



Appeal Decision

Hearing held on 15 April 2008
Site visit made on 15 April 2008

by **David Hogger** BA MSc MRTPI MIHT

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

19 MAY 2008

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Decision date:
16 May 2008

Appeal Ref: APP/Q1445/A/07/2056335

Unit 1, 132-135 Lewes Road, Brighton BN2 3LG

- 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 *Uncle Sams* against the decision of Brighton & Hove City Council.
- The application Ref BH2007/02326, dated 15 June 2007, was refused by notice dated 28 August 2007.
- The development proposed is the change of use from class A1 (retail) to class A5 (hot food takeaway) and the erection of a rear extract flue.

Decision

1. I dismiss the appeal.

Main issues

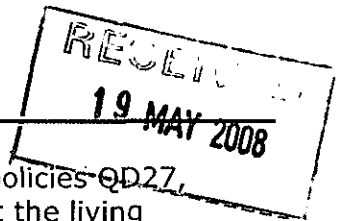
2. I consider the main issues to be:
 - the effect of the proposed use on the vitality and viability of the Lewes Road District Centre; and
 - the effect of the proposed extract flue on the living conditions of neighbours in terms of nuisance from odour.

Reasons

3. The appeal site is a newly built property within the Lewes Road District Centre. The unit is set back from the pavement by about 3m. Immediately to the north is a Community Centre, a residential property and then some vacant premises. To the south is located a hot food takeaway (which operates a home delivery service) and then a retail unit. I visited the site in both the morning and afternoon and on both occasions I would describe the level of pedestrian activity as low.
4. It is clear to me that the Council's objective, as established in the Brighton and Hove Local Plan 2005 (LP), is to maintain and enhance the vitality and viability of the District Centre and to draw pedestrian activity into the area, in particular by maintaining the prime retail frontage. Policy SR5 of the LP sets out the 4 distinct requirements which all have to be met and I am required to determine the appeal in accordance with the statutory Development Plan unless material considerations indicate otherwise.
5. Criterion (b) of policy SR5, which forms the basis for the Council's first reason for refusal, specifically places a limit of 15m on the length of break in the prime retail frontage. There was some discussion at the Hearing with regard to the

interpretation of the word 'significant' as used in criterion (b). The appellant suggested that a change of use would have to result in a break of prime shopping frontage of more than 15m and also would have to be considered to be significant, in order for a proposal to be deemed contrary to policy. However, it is the Council's assertion that anything over 15m would be considered to be significant and any flexibility in the interpretation of this criterion would only be in terms of one or two metres.

6. The Council's interpretation of the policy would seem to be the more logical but irrespective of this difference of view, it is my opinion that a break of 32m (as identified by the appellant) would be significant – at over twice the length put forward in the policy.
7. The appellant also argued that the determination of what constitutes significant should relate to the level of footfall and activity generated by the proposed use. It is suggested that such activity would be substantial and I have no reason to doubt that. However, I was told that such use would peak at lunch time and in the evening, leaving the bulk of the day-time trading hours without any significant additional footfall.
8. I was provided with no detailed evidence to demonstrate how the level of activity for the proposed use would compare to the activity associated with an A1 use. However, it is my opinion that an A1 use would be more likely to generate a more even flow of activity throughout the day because people do not tend to restrict their general shopping to particular times. Therefore, bearing in mind the neighbouring uses which I describe in paragraph 3, I consider that an A1 use would be more likely to improve the vitality and viability of the District Centre.
9. Similarly I was provided with no detailed evidence with regard to the potential for combined trips and although I note that the Council did not consider criterion (c) of policy SR5 would be significantly breached, I am unable to attach much weight to the appellant's assertion that an A5 use would have equal potential to attract combined trips as would an A1 use.
10. With regard to the distance between the footway and the front of the building it is my opinion that because it is only about 3m, pedestrians would be able to see clearly into the front window and that therefore there is no substance in the argument that the unit already forms a break in the frontage.
11. To conclude on this issue I consider that, for the reasons given above, the proposal would breach policy SR5(b) of the LP which seeks to limit the length of any break in the prime retail frontage and that there is insufficient justification for making an exception to the policy in this case. In my opinion the proposal would materially harm the vitality and viability of the Lewes Road District Centre.
12. With regard to the second issue I saw that the proposed extract flue would be some distance from the rear first floor window of the adjacent property and that the end of the flue would be higher than that window. It is my opinion that the location of the flue together with the use of appropriate odour control equipment (which could be provided through the imposition of an appropriate condition) would ensure that the living conditions of nearby residents would not be significantly impaired.



13. I conclude on the second issue that the requirements of LP policies QD27, SR5(d) and SU9, which seek to prevent pollution and protect the living conditions of neighbours, would be met.
14. However, my finding on this issue does not outweigh my conclusion with regard to the effect of the proposal on the vitality and viability of the District Centre.
15. For the reasons given above and having considered all other matters, including the previous uses of the site, I conclude that the appeal should be dismissed.

David Hogger

Inspector

APPEARANCES

FOR THE APPELLANT:

Luke Carter

Lewis and Co Planning, Paxton Business Centre,
Portland Road, Hove, East Sussex BN3 5SG

FOR THE LOCAL PLANNING AUTHORITY:

Gemma Barnes
Kate Brocklebank

Senior Planning Officer, Brighton and Hove CC
Planning Officer, Brighton and Hove CC

DOCUMENTS

1 Notification of Hearing

PLANS

A Plan Showing Prime Retail Frontage – Lewes Road, Brighton

B Extracts from Local Plan Proposals Map

PHOTOGRAPHS

1 Photograph of the rear of the appeal premises