
Appeal Decision

Site visit made on 12 September 2016

by C. Jack, BSc(Hons) MA MA(TP) MRTPI

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

Decision date: 21st September, 2016

Appeal Ref: APP/Q1445/W/16/3151328
12A Queens Road, Brighton BN1 3WA

- 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 Pavel Preobrazhenskiy against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/00398, dated 4 February 2016, was refused by notice dated 25 April 2016.
 - The development proposed is the change of use from A1 to A5 to form a noodle bar takeaway shop.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from A1 to A5 to form a noodle bar takeaway shop at 12A Queens Road, Brighton BN1 3WA in accordance with the terms of the application, Ref BH2016/00398, dated 4 February 2016, subject to the conditions set out in the Schedule to this decision.

Main Issues

2. The main issue is the effect of the proposed development on i) the vitality and viability of the Regional Shopping Centre and ii) the living conditions of nearby occupants, with particular regard to noise disturbance and odour.

Reasons

3. Number 12A is a three-storey, plus basement, narrow-fronted building situated in a terrace on Queens Road in central Brighton. It has a traditional, predominantly glazed ground floor shop front. The ground floor and basement are currently in commercial use and the first and second floors are in separate residential use. Queens Road is a busy main route between Brighton train station and the city centre, with significant pedestrian footfall evident during my site visit. This area is defined as a 'prime frontage' within the Regional Shopping Centre. Queens Road currently includes a wide range of uses including retail, hotels, pubs, restaurants, offices, convenience stores, cafes, Army careers office, tanning shop, estate agents and residential (mostly above ground floor level).
 4. The proposal is to change the use of the existing commercial premises from A1 (retail) to A5 (hot food takeaway). No changes to the external appearance of the building are proposed, except for an extension of 1 metre
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in height to the existing extraction flue situated at the rear of the property. I am advised that a separate application is to be made to the Council for proposed alterations to the external signage.

Vitality and viability

5. Retained Policy SR4 of the Brighton and Hove Local Plan 2005 (BHLP) seeks to ensure that the number of units or proportion of frontages in non-retail use within defined prime frontages does not exceed 25% of the shopping street to which it relates. The Council considers the appropriate area to which the appeal proposal relates to be the area of Queens Road lying between North Street and Church Street and it has assessed the amount of current non-retail use on that basis. The appellant does not contest this approach and I see no reason to disagree. Nonetheless, there is some discrepancy between the resulting figures presented by the Council and the appellant. However, in either scenario the parties consider number of non-retail uses to currently fall within the range of approximately 29 – 34%, thereby already exceeding the 25% threshold set out in Policy SR4. The Council considers that the proposal would increase this exceedance to around 37%.
6. The existing business operating from the premises is known as the Green Chair. It has the appearance of a small café, with a number of seats and tables available both inside and immediately outside on the pavement. There is a serving area adjacent to the customer seating area and a small kitchen to the rear. In this regard the proposal would differ little from the existing operation, except that the front serving area would be replaced by a commercial wok. The customer seating area would remain, as would the kitchen to the rear.
7. The Council describes the existing use of the appeal premises as a sandwich shop. However, I saw during my site visit that while cold foods including wraps and salads were available for consumption on or off the premises, the menu also included a significant selection of hot foods, including full cooked breakfasts and chicken and rice dishes, which also appeared to be available for consumption on or off the premises. Hot food was being prepared in the kitchen during my visit. In this respect the proposal would again differ little from the existing operation, although I accept that the proportion of hot compared to cold food sold may be greater as proposed. As a result, while the difference in character between a retail use and a hot food takeaway can often be significant, I consider that this would not be the case here.
8. Moreover, the appeal premises are very small in comparison to many others in the area, with only a narrow street frontage, situated between the significantly larger dental health and beauty spa and Hope and Ruin pub next door on either side. I acknowledge the importance of retail provision within a Regional Shopping Centre. However, the overall effect on retailing in this area of prime frontage as a result of the change of use would be very limited, such that it would not have a significant impact on the overall function of the area. Furthermore, the proposal would add to the sustainable, diverse and complementary mix of uses in the area, where retail would nonetheless remain the predominant use, thereby making a proportionate positive contribution to local viability and vitality. In this

respect the proposal would also be generally consistent with Policy CP4 of the adopted Brighton and Hove City Plan Part One 2016 (BHCP), which amongst other things seeks to encourage a range of facilities and uses in shopping centres whilst preserving the predominance of retail uses.

9. Therefore, while I recognise that the proportion of non-retail uses in the area would remain above the 25% threshold as a result of the proposed change of use, I consider that this would not be harmful to the viability and vitality of the prime frontage or the wider Regional Shopping Centre in this instance. In contributing to the sustainable mix of uses in the area, the proposal would generate a small amount of additional local employment and help support the early evening economy, in accordance with the aims of the National Planning Policy Framework in respect of ensuring the vitality of town centres.
10. For the reasons given above, I conclude that while the proposal would be contrary to Policy SR4 of the BHLP because the specified threshold for non-retail uses would continue to be exceeded, the proposed change of use would nevertheless support rather than harm the vitality and viability of the Regional Shopping Centre.

Living conditions

11. Since the Council determined the application, additional information has been provided specifying the details of the proposed extraction equipment. This sets out that the existing extraction system would be upgraded, including the extension of the existing external flue by 1m so that it would expel above eaves level, thereby further from the nearby windows of the residential units above the appeal premises. I am satisfied that this, together with the specified extraction equipment, which would include odour filtration, would ensure that the proposal would not harm the living conditions of nearby residents as a result of cooking odours.
12. The submitted details show that the proposed extraction system has been designed to operate at noise emission levels between 30-33 dBA at 1 metre from the nearest residential unit. This would be notably lower than the average background readings at the rear of the premises submitted by the appellant of 64-68 dBA. The Council has not contested these figures and I see no reason to disagree. I am therefore also satisfied that the proposed extraction system would not result in any significant noise disturbance to nearby residents.
13. Nonetheless, in order to ensure that the living conditions of nearby residents are not harmed as a result of cooking odours or noise disturbance from the operation of the proposed extraction system, it would be necessary to secure its installation in accordance with the specified details, and maintenance and retention by condition.
14. I therefore conclude that the proposal would not harm the living conditions of nearby occupants, with particular regard to noise disturbance and odour. Accordingly I find no conflict with retained Policies SU10 or QD27 of the BHLP, which among other things seek to ensure that a change of use would not result in harm to living conditions, including as a result of noise and smells.

Conditions

15. The Council has not provided a list of suggested conditions for me to consider. I have therefore had regard to the related comments and requests received during the process of the application. In addition to the standard three year time limit for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans, as this provides certainty. I have also imposed a condition to control the hours of opening for customers to those requested by the appellants in the interests of the living conditions of nearby residents. A condition to ensure the installation and on-going operation and maintenance of suitable extraction equipment is also necessary for the same reason. A condition to restrict a delivery service is not necessary as there are highway restrictions in place adjacent to the site to control loading in the interests of the free flow of traffic. I have also not imposed a condition to restrict deliveries to the premises since I have no significant evidence before me that this is necessary or reasonable in this circumstance.

Conclusion

16. For the above reasons, and having considered all matters raised, I conclude that the appeal should succeed.

C Jack

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P01; P02; P03; P04; P05; P06; P07; P08.
- 3) The premises shall only be open for customers between the following hours: 0900 - 2000 on Mondays – Fridays and 1100 – 2000 on Saturdays, Sundays and Bank or Public Holidays.
- 4) Before the use hereby permitted takes place, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with the following details as specified:
 - a) equipment brochure - C3 circular attenuators
 - b) equipment brochure F7 - west life rigid bag filters
 - c) equipment brochure FP - pleated G4 panel
 - d) equipment brochure - gigabox centrifugal fans
 - e) equipment brochure - stainless steel baffle filters
 - f) equipment brochure – standard discarb cells
 - g) extract system diagram B
 - h) extract system plan
 - i) extract system plan B.

All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with the approved details and retained for so long as the use continues.

