
Appeal Decision

Site visit made on 16 May 2016

by Rory Cridland LLB (Hons)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 June 2016

Appeal Ref: APP/Z0116/W/16/3145036
68 Westbury Hill, Westbury, Bristol BS9 3AA

- 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 Second State Pizza Company Ltd t/a Domino's against the decision of Bristol City Council.
 - The application Ref 15/04143/F, dated 11 August 2015, was refused by notice dated 25 November 2015.
 - The development proposed is change of use from a vacant retail unit (Class A1) to a hot food takeaway (Class A5); installation of extraction/ventilation equipment and external alterations.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from a vacant retail unit (Class A1) to a hot food takeaway (Class A5); installation of extraction/ventilation equipment and external alterations at 68 Westbury Hill Westbury, Bristol BS9 3AA in accordance with the terms of the application, Ref 15/04143/F, dated 11 August 2015, subject to the conditions set out in the attached Schedule.

Main Issues

2. The main issues are the effect of the proposed takeaway on:
 - (i) the health of young people; and
 - (ii) the effect of the proposed development on highway safety, with particular regard to parking provision.

Reasons

Highway Safety

3. The appeal property is vacant having formerly traded as a dry cleaners. It is located in the Town Centre which forms part of the Westbury-on-Trym Conservation Area and is within the defined Primary Shopping Area. Although surrounded by other commercial premises, the majority of these are within Use Class A1 and there are no Class A5 units in the immediate vicinity. It is located on a busy road, close to the Grade II Listed War Memorial roundabout and directly alongside a pedestrian crossing. There are white zigzag road markings directly outside with double yellow lines further along the road.

4. The National Planning Policy Framework (“the Framework”) advises that development should only be refused on transport grounds where the residual cumulative impacts of development are severe.
5. The proposed development would be located within easy walking distance of the surrounding residential area. The Council appears to accept that the proposal would not result in illegal parking by customers and acknowledges that the existing on street parking restrictions are enforceable outside of the planning process. However, it is concerned that a lack of parking for delivery drivers would, at peak times, result in unauthorised parking to the front which would be detrimental to highway safety. I find this unlikely. As with customers, delivery drivers who arrive and find the sole parking space to the rear occupied are unlikely to seek to park at the front with its associated traffic restrictions and the safety issues which would be likely to arise. Instead they are more likely to find alternative legal parking in the immediate area while waiting for the available space to become free. In any event, as with customer parking, the restrictions in place are enforceable outside of the planning process.
6. Furthermore, I noted during my site visit that parking appeared in high demand as would be expected during normal business hours. Nevertheless, it was clear that there were spaces available in close proximity to the unit which could accommodate delivery vehicles should the need arise.
7. The proposed HFT would operate during the day and the evening. However, its delivery service is likely to be at its peak in the evening when other commercial premises are closed. As such the demand for parking will have significantly reduced. While I accept that the demand from local residents will have increased, it appears to me that there is sufficient parking capacity to accommodate the requirements of both local residents and the delivery vehicles without either having to resort to illegal parking.
8. While I note the Council’s concerns that a high number of pizza delivery vehicles utilising the car park could impact on the amenity of the occupiers of nearby Priory Dene, no robust evidence has been submitted which establishes that the number of vehicle movements would be so great that it would materially affect the living conditions of occupiers of these properties. Accordingly, I do not regard this as sufficient to warrant a refusal of planning permission in this instance.
9. On the whole, the evidence before me does not establish that the change of use proposed would result in unsafe or illegal parking on the road outside it. Furthermore, while I note the concerns of local residents that the additional vehicle movements associated with the change of use would result in highway safety issues along Priory Dene, these movements would be at their highest outside peak times and when vehicular use of that street was significantly lower. It would therefore be unlikely to result in sufficiently serious highways safety issues to justify a refusal of planning permission.
10. Consequently, for the above reasons, I conclude that the development would not be detrimental to highway safety. Accordingly, I find no conflict with Policy BCS10 of the Bristol Core Strategy¹ or Policies DM10 & DM23 SADMP which

¹ Bristol Development Framework Core Strategy (2011)

seek to ensure, amongst other things, that new A5 development does not prejudice highway safety.

Health of young people

11. Policy DM10 of the Site Allocations and Development Management Policies² ("SADMP") restricts development which would result in a harmful concentration of food and drink uses. In assessing the impact of proposals, it sets out a number of matters which are to be taken into account including the number, distribution and proximity of such units. It also seeks to limit the number of takeaways situated in close proximity to schools and youth facilities.
12. The appeal site is situated around 60m from the Westbury-on-Trym Methodist Church. The Council argues that in view of the number of youth activities which take place there, this should be regarded as a youth facility. Although not its primary purpose, from the evidence before me it appears that a considerable number of young people attend the site on a regular basis. Accordingly, I am satisfied that it is the type of youth facility envisaged by Policy DM10.
13. The explanatory text of Policy DM10 provides a definition of close proximity as being up to 400m of a school or youth facility, while also recognising that the point at which a harmful concentration is reached will vary from place to place. As such, the 400m figure is only a starting point and it is necessary to consider the site's location and the number of existing units and assess whether the proposal would result in a harmful overconcentration.
14. In this case, the proposed development would be a pizza delivery business located in the town centre, an area where such uses are to be expected. The imposition of a 400m exclusion zone around youth facilities in this location would exclude large parts of the town centre and would severely restrict class A5 development in that area. This would be detrimental to the overall vitality and viability of the town centre, contrary to the advice set out in paragraph 23 of the National Planning Policy Framework.
15. Although there are other hot food takeaways nearby, their numbers are small. Similarly, there is a sufficient degree of separation to ensure that there is no overconcentration of such uses. Although they are situated within a short distance of the appeal site and the church, their limited number and degree of separation help ensure that any impact on young people is likely to be limited. The Council has provided little in the way of robust evidence to show that children attending the church to undertake youth activities will be influenced by the presence of an additional Hot Food Takeaway ("HFT") in this location. In the absence of such evidence, I regard the addition of a further unit selling takeaway pizza as unlikely to materially alter the present position.
16. Whilst I have had regard to the concerns of neighbouring occupiers and other third parties, particularly those of Centre which relate to the potential contradictory messages to their clients, I accept that different types of takeaway will have different health impacts and that fast food does not necessarily equate to unhealthy eating. I am therefore satisfied that any resultant harm would not be significant and as such would be insufficient to justify a refusal of planning permission.

² Adopted July 2014

17. Accordingly, I find that the proposal would not be harmful to health or to the promotion of healthy lifestyles and as such find no conflict with Policy DM10 of the SADMP.

Other matters

18. The proposal includes a new shop front and other physical works. However, the Council raises no objection to the proposal on this basis and I see no reason to come to a contrary view. Accordingly, I conclude that the Westbury-on-Trym Conservation Area, within which the appeal property lies, would be preserved as would the setting of the Grade II Listed War Memorial.
19. I have taken into account the concerns of nearby residents and the objections made both at application stage and as part of this appeal. Those which relate to highway safety and unhealthy eating have been considered in my reasoning above. Those which relate to odours, noise, air quality, waste, vermin and litter were considered by the Council at application stage. I note that they do not form a reason for refusal and where necessary, could, where appropriate, be adequately dealt with by means of a condition. Accordingly, I do not regard them as sufficient, either individually or cumulatively, to justify a refusal of planning permission in this instance.

Conditions

20. I have had regard to the conditions suggested by the Council. In addition to the standard time condition, I regard a condition requiring compliance with the approved plans as necessary for the avoidance of doubt. Likewise, a condition requiring the submission of further details of the extraction/ventilation system is necessary in the interests of adjoining properties and for general environmental protection as are those which relate to refuse and recycling facilities. A condition restricting noise levels of the plant and equipment is necessary in the interest of neighbouring amenity.
21. I have considered the Council's suggested restriction on opening hours. However, no robust reasoning has been provided which would justify limiting the operating hours of the proposed takeaway to those suggested. Furthermore, I note that the other nearby takeaways have similar opening times to those proposed by the appellant. In view of its town centre location, such a restriction would not be appropriate and I have amended the suggested condition accordingly.
22. I do not however regard a condition requiring an Odour Management Plan as necessary. As the appellant has pointed out, this information is included in the submitted documentation.
23. Although I have found that the number of vehicle movements associated with the delivery of pizzas would not have any material impact on the residents of Priory Dene, when coupled with additional deliveries to the premises, the cumulative impact has the potential to create unacceptable levels of disturbance, particularly later in the evening. As such, I regard the imposition of a condition restricting deliveries to the premises to be reasonable and necessary in order to protect the amenity of neighbouring occupiers.
24. A number of these conditions need to be discharged before work commences on site as these relate to matters which need to be resolved on a fully coordinated basis.

Conclusion

25. For the reasons set out above I conclude that the appeal should be allowed.

Rory Cridland

INSPECTOR

SCHEDULE

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Except where these conditions require otherwise, the development hereby permitted shall be carried out in accordance with the following approved plans:
 - DB146 -EL-05 - Proposed Front and Rear Elevations
 - DB146 -EL-06 - Proposed Side Elevation,
 - DB146 -EX-01 - Existing Layout Plan,
 - DB146 -EX-02 - Existing Front and Rear Elevations
 - DB146 -EX-03 - Existing Side Elevation
 - DB146-BP09A - Block Plan
 - DB146 -GA-04A - Proposed Layout Plan
 - DB146-LP, Revision B - Site Location Plan
- 3) No development shall take place until details of ventilation system for the extraction and dispersal of cooking odours including details of the flue, its location and the method of odour control, noise levels and noise attenuation measures have been submitted to and approved in writing by the local planning authority

The approved scheme shall be implemented prior to the commencement of the use, be permanently retained thereafter, be used for its intended purpose during opening times and maintained in accordance with the details set out in Para 5.9 of the Supporting Annex B Document for Proposed Ventilation System.
- 4) No building or use hereby permitted shall be occupied or the use commenced until the refuse store, and area/facilities allocated for storing of recyclable materials, have been completed in accordance with the approved plans. Thereafter, all refuse and recyclable materials associated with the development shall either be stored within this dedicated store/area or internally within the building that forms part of the application site. No refuse or recycling material shall be stored or placed for collection on the public highway or pavement, except on the day of collection.
- 5) The rating level of any noise generated by plant & equipment as part of the development shall be at least 5 dB below the pre-existing background level as set out in Paragraph 3.2.2 of the Noise Report.
- 6) Activities relating to the collection of refuse and recyclables and the tipping of empty bottles into external receptacles shall only take place between 08.00 and 20.00 Monday to Saturday and not at all on Sundays or Bank Holidays.
- 7) Activities relating to deliveries to the premises (excluding activities involving the delivery of cooked pizza's to customers) shall only take place between 08.00 and 20.00 Monday to Saturday and not at all on Sundays or Bank Holidays.

- 8) The use hereby permitted shall not be open to customers outside the following times:

11:00 to 23:00 Monday to Sunday.