 1 slight crash incident in the last 5 years, it is a complex road junction and hazardous for all road users.
11. Whilst the appellant suggests the takeaway use would 'target' local people, not those driving to it (ie travelling by walking or cycling), there is no guarantee that this would be the case. It would not, anyway, address the likelihood of cars or scooters used by delivery drivers. For the reasons explained earlier above, there is no apparent way to ensure that there would be no increase in vehicular traffic generated as a result of the existing takeaway business moving because it would leave a takeaway premises free for occupation.
12. While there is no Council car or scooter parking standard before me for the proposal, I therefore have no reason to disagree with the Highway Authority that the proposal would result in additional short-term demand for car parking in this area. There is no evidence that existing provision would provide the opportunity for customers or delivery drivers to safely or conveniently park cars or scooters near the site, including unduly low vehicle speeds whilst trying to find a space.
13. The Highway Authority also considers that customers visiting hot food takeaways tend to try and park as close as possible and due to the short duration of these visits and desire to keep food hot, they are often prepared to ignore waiting restrictions and park in hazardous locations. Moreover, home deliveries are now routine post-Covid 19 and it is usual for there to be numerous cars or scooters and drivers or riders close to or directly outside takeaways, including stopped in the carriageway or overlapping a pavement.
14. In the absence of any compelling evidence to the contrary, and albeit to a lesser extent during the day, this would obstruct the safe and free flow of traffic, including cyclists, or pedestrians, especially if the Sainsbury's spaces next to the site were used so resulting in cars and possibly scooters reversing onto Albert Road close to the blind bend at times when these spaces would otherwise not be in use. These considerations are fundamental to a decision to grant planning permission in this case given the location of the site, so can't be left to a condition for a travel plan as the appellant otherwise suggests.

15. I am not, therefore, satisfied the appellant has demonstrated that the effect of car and scooter movements associated with the proposed use would not have an adverse effect on parking and the free flow of traffic and highway safety. In these circumstances, the proposal is contrary to BLP Policy DP24. This policy includes that development should not have a significant negative effect on the safety of any users of the transport network or on the operation or efficiency of the local road network.

Other Matters

16. The site is not in a Conservation Area and is not a heritage asset. The Council did not object to a new shopfront, if one is in fact proposed, and signs would be a separate matter for either deemed or express consent. Subject to suitable conditions for hours of opening and to ensure satisfactory details of plant and equipment and for refuse storage, the proposed use would not have an unacceptable adverse effect on the living conditions of any existing occupiers of residential properties. Fire safety would also be a separate matter between the appellant and the relevant authority. The absence of harm in these regards is a neutral factor in my decision.

Conclusion

17. The proposal conflicts with relevant policies of the development plan and undermines related objectives of the Council in these regards. These are broadly consistent with equivalent objectives of the National Planning Policy Framework for a range of suitable town centre uses, for healthy lifestyles through access to healthier food and to avoid significant impact on transport networks or on highway safety for all road users and minimise the scope for conflict.
18. There are no other material considerations to indicate that the decision should be made other than in accordance with the development plan taken as a whole. Consequently, for the reasons given above, the proposal is unacceptable so the appeal does not succeed.

Robin Buchanan

INSPECTOR