
Appeal Decision

Site visit made on 25 June 2015

by P Jarvis Bsc (Hons) DipTP MRTPI

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

Decision date: 29 July 2015

Appeal Ref: APP/A2525/W/15/3006115

39 High Street, Donington, Lincolnshire PE11 4TA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Cavit Cagdas against the decision of South Holland District Council.
 - The application Ref H04-0961-14 dated 6 November 2014 was refused by notice dated 30 January 2015.
 - The development proposed is the change of use of ground floor from retail shop (A1) to pizza takeaway (A5).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of ground floor from retail shop (A1) to pizza takeaway (A5) at 39 High Street, Donington, Lincolnshire PE11 4TA, in accordance with the terms of application ref: H04-0961-14 dated 6 November 2014, and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years of the date of this decision.
 - 2) This permission shall relate to the following approved plans: 1:1250 site location plan and PLAN A (ground floor layout).
 - 3) The use hereby permitted shall only operate between the hours of 16:00 and 21:00.
 - 4) No fried foods shall be cooked, consumed or sold from the premises.
 - 5) The use shall not commence until full details of an extraction system and a scheme for its maintenance has been submitted to and approved in writing by the Local Planning Authority and fully installed in accordance with the approved details. It shall thereafter be maintained as approved.
 - 6) The use hereby permitted shall not commence until full detail of the proposed bin storage area in the rear yard have been submitted to and approved in writing by the local planning authority and the area provided in accordance with the approved details.

Main issues

2. The main issues are the effect on (a) the living conditions of the occupiers of nearby properties and (b) the health and well-being of pupils of the nearby High School.

Reasons

3. The appeal site is located towards the eastern end of the High Street within the Donington Conservation Area and 'defined retail centre'. It comprises the ground floor of a two-storey terraced building which is currently vacant and was last used as a shop. The immediately surrounding area is mixed in character containing commercial and community uses. However, there is a high proportion of residential uses with a flat above the shop and dwellings either side of the appeal site. The main concentration of retail and other commercial uses is located towards the western end of the High Street.
4. Both parties have referred to an earlier appeal decision relating to a change of use to A5 kebab shop at the appeal site¹. The Inspector in that case concluded that the proposed use would have an adverse effect on the living conditions of neighbours in respect of noise and disturbance late into the evening.

Effect on living conditions

5. The appellant argues that as the proposal now relates to a pizza take-away rather than a kebab shop the likelihood of persons visiting or congregating at the premises would be significantly reduced. Furthermore, the appellant has indicated that the premises would close at 21:00 hours, an hour earlier than proposed in the earlier appeal. I agree with the appellant that the type of food now proposed is more likely to be home delivered than collected by the customer and this would have the effect of reducing the number of customers visiting the premises and thereby reduce the level of noise and disturbance. Furthermore, the suggested earlier closing time would remove any disturbance occurring late in the evening.
6. The proposal is accompanied by a noise survey which was carried out on two separate days. This shows that the ambient noise levels do not decrease significantly into the evening as was assumed by the previous Inspector who had no similar noise survey before him. Therefore, whilst customers would still visit the premises and there would be associated noise in particular from vehicles, its effect would not be as significant as previously assumed. Taken together with the earlier closing time, the overall impact would in my view be acceptable.
7. The appellant has also provided information relating to the provision of an extraction system which could be installed to the rear of the building. Full details of an appropriate system could be secured via condition to ensure that there would be no adverse impact in respect of odour and I note that a similar conclusion was reached by the Inspector in the previous appeal.
8. I therefore conclude that, overall, on the basis of the above and subject to appropriate conditions, the proposed use would not have a harmful effect on the living conditions of the occupiers of nearby properties. Therefore the proposal would accord with Policies SG17 and EC10 of the South Holland Local Plan (2006) which seek to prevent development that causes harm to residential amenity through potential noise including that associated with vehicular activity and to allow hot food take away outlets where there would be no harm as a result of anti-social behaviour or through an over concentration of such uses.

¹ APP/A2525/A/13/2211193

Effect on health and well being

9. The Council's decision notice had identified an objection based on the proximity of the local High School to the appeal site and the detrimental effect that the proposed use would have on the health and well-being of the pupils, contrary to one of the core principles of the National Planning Policy Framework (the Framework).
10. However, the appellant has indicated that the premises would not open until 16:00 hours thereby avoiding school opening times. On this basis the Council appears to have removed its objection based on this issue. I concur with this and conclude that the proposal would not have a harmful effect on the health and well being of local pupils.

Other Matters

11. Although not cited in the decision notice, the Council has suggested that the proposal would not make a positive contribution to the Conservation Area as no design enhancements are proposed and it is unclear where refuse and recycling areas would be provided. However, the appellant has confirmed that it is the intention of the appellant to renovate the shopfront and the information submitted confirms that storage would be accommodated to the rear of the premises. A condition could be imposed to ensure full details are submitted for approval to protect the amenity and character of the area.
12. Other concerns including the potential for littering have been raised but in my view this would not be on such a scale as to materially affect the area. In addition, it is my view that the re-use of the premises, which has been vacant for some years, would be beneficial to the character of the area. On this basis, and that the extraction system would be accommodated to the rear of the building as confirmed by the appellant, it is my view that the character and appearance of the Donington Conservation Area would be preserved.
13. Furthermore, the proposal would bring back into beneficial use a building which has been vacant for some time and which is in need of renovation. This would support the vitality and viability of the village centre and local economy in accordance with policies of the Framework.
14. In respect of conditions, in addition to the standard conditions and the conditions mentioned above, I consider that a restriction on the type of food is also necessary to minimise the likelihood of persons visiting the site for the reasons set out above. I disagree with the Council that such a condition would be difficult to enforce as it could prevent the cooking and provision of fried foods, as is the confirmed intention of the appellant, rather than seek to control the type of hot foods provided. In addition, I note that the Council suggests that the premises should not open on Sundays or Bank Holidays but I see no reason to prevent this, particularly given the reduced hours of opening.

Conclusion

15. I therefore conclude that the appeal should be allowed and planning permission granted.

P Jarvis

INSPECTOR