The Planning Inspectorate

Appeal Decision

Site visit made on 12 March 2019

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: Tuesday, 18 June 2019

Appeal Ref: APP/A2525/W/18/3208189
15 New Road, Spalding PE11 1DQ

- 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 Rifat Karaoglan against the decision of South Holland District Council.
- The application Ref H16-0462-18, dated 14 May 2018, was refused by notice dated 25 June 2018.
- The development proposed is a change of use from A1 use class (shop) to A3/A5 mixed use class (restaurant/take away).

Decision

1. The appeal is allowed and planning permission is granted for a change of use from A1 use class (shop) to A3/A5 mixed use class (restaurant/take away) at 15 New Road, Spalding PE11 1DQ in accordance with the terms of the application Ref H16-0462-18, dated 14 May 2018, subject to the following conditions:

   1) The development hereby permitted shall begin no 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: 18.003 P100 and 18.003 P101.

   3) The use hereby permitted shall only take place during the period from 08:00am to 11:00pm Monday to Saturday and 08:00am to 10:00pm on Sundays and Bank Holidays.

Preliminary Matters

2. During the determination of the appeal I was made aware that the South East Lincolnshire Local Plan (SELLP) was adopted on 8 March 2019. This forms the new development plan for both Boston Borough Council and South Holland District Council. The Council's evidence shows that Policy 2, Policy 24 and Policy 25 of the SELLP are relevant, all of which have been provided. These replace Policies EC5, EC9 and EC10 of the South Holland Local Plan that are referred to in the Council's decision notice. I am required to determine this appeal having regard to the development plan and national policy which are in place at the time of my decision and have done so on this basis.

3. The Council has given only one reason for refusal within its decision notice and this concerns the effect of the proposal on the retail function of Spalding's town centre. However, its Officer report and statement deals with the impact of the proposal on the living conditions of the occupants of surrounding properties

and raises concern in this regard. The appellant has responded to this in his statement. Consequently, no party would be prejudiced by my consideration of this matter as a main issue.

Main Issues

4. Following on from the above, I consider that the main issues are the effect of the proposal on:

   - the retail function of Spalding's town centre; and
   - the living conditions of the occupants at surrounding properties, with particular regard to noise and odour.

Reasons

Spalding's Town Centre

5. The appeal site is located towards the edge of the Town Centre Boundary of Spalding (a Sub-Regional Centre) and is within the Conservation Area, as denoted by the SELLP. It comprises a ground floor retail (A1) unit located in a three storey, end of terrace, building. This was vacant at the time of my visit. There are a number of nearby take-aways and public houses along New Road and Broad Street and this part of the town centre therefore appears to be somewhat reliant on the evening economy. However, I observed that there is a good mix of residential, retail and other commercial uses close to the appeal site and throughout the large town centre.

6. The proposal seeks to change the use of the existing A1 unit to mixed use comprising a restaurant (A3) and take-away (A5). The Council raise no objection to the impact that this would have on the Conservation Area or in terms of parking provision and highway safety. On the evidence before me, and having visited the site, I have no reason to disagree with this.

7. The Council's main concern is that the proposal would result in an excessive number of businesses serving food in this part of the town centre, to the detriment of customer choice and the retail function of the town centre. Although the proposal would contribute to the concentration of such uses, given that the appeal site is away from the Primary Shopping Area (as illustrated within the SELLP), this cluster of similar uses would be unlikely to noticeably affect the central core of the town centre. Indeed, I have no evidence to suggest that the proposal would result in a substantial shift in the mix of uses within the town centre as a whole.

8. In addition, it is not unusual for A3/A5 uses to support surrounding retail uses, of which there are plenty in this instance, and the proposal would bring a vacant unit back into use. This would help maintain levels of footfall and pedestrian activity in this part of the town centre.

9. For the reasons given, I conclude that the proposal would not adversely affect the retail function of Spalding's town centre. It would therefore accord with Policy 24 and Policy 25 of the SELLP. Amongst other things, these seek to support proposals for uses falling within Classes A1-A5 within Sub-Regional Centres and enhance the multi-functional environments of town centres. The proposal would also accord with the National Planning Policy Framework (the

Framework) insofar as it seeks to ensure that town centres comprise a suitable mix of uses and that developments function well.

Living Conditions

10. The A3 use would comprise a large, 24 seat, dining area. A counter, an external flue and two preparation areas are also shown on submitted plans which would assist with this use as well as the take-away element. Given the nature of this proposed mixed use there would be potential for noise and disturbance to residential flats above the site as well as other nearby residential properties.

11. A condition managing the hours of operation at the appeal site was not originally suggested by the Council. However, the application form shows that both the A3 and the A5 elements of the proposed use would operate between the hours of 08:00am to 11:00pm Monday to Sunday as well as on Bank Holidays. During the determination of the appeal the appellant has also indicated that he is willing to reduce the operating hours to between the hours of 10:00am to 11:00pm from Monday to Saturday and 10:00am to 10:00pm on Sundays and Bank Holidays.

12. It is not unusual for businesses within town centre locations to begin operating at 08:00am. I also have no substantive evidence before me to suggest how or why such an opening hour would result in significant noise and disturbance to residents at nearby properties. Furthermore, it would appear that the Council has concerns that the late opening times for uses such as take-aways detracts from the vibrancy of town centres. An earlier opening hour would help address such concerns. I am therefore satisfied that an opening hour of 08:00am would be acceptable. I am also content that operating until 11:00pm on Monday to Saturday, which is likely to be similar to surrounding commercial uses at this town centre location, would not result in significant noise and disturbance to surrounding properties.

13. Notwithstanding the above, the appellant has agreed to cease the use of the premises by 10:00pm on Sundays and Bank Holidays. In my view, this is appropriate and would reduce the potential for noise and disturbance during days which are traditionally quieter.

14. I note that submitted plans also show that there would be an acoustic ceiling between ground and first floor levels. However, I do not have any information before me to show how effective this would be. It would therefore not be reasonable to secure this conditionally with regard to the tests at paragraph 55 of the Framework. In any event, subject to the imposition of an appropriately worded condition to secure operational hours as discussed above, in my view the proposal would not, when considered individually or in conjunction with similar nearby uses, result in significant levels of noise and disturbance to nearby properties.

15. Turning to odour, the flue has already been given planning permission under application Ref H16-0995-13 and has been installed. Consequently, it is highly likely that the Council has already assessed the flue in terms of its impacts upon living conditions at nearby properties and found it to be acceptable in this regard. I have no evidence before me which would lead me to a different conclusion on this matter.

16. For the reasons given, I conclude that the proposal would not adversely affect the living conditions of the occupants of surrounding properties in terms of noise and odour. It would therefore comply with Policy 2 of the SELLP which, amongst other things, seeks to ensure that developments do not have an unacceptable impact upon living conditions in terms of noise, odour and disturbance.

Other Considerations

17. Notwithstanding the concerns of a third party, there is no evidence before me that the development would lead to adverse impacts upon the operation of surrounding businesses. The Council has not raised any concerns in this regard and I see no reason to take a different view in this case. Furthermore, the large yard to the rear of the site could be used for the storage of bins which could be appropriately presented for collection.

18. I note that the Council raises concern in terms of antisocial behaviour. However, there are no records before me to show that there are high levels of existing antisocial behaviour in the area, nor is there any substantive evidence before me to illustrate that the proposal would exacerbate such problems. Consequently, I am satisfied that the proposal would not result in an unacceptable impact in terms of antisocial behaviour.

19. I also acknowledge that there have been two previous applications[1] for a change of use at the site from A1 to A5, both of which have been refused by the Council. The details of these cases are not before me, but they appear to have been determined prior to the adoption of the SELLP. In any event, I have determined this appeal scheme on its own individual merits in the light of current planning policy. Consequently, this does not alter my conclusions.

Conditions

20. I have considered the conditions put forward by the Council. Having regard to the tests set out in paragraph 55 of the Framework, I have amended the wording where necessary in the interests of clarity and simplicity. In addition to the standard time limit, a condition specifying the plans is required in the interests of certainty. A condition managing the hours of use of the premises is also necessary, in order to protect the living conditions at surrounding residential properties.

Conclusion

21. For the reasons set out above, the proposal would not conflict with the development plan. Having considered all other relevant matters raised, I therefore conclude that the appeal should be allowed.

M Heron

INSPECTOR

[1] Applications Ref H16-0701-13 and H16-0856-14