



Appeal Decision

Site visit made on 30 October 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 20th November 2020.

Appeal Ref: APP/M3645/W/20/3255818 36 Station Road West, Oxted RH8 9EU

- 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 Kenan Tezgel against the decision of Tandridge District Council.
 - The application Ref TA/2020/565, dated 17 March 2020, was refused by notice dated 19 June 2020.
 - The development proposed is change of use from A1 (retail) to mixed use A3/A5 (restaurants and cafes/takeaways) and installation of extractor to rear elevation.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from A1 (retail) to mixed use A3/A5 (restaurants and cafes/takeaways) and installation of extractor to rear elevation at 36 Station Road West, Oxted RH8 9EU in accordance with the terms of the application, Ref TA/2020/565, dated 17 March 2020, subject to the conditions in the following Schedule.

Procedural Matters

2. The description in the header above is taken from the Council's decision notice. I consider it more accurately describes the proposal, which includes installation of an extractor flue, than the description given on the application form.
3. Since the Council made its decision, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (as amended) have come into force. Amongst other changes, these remove Class A from the Use Classes Order (UCO) and include restaurants and cafes into a new Class E. Article 3(6) sets out a list of uses that now fall outside of any class, which includes uses which previously fell under Class A5. However, transitional provisions in Regulation 4 set out that applications made prior to 1 September 2020 which referred to the previous use classes must be determined by reference to those use classes. I have therefore considered the appeal on that basis.

Main Issue

4. The main issue is the effect of the proposed development on the vitality and viability of the town centre.

Reasons

5. Policy DP2 of the Tandridge District Local Plan Part 2 (LP) only permits changes of use of ground floor premises from Class A1 to Class A2, A3, A4 or A5 within

a primary frontage where certain criteria apply. The Council's evidence, which the appellant does not dispute, is that the proposal would result in 68% of the town centre's total primary frontage remaining in retail use, which is less than the 70% required by Policy DP2. Furthermore, the unit is currently trading as a retail unit and there is no evidence before me that it has been marketed. As such, although the proposal would meet criterion C.2. of Policy DP2, it would not meet criteria C.1. or C.3. and would therefore conflict with that Policy.

6. The use sought is proposed to operate during the day only, in contrast to other restaurant uses nearby, and there are few other similar uses in this shopping area to the west of the railway. A daytime food offer may also encourage people to stay in the area for longer, and could therefore contribute to other local businesses. Therefore, the proposal would add to the mix of uses locally and complement the existing commercial offer in this parade and the wider shopping frontage. It would therefore be consistent with Government policy to encourage greater flexibility in the range of uses in town centres, and the ability for businesses to adapt and diversify to meet changing demands, particularly as town centres seek to recover from the economic impact of Coronavirus.
7. Accordingly, despite the loss of one retail unit, the proposal would not harm the vitality or viability of the town centre as a whole. I therefore find no conflict with Policy CSP22 of the Tandridge District Core Strategy (CS), which seeks to develop a sustainable economy, including by seeking to make best use of existing commercial sites, especially those suitable for occupation by small businesses. Nor do I find any conflict with the National Planning Policy Framework (the Framework), which requires that planning decisions take a positive approach to the growth, management and adaptation of town centres.
8. The recent changes to the UCO mean that changes of use from retail to numerous non-retail uses are no longer development, and as such do not require planning permission. Consequently, the Council's ability to control the range of uses in primary shopping frontage through local policy has been significantly constrained. I therefore afford only modest weight to the conflict with LP Policy DP2.
9. This proposal includes Class A5 takeaway use, which is specifically excluded from any of the new use classes, and therefore the proposed use would not fall within the new Class E, as the main parties have suggested. However, the unit could be changed to another non-retail use irrespective of the outcome of this appeal. I consider that there is a realistic prospect that this would occur if this appeal were dismissed and therefore attach significant weight to this fallback position. I conclude that this is a material consideration which outweighs the conflict with Policy DP2.

Other Matters

10. The site falls within the Station Road West Conservation Area (CA), which derives considerable significance from its high quality 'mock Tudor' buildings and relationship with the railway. The proposed extractor would be on the rear of the building, where it would be seen along with various modern extensions, air conditioning units and another large flue on the rear of the same row of buildings. The storage of waste would also be contained within the site, and there are numerous other large bins and storage areas in the access road at the rear. In this context, the proposal would preserve the character and

appearance of the CA and would not adversely affect any features that contribute to its significance. As such, I find no conflict with local or national policies which seek to conserve designated heritage assets.

11. The appellant has provided a technical report including details of measures to mitigate noise and odour from the proposed extraction system. I am mindful that, on the basis of this report, the Council's Environmental Health officer raised no objection to the proposed extractor in terms of the living conditions of neighbouring occupiers. However, the design of the upper part of the extractor shown in that report differs from the submitted elevation drawings. In particular, the plans in the report do not show the extract outlet facing towards the windows of neighbouring flats. It is therefore unclear whether the report assesses the impacts of the extract system now proposed.
12. Nonetheless, the report demonstrates that an appropriate technical solution exists which would safeguard the living conditions of neighbours from odour and noise and protect air quality, without significantly changing the appearance of the external extract. The final detailed design can therefore be secured by planning condition.
13. If unrestricted, there is potential for the operation of the proposed café/takeaway to cause noise and disturbance during unsociable hours, to the detriment of the living conditions of neighbours. This could however be mitigated by a condition limiting the hours of operation, collections and deliveries to those proposed on the application form.
14. Limited details have been provided regarding waste and recycling storage and collection. Therefore, further information is needed to secure appropriate provision without obstructing access to the hairdresser's business and parking space at the rear of the property, or access along the rear service road, including for emergency vehicles. These details can be secured by condition.
15. Any new or replacement external ventilation or air-conditioning units would require separate planning permission, and as such there is no need to control such potential future development through this decision. The proposed use is unlikely to generate greater demand for car parking than the existing shop and would not be open during the evening, and therefore would not contribute to parking stress locally. Any requirement for the appellant to obtain consent from another landowner, including in relation to rights of access, is a civil matter dealt with under separate legislation and therefore does not fall within my remit in determining this appeal.

Conclusion

16. For the reasons given above, the appeal is allowed subject to conditions.
17. In addition to those set out above, a condition is necessary to require compliance with the approved plans, other than in relation to the details of waste storage and the extraction system, which would be secured by those other conditions.

L McKay

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin no 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: 0102/36STAT-01, except in respect of the design of the extractor and waste storage details shown on that plan.
- 3) The premises shall only be open for customers between 0800 hours and 1700 hours on any day. All deliveries and collections to and from the premises shall take place within these hours.
- 4) No extraction equipment shall be installed unless in accordance with details that have first been submitted to and approved in writing by the local planning authority. Such details shall include the noise performance of the extraction system and measures to control the emission of fumes and smell from the premises. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.
- 5) The use hereby approved shall not commence until provision for waste and recycling storage and collection have been made in accordance with details that have been submitted to and approved in writing by the local planning authority. Thereafter, no waste or recycling shall be stored anywhere on the site other than in the approved location(s).