



Appeal Decision

Site visit made on 22 October 2024

by **S Harrington MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **1st November 2024**

Appeal Ref: APP/V1260/W/24/3337096

Unit 3, Sharp Road, Poole BH12 4BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Darius Majidi, HappyEater Ltd against Bournemouth Christchurch and Poole Council.
 - The application Ref is APP/23/00154/F.
 - The development proposed is use of the buildings and land for commercial activities falling within Sui Generis restaurant/takeaway, erection of toilet facilities.
-

Decision

1. The appeal is dismissed and planning permission for use of the buildings and land for commercial activities falling within Sui Generis restaurant/takeaway, erection of toilet facilities is refused.

Preliminary Matters and Main Issues

2. The description of the proposal provided on the application form included '*erection of a replacement outbuilding*'. However, during the application process the proposal was amended with the main parties agreeing to remove this element from the description. As such, I have also removed this element from the description in the banner heading above.
3. As set out in the banner heading above, the Council failed to determine the application to which this appeal relates within the prescribed period. Since the appeal has been made, the Council has provided reasons that they would have refused planning permission for, had they retained jurisdiction to do so. The appellant has had the opportunity to respond to these in their final comments. Therefore, they would not be prejudiced by my taking these into account and forming the main issues. With these reasons for refusal in mind, I consider the main issues to be:
 - Whether the site is suitable for the proposed use, with regard to the local economic strategy and provision of premises within employment areas; and
 - The effect of the proposal on the character and appearance of the area, with particular regard to the impact of the proposal on trees.

Reasons

Suitability for the proposed use

4. The appeal building is an industrial unit, located at the end of a group of similar units within the Sharp Road Industrial Estate. This industrial estate is an existing employment area identified within the Poole Local Plan (2018)(LP).
5. Whilst LP Policy 16 safeguards such areas for office, industrial, and storage/distribution uses, it also provides for uses which generate employment, and which are appropriate to the location due to a lack of suitable alternative sites outside existing employment areas.
6. In such cases, LP paragraph 7.15 outlines that the applicant is expected to include evidence of alternative sites considered outside existing employment areas, and to set out the employment benefits of the proposed use. Such uses are only permitted where they would not compromise the activities and vitality of the employment area.
7. Furthermore, LP Policy 22 requires that in locations such as the appeal site, main town centre uses (stated within the LP to include amongst other uses cafes/restaurants and hot food take-aways) will only be permitted where the proposal satisfies a sequential test and for retail and leisure schemes over 280m² (net) floor space, an impact assessment(IA). Moreover, the proposal must also be appropriate in scale, role, function and nature to its location.
8. The appellant's sequential test(ST) outlines two crucial business requirements that form the basis of the suitability for premises, these being a business space between 200m²–300m², and a location with good accessibility links for deliveries and customers. Although not dated, the ST identifies 29 commercial properties to rent available at the time, with 6 premises for sale.
9. However, the majority of these sites have been discounted due to size of property, or lack of suitable transport links. The remaining units available that met the business requirements were also on allocated employment sites. Although the Council state that an internet search shows a number of commercial units available in Poole town centre of the size required, no details of location or any substantive evidence of such availability is before me. The available evidence therefore indicates that suitable alternative sites do not exist outside existing employment areas.
10. Notwithstanding, there is dispute as to the floor space of the proposal and if an IA is required. Although the application form indicates that the proposal relates to 240m² of internal floorspace, the appellant's ST states that the proposal is for a 244m² food hall and additional office space of 50m².
11. Even if there is already an office within the premises, the appeal site and change of use covers a single planning unit, with no evidence before me that the office is anything other than a functionally related incidental part of the proposed use. I therefore find that in accordance with LP Policy 22, an IA would be required in order for an assessment to be made as to the effect of the proposal on the Council's retail strategy and role and function of Poole town centre.
12. The application form indicates that the proposed use would provide 21 full-time equivalent jobs (15 full-time and 12 part-time). However, there is a lack

of clarity on the final numbers to be employed, with the appellant's addendum statement indicating the proposal will initially employ 30-40 people part/full time employees which includes the 6 food units employing at least two people.

13. The proposal would undoubtedly provide employment, however the lack of reasonable clarity on numbers prevents a clear understanding as to if the proposal would provide a comparable level of employment to the safeguarded use of the employment area for the principal activities defined within LP Policy PP16.
14. Whilst a lack of suitable alternative sites has been demonstrated, the impact on the retail strategy and Poole town centre, as well as the employment benefits of the proposal have not been adequately demonstrated. I therefore conclude, on the substantive evidence before me, that the site is not suitable for the proposed use, with regard to the local economic strategy and provision of premises within employment areas. The proposal would conflict with LP policies PP16 and PP22. These policies, amongst other matters, seek to ensure defined existing employment areas continue to play a crucial role in Poole's economy and ensure retail and main town centre uses are directed to Poole town centre, district centres, local centres and neighbourhood parades in accordance with Poole's retail hierarchy.

Character and appearance

15. The appeal site is located adjacent to the Alder Hills Nature Reserve (NR) which forms part of the Bourne Valley SSSI. Mature trees within the NR run along the boundary of the site, and due to their size and prominence from both within the industrial estate and also from footpaths within the NR, make a positive contribution to the verdant character of the NR and visual backdrop to the industrial estate.
16. The Council have raised concerns that a proposed small WC block, which is located close to the boundary and adjacent trees could have a harmful effect on the trees. However, the appellant has confirmed that the WC facilities are intended to be sited in a non-invasive manner with no digging required, similar to port-a-loos.
17. Whilst no arboricultural information is before me, the proposed plans indicate that the WC's would be modest in size, and I see no reason why they could not be sited in a non-invasive manner without groundworks as is suggested. This could be secured by the imposition of an appropriate planning condition. No other building or ground works are proposed along the boundary of the site, and no substantive evidence is before me to indicate that the proposal would have a harmful effect on adjacent trees.
18. Consequently, I conclude that the proposal would not harm the character and appearance of the area, with particular regard to the impact of the proposal on mature trees. The proposal would accord with LP policies PP27 and PP32. These policies seek, amongst other matters, to ensure development does not result in the loss of trees that make a significant contribution, either individually or cumulatively, to the character of the area or adversely affect nationally, European and internationally important sites.

Other Matters

19. The Bourne Valley SSSI is part of the Dorset Heathlands Special Protection Area and the Dorset Heaths Special Area of Conservation (habitats sites). The Dorset Heathlands Planning Framework 2020-2025 SPD (April 2020) advises that the Dorset Heathlands is designated for protected and priority habitats and species including Dartford warblers, nightjars, woodlark, hen harrier, merlin, sand lizards and smooth snakes as well as other typical species of lowland heathland, wetlands and dunes.
20. Natural England have advised that the proposal will give rise to relevant and significant effects on the habitats sites. Given the proximity of the proposal to the habitats sites, and ease of access via an adjacent footpath, the proposal would lead to increased levels of recreational activity, and potential increase in rat population within the habitats sites. This would be likely to have a significant effect on the designated features of the habitats sites either on its own or cumulatively with other similar development, without avoidance measures.
21. However, Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposal.
22. Given my conclusions on the first main issue above, it is not necessary for me to consider this matter any further as the proposal would not take place and would not affect the habitat sites. Moreover, even if I were to find that suitable mitigation had been appropriately secured, a lack of harm would only be a neutral factor.
23. I note the appellant's comments about the Council's handling of the application. This has little to do with the planning merits of the case, which I have considered on the basis of the evidence before me and a recent site visit.

Conclusion

24. For the reasons given above, I find that the proposal would conflict with the development plan, read as a whole. No material considerations, individually or cumulatively, indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal is dismissed.

S Harrington

INSPECTOR