



Appeal Decision

Site visit made on 16 July 2024

by E Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2024

Appeal Ref: APP/U3935/W/23/3331914

20 Cricklade Road, Swindon SN2 8AA

- 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 M Guvercin against the decision of Swindon Borough Council.
 - The application Ref is S/23/0808/JAAB.
 - The development proposed is the change of use from E(a) to suis generis hot food take away.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the site would be a suitable location for the proposed hot food takeaway having regard to the vitality and viability of the District Centre and public health.

Reasons

3. The appeal site is a terraced property located within a row of similar properties, it has a commercial use at ground floor and residential use above. It lies within a District Centre, the surrounding area comprises a mix of uses including commercial units, residential development, and a church. The proposal would see the change of use of the existing ground floor of the building, which is currently a cake shop, to a hot food takeaway.
4. Policy EC3 of the Swindon Borough Local Plan 2026, adopted March 2015 (LP) seeks to protect the shopping function of centres, including District Centres. Part e of Policy EC3 sets out that within a District Centre, where the percentage of Class A1 Uses (retail) occupying the street frontage is already at or below 70%, proposals for non-A1 Class uses will normally be permitted where they meet specific criteria, including that at least 12 consecutive months active marketing of the premises for Class A1 Use (retail) has been undertaken; and, the proposed use is appropriate for its location.
5. Amendments to the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) which came into effect on 1 September 2020 mean that the previous use Class A1 (shops), along with other use classes now fall within a new Class E (Commercial, business and service). Therefore, reference to Class A1 within the LP has been subsumed by the above change.
6. I saw at my site visit that 3 out of the 9 units within the street frontage of this part of the District Centre were hot food takeaways, which equates to over

33% of the existing frontage. The extent of other uses within the frontage, including retail uses, therefore falls below the 70% threshold set out in LP Policy EC3. As such, the proposed change of use of the premises to a non-retail use would trigger a requirement for marketing of the property for alternative retail uses. There is nothing before me to demonstrate that marketing of the property for such uses has been carried out.

7. Even if the new use would be operated by the same client, this would not eliminate the policy requirement to market the property for an alternative retail use in the first instance. Moreover, as set out in Planning Practice Guidance¹, planning permission usually runs with the land, and it is rarely appropriate to provide otherwise. Consequently, in the absence of any clear evidence that, if the property was marketed, an alternative viable retail use would not be forthcoming, the proposal would fail to accord with Policy EC3 of the LP and would erode the shopping function of the District Centre and would harm its vitality and viability.
8. The appellant indicates that healthier food choices would be sold from the premises, including non-fried food as there would not be a flue. While this may be the intention of the appellant at the application stage, in the absence of a control mechanism to restrict the specific types of food to be sold, the granting of permission for a hot food takeaway would allow the unrestricted sale of hot food, healthy or otherwise. Accordingly, I cannot be certain that the proposal, which would increase the number of hot food takeaways in the locality, would not have any adverse health impacts through the provision of unhealthy food.
9. My attention is drawn to a planning permission granted by the Council for the use of the building for uses within Class E (a) of the UCO². However, Class E (a), which includes the display or retail sale of goods, other than hot food, principally to visiting members of the public, differs from the appeal proposal, which relates to the sale of hot food for consumption off the premises.
10. For the foregoing reasons I conclude that the site would not be a suitable location for the proposed hot food takeaway having regard to the vitality and viability of the District Centre and public health. Consequently, it would fail to accord with Policy EC3 of the LP and the aims of the National Planning Policy Framework which promote the vitality of town centres and seek to achieve places that enable and support healthy lifestyles, through among other things, access to healthier food.

Conclusion

11. The proposal would conflict with the development plan as a whole, and material considerations have not been shown to carry sufficient weight to indicate that a decision should be taken otherwise than in accordance with it. The appeal is therefore dismissed.

E Worley

INSPECTOR

¹ Paragraph: 015 Reference ID: 21a-015-20140306

² LPA Ref. S/23/0220/JAAB