



Appeal Decision

Site visit made on 15 January 2013

by Wendy J Burden BA(Hons) DipTP MRTPI

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

Decision date: 23 January 2013

Appeal Ref: APP/Z0116/A/12/2185071

733 Fishponds Road, Fishponds, BRISTOL, BS16 3UP

- 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 I Hardy against the decision of Bristol City Council.
 - The application Ref 12/02529/F dated 01 06 2012, was refused by notice dated 23 08 2012.
 - The development proposed is the change of use from retail (Use Class A1) of ground floor to restaurant/café (Use Class A3) with ancillary office on part of first floor.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from retail (Use Class A1) of ground floor to restaurant/café (Use Class A3) at 733 Fishponds Road, Fishponds, BRISTOL, BS16 3UP in accordance with the terms of the application, Ref 12/02529/F dated 01 06 2012, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) Before the use hereby permitted begins, a scheme for the installation of equipment to control the emission of fumes and smell from the premises shall be submitted to and approved in writing by the Local Planning Authority, and the scheme as approved shall be implemented. All equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the manufacturer's instructions.
 - 3) The rating level of any noise generated by plant and equipment such as that required to control fumes and smell as part of the development shall be at least 5 dB below the pre-existing background level as determined by BS4142: 1997-"Method of rating industrial noise affecting mixed residential and industrial areas".
 - 4) Prior to the commencement of the use hereby permitted details of the proposed refuse and recycling facilities shall be submitted to, and approved in writing by, the Local Planning Authority, the facilities thereby approved shall be provided in accordance with that approval and thereafter retained.
 - 5) No development shall take place until a scheme of noise insulation measures for between the proposed restaurant and residential flat above has been submitted to and approved in writing by the Council.

The scheme of noise insulation measures shall be prepared by a suitably qualified acoustic consultant/engineer and shall take into account the provisions of BS 8233: 1999 "Sound Insulation and Noise Insulation for Buildings - Code of Practice".

The approved scheme shall be implemented prior to the commencement of the use and be permanently maintained thereafter.

- 6) Activities relating to the collection of refuse and recyclables and the tipping of empty bottles into external receptacles shall only take place between 08.00 and 20.00 Monday to Saturday and not at all on Sundays or Bank Holidays.
- 7) Activities relating to deliveries shall only take place between 08.00 and 20.00 Monday to Saturday and not at all on Sundays or Bank Holidays.
- 8) No customers shall remain on the premises outside the hours of 09:00 to 23:00 Monday to Sundays.

Application for costs

2. An application for costs was made by Mr I Hardy against Bristol City Council. This application is the subject of a separate Decision.

Preliminary issue

3. It was confirmed by email dated 21 June 2012 that the reference in the planning application to an office on the upper floor was an error. I have dealt with the application as for a change of use to the ground floor only.

Main Issue

4. The main issue is the effect of the proposed change of use on the vitality and viability of the primary frontage within the Fishponds shopping centre.

Reasons

5. Policy S5 of the adopted Bristol Local Plan 1993 allows for the change of use from retail to non-shopping uses provided that the proposed new use would not seriously undermine the retail function of the shopping centre. It lists six factors to be taken into account in reaching a judgement, although the last relates to the city centre shopping area only. Criteria iii) and iv) are of particular concern to the Council. The National Planning Policy Framework also seeks to secure the vitality of town centres.
6. In making its assessment, the Council calculated that just 36% of the primary shopping frontage would remain in retail use if the appeal was allowed. However, assessments undertaken by the appellant indicate that a different result could be calculated. In these circumstances I find that the numerical calculations are not a reliable indicator and will therefore reach a judgement having regard to the overall character and vitality of the centre as a whole.
7. From my observations this is a busy centre on a main traffic route with provision for parking both on and off street. There is a mix of shops and non-shopping uses throughout the centre, with no significant level of vacant premises. The appeal site is not in a prominent location and is between a corner shop to one side and a nail bar. As the Council state, the unit is of a similar frontage width to other units in this frontage and is not overly large or

small. In the Bristol Core Strategy, Policy BCS7 states that retail shop uses will predominate in the designated primary shopping areas, and criteria iii) of Policy S5 requires regard to be had to the number, distribution and proximity of other non-shopping uses. Whilst there are a number of non-shopping uses within the Fishponds primary frontage as a whole, and within the immediate vicinity of the appeal site, these are the types of uses normally to be found within a town centre. Many of the non-shopping uses such as the Money Shop and betting shops, attract customers during normal shopping hours in their own right. As a result the centre retains the character of a vibrant and active shopping centre, with non-shopping uses interspersed between retail units and generally making a contribution to an active town centre frontage.

8. In terms of A3 uses, I share the findings of the Inspector in relation to the 2007 appeal decision for these premises (APP/Z0116/A/06/2025941), that there is not an over-dominance of A3 café/restaurant uses either in the same parade or the primary frontage as a whole. The Council is concerned that this is a speculative proposal and a future occupier might not open during the daytime. However, the appellant initially sought opening hours from 09:00 to 19:00, but is flexible and would accept opening until 11:00 as allowed in the last appeal. With so few existing coffee shops and cafes within the centre, the unit may well appeal to a daytime occupier of this sort. However, even if the use was only for an evening restaurant business, there would be a contribution to the evening economy and the unit would no longer be vacant.
9. The Council has submitted a list of conditions to be imposed in the event that the appeal is allowed. These deal with noise, odour control, refuse disposal, deliveries and opening hours. I consider that all these conditions would be necessary to the grant of a permission in order to protect the amenities of residents within the centre. I shall amend the wording of the conditions to accord with Circular 11/95 where appropriate. The Council is concerned that there are constraints as to the type of extraction equipment which could be installed at the unit. However, with a negatively worded condition, no use could commence before an adequate extraction and ventilation system has been approved and implemented.
10. The site is within the Stapleton and Frome Valley Conservation Area. There is no suggestion that there would be any conflict with policies relating to the conservation area. Since there would not be any significant physical alteration to the building, and the use would be in keeping with the commercial character of the conservation area, I consider that the proposal would preserve the character and appearance of the conservation area, and in putting the premises into active use, the proposal would enhance it.
11. There is a healthy level of activity within the shopping centre as a whole; no significant level of vacant units; and a low number of existing A3 uses within the centre. The premises are of modest size and are not in a prominent location. In all the circumstances of this case, I find that the appeal proposal would contribute to the diversity of the commercial offer within the Fishponds shopping centre, and conclude that it would be unlikely to cause significant harm to its vitality and viability. The appeal scheme would not therefore be in conflict with the policies of the Bristol Local Plan or of the Core Strategy.

Wendy Burden

INSPECTOR