
Appeal Decision

Site visit made on 14 October 2013

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 5 November 2013

Appeal Ref: APP/Z4718/A/13/2198404

Westbourne Road, Marsh, Huddersfield HD1 4LF

- 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 Ganex Investments Ltd against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2012/62/91978/W, dated 21 June 2012, was refused by notice dated 9 May 2013.
 - The development proposed is the change of use from retail unit to restaurant.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from retail (DIY store) to restaurant and alterations at Westbourne Road, Marsh, Huddersfield HD1 4LF in accordance with the terms of the application, Ref 2012/62/91978/W, dated 21 June 2012, subject to the conditions set out in Annex A.

Procedural Matter

2. Although the application form describes the development proposed as referred to at the top of this decision, the description used on the appeal form and decision notice also includes the minor external alterations that form part of the application. As this is a more accurate description I have used the amended version in my formal decision and determine the appeal on this basis.

Main Issue

3. The main issues of the appeal are the effect of the proposed development on;
 - The living conditions of nearby residents with particular regard to noise and disturbance; and
 - Highway safety.

Reasons

4. The appeal site comprises a large L-shaped building, which although currently vacant, was last used for retail purposes, and an associated area of car parking. Whilst the main part of Marsh Local Centre is focussed along Westbourne Rd, the site lies directly behind the retail units along this road and it is acknowledged by both sides that the site forms part of the centre. However, it is surrounded by residential uses on the other 3 sides. Whilst

access to the site can be gained from both Westbourne Road and Syringa Street, the only vehicular exit for the site is onto Syringa Street.

Living Conditions

5. The proposed restaurant would be open until 11.30 Monday – Friday and until midnight on Saturday, Sunday and Bank Holidays. There are a number of uses within Marsh centre that open during the evening but these are focussed mainly on Westbourne Road. As such it is likely that the noise and disturbance from these uses would have a limited impact on the residential streets surrounding the appeal site. Although The Croppers Public House has its car park, beer garden and smoking shelters at the rear of the building immediately adjacent to the appeal site, there is no evidence to suggest that this causes any noise or disturbance in the local area.
6. Although it has been indicated that the current lawful use of the building has no restrictions on the hours of operation, it has been stated that historically it has mainly been used in the daytime. In contrast, the main activity associated with a restaurant tends to occur during the evening. As well as from inside the premises, noise and disturbance can occur from traffic movements associated with deliveries and the arrival and departure of customers, from the general noise arising from the congregation and movement of customers and from the refrigeration and ventilation systems associated with the use.
7. The detached nature of the building, its distance from surrounding dwellings and the limited number of windows and other openings means that it is unlikely that noise generated inside the building would have any impact on nearby residents. In addition, as the main entrance is located adjacent to the car park, it is a considerable distance from any of the surrounding houses. Given that the noise and disturbance associated with the coming and goings of customers would be focussed in this area, it would be unlikely to have any adverse impact on the living conditions of those living in the vicinity.
8. Part of the car park lies immediately adjacent to the side elevation of 39 Syringa Street and the boundary of the rear gardens of properties on Mint Street. The nature of a restaurant is such that customers generally stay for several hours and as a result the number of vehicular movements is more limited than would occur with a take away for example. As a result noise and disturbance arising from the coming and going of customers' vehicles would be limited and not significantly different from that occurring through the use of the adjacent pub car park, which also adjoins the rear boundaries of dwellings on Mint Street. Moreover, this part of the car park is the furthest away from the entrance to the building and so it is likely that this will be the least used part of the car park. As, such the noise and disturbance from the use of the car park would be unlikely to adversely affect the living conditions of those living in the nearby houses.
9. Although the proposal would increase the amount of traffic using the surrounding streets, and in particular Syringa Street, in an evening, the traffic movements would be spread across the evening, and so the noise and disturbance associated with them would not significantly affect the living conditions of the occupiers of dwellings on these streets
10. The proposal would continue to use the existing delivery yard which is located adjacent to the side elevation of 83 Syringa Street. The hours that this could

be used could be controlled by way of a condition which would limit the noise and disturbance to the occupiers of the dwellings in the immediate vicinity. Moreover, as the plans indicate that the bins would be stored internally, I am satisfied that the living conditions of nearby residents would not be adversely affected by odours.

11. The plans indicate that a new extraction system would be situated facing the rear of the commercial properties on Westbourne Road and that the plant for the freezer would be mounted externally in acoustic housing. The Council has suggested conditions requiring the details of these to be approved prior to the development being brought into use, and subject to this I am satisfied that these elements of the proposal would result in no significant harm to the living conditions of adjacent residents, in terms of noise and disturbance.
12. I note the concerns regarding the first floor bar area and the potential for overlooking and disturbance from the lighting. Whilst the bar area faces the rear elevation of properties on Mint Street, I am satisfied that the distance that separates them, and a condition to ensure the obscure glazing of the windows, would be adequate to prevent any such adverse impacts on the living conditions of the occupiers of these dwellings. In addition, conditions to control any external lighting of the building and car park, would prevent any potential light pollution which could adversely affect local residents.
13. Concern has also been raised that the plans do not indicate where customers might go to smoke and that this may cause disturbance to local residents. It is most likely that smoking would take place in close proximity to the entrance. Given the separation distance between this area and the nearest houses I am satisfied that should people smoke here, it would not cause any significant disturbance to local residents. Moreover, it would be further away from the houses than the smoking shelters at the rear of the pub, which at present do not appear to cause any harm to the living conditions of the occupiers of the nearby houses.
14. Overall, therefore, I consider that the proposed development would not materially harm the living conditions of nearby residents with particular regard to noise and disturbance. Accordingly there would be no conflict with Policy D2 of the *Kirklees Unitary Development Plan (adopted March 1999 and revised September 2007)* (UDP) which requires that new development should protect residential amenity.

Highway Safety

15. Many of the houses in the area surrounding the appeal site have little or no off-street parking and in addition, as some of the roads are quite narrow, on-street parking is only possible on one side of the street. Consequently, the demand for on-street parking in the area is likely to be high. At the time of my site visit the levels of on-street parking were significant and I recognise that given the residential nature of the area, the demand during the evenings or weekends is likely to be greater. Evidence from local residents suggests that the lack of on-street parking is a problem in the area.
16. It is proposed that the restaurant would have 120 covers, and the proposed car park would have 59 spaces. The Council have indicated that, given the floorspace available, the car parking standards in the UDP would require a maximum of 94 spaces. The appeal site is located within a designated centre

which the evidence indicates has good public transport links. It is also within easy walking distances of many local people. Furthermore, given the nature of the proposed use, it is likely that many customers would arrive together in one vehicle. As a result, I consider a ratio of one parking space for every 2 customers would be sufficient and would be unlikely to result in an increase in demand for on-street parking in the vicinity.

17. Concern has been raised that given the floorspace available the restaurant would be able to hold more people than is currently suggested and that this would result in an increase in demand for parking in the surrounding streets. However, I am satisfied that conditions, as suggested by the Council to prevent the creation of a mezzanine floor and to control the number of covers, would be sufficient to ensure that this did not happen and that the level of car parking provided would be sufficient for the current floorspace .
18. It has been put to me that the accesses to the car park from both Westbourne Road and Syringa Street are narrow and often have vehicles parked along them. However, I note that the highways engineer did not have any concerns in this regard and I am satisfied that the accesses will be adequate for the proposed development. In addition, residents have indicated that delivery vehicles have previously had difficulty accessing the service yard due to the parking of cars on the street. However, as the appellant has highlighted that the size of delivery vehicles is likely to be smaller than for the existing A1 use, I consider that the access for the service yard is less likely to cause problems.
19. Consequently, although the proposal would not provide the maximum car parking levels set out in Policy T19 and Appendix 2 of the UDP, I consider that the appeal scheme would be unlikely to result in a significant increase in demand for on-street parking in the area. Therefore, it would not be detrimental to highway safety in the area. As such it would not be contrary to Policies T19, T10 and D2 of the UDP which seek to ensure the provision of off-street parking in new developments and that developments do not adversely affect highway safety or residential amenity.

Other Matters

20. I note that previously the car park for the site was used by members of the public visiting the centre, and also by local taxis firms for waiting. However, the car park is with the ownership of the appellant and the use of the car park for these purposes appears to have only been an informal arrangement. The Council have confirmed that the public right of way that runs across the site would be maintained by the scheme.
21. Whilst it has been argued that there are enough similar uses within the centre already, it is not the role of the planning system to restrict competition. In fact the National Planning Policy Framework (paragraph 23) requires planning to promote competitive town centres that provide customer choice.
22. It has been suggested that there are other buildings elsewhere that would be more suitable for the use, although no sites or buildings to which this might apply were put forward. However, as this is town centre use, proposed within a defined centre, the principle of the use of the building for this purpose would be acceptable. Moreover, whilst a number of residents have suggested alternative uses for the building / site this does not justify withholding permission in this case.

23. Concerns have been raised as to whether the drains would be adequate for the proposed use. Whilst different to the previous use, there is no substantive evidence to indicate that the drainage system would be inadequate. Nor is there any firm evidence to suggest that the development would lead to significantly increased rates of antisocial behaviour or litter.
24. Local residents have stated that the building may be used for roosting by bats although no substantiated evidence on this matter has been submitted. I have had regard to the relevant legislation but there is nothing in the evidence before me that leads me to suppose that the proposal would have any significant effect on a protected species.

Conclusion and Conditions

25. For the reasons set out above, I conclude that the appeal should be allowed.
26. In addition to the standard implementation condition, it is necessary for the avoidance of doubt, to define the plans with which the scheme should accord. In the interests of the character and appearance of the area a condition is required to control the external appearance of the building.
27. In order to protect the living conditions of local residents conditions are required to: restrict the hours of operation of the restaurant and of deliveries to the building; approve the details of the ventilation system and any refrigeration/condenser and air conditioning units, and to ensure their subsequent retention, maintenance and operation; ensure the internal storage of the bins and the approval of a waste management and collection plan; control any external lighting on the building; and ensure the obscure glazing of the windows on the first floor.
28. Conditions are required to prevent a mezzanine floor being constructed and to limit the number of covers in order to ensure that the development remains at an acceptable scale, to ensure that adequate off-street parking is provided in the interests of highway safety, and to protect the living conditions of nearby residents. In the interests of highway safety and residential amenity it is necessary to control details of the surfacing, layout, drainage, lighting and management of the car park and to ensure that it is made available for use before the restaurant is brought into use.

Alison Partington

INSPECTOR

Annex A

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Other than as specified in the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; Existing Plans Drawing No 1423 01; Proposed Plans Drawing No 1423 04 Rev A; and Existing and Proposed Elevations Drawing no 1423 03.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) The use hereby permitted shall not be open to customers outside the following times 09:00 to 23:30 Monday to Friday and 09:00 to 00:00(Midnight) on Saturdays, Sundays and Bank Holidays.
- 5) No deliveries shall be taken at, or despatched from, the site outside the hours of 08:00 to 18:00 Monday to Friday and 09:00 to 17:00 Saturdays nor at any time on Sundays, Bank or Public Holidays.
- 6) Before the use hereby permitted begins, a scheme for the installation and/or erection of any extract ventilation system, including details of the methods of treatments of emissions and filters to remove odours and control noise emissions shall be submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be implemented. Such works shall thereafter be retained, operated at all times when the restaurant is in use, and maintained and operated in accordance with the manufacturer's instructions.
- 7) Before the use hereby permitted begins, a scheme for the installation and/or erection of any external refrigeration/condenser or air conditioning units shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme as approved shall be implemented. The details shall include the exact position of the units, their external appearance and predicated noise levels. Such works shall thereafter be retained and maintained and operated in accordance with the manufacturer's instructions.
- 8) The storage of bins shall be internal to the building and undertaken in strict accordance with the details as shown on the plans approved under condition 2 to this permission. Before the use hereby permitted begins details of the arrangements for the collection/emptying of bins, including frequency of collection/ emptying and the times this would take place, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter the development shall be undertaken in accordance with the scheme so approved. There shall be no external storage of bins except on those occasions set out in the approved scheme.
- 9) No external artificial lighting shall be erected within the application site without a scheme being first submitted to, and approved in writing by,

the Local Planning Authority. The scheme submitted shall indicate the measures to be taken for the control of any glare or stray light arising from the operation of external artificial lighting. The lighting shall be installed in accordance with the measures so approved and thereafter the external artificial lighting shall be operated in accordance with the approved scheme.

- 10) Notwithstanding the approved plans, no development shall take place until details of measures to obscurely glaze the first floor windows in the front elevation of the building serving the bar area, as shown on the elevations drawing approved under condition 2 to this permission, have been submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be completed in accordance with the details so approved before the use hereby permitted begins and the windows shall be permanently retained in that condition.
- 11) Notwithstanding the provisions of section 55(2)(a)(i) of the Town and Country Planning Act 1990 (or any order revoking, re-enacting that Order with or without modification) no mezzanine floor shall be inserted in the building outlined in red on the location plan approved under condition 2 to this permission.
- 12) Notwithstanding the approved plans, the hereby approved A3 restaurant use shall not cater for any more than 120 covers at any one time.
- 13) No development shall take place until a scheme detailing the surfacing, drainage, marking out, any proposed lighting and the management of the car park, has been submitted to, and approved in writing by, the Local Planning Authority. The development shall not be brought into use until the approved scheme has been implemented. Thereafter, the implemented scheme shall be retained throughout the lifetime of the development.