



Appeal Decision

Site visit made on 8 November 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2022

Appeal Ref: APP/K2230/W/22/3290937

6 The Bay, Vigo, Gravesend DA13 0TD

- 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 Sblended Aquascorp Ltd against the decision of Gravesham Borough Council.
 - The application Ref 20211264, dated 8 October 2021, was refused by notice dated 22 December 2021.
 - The development proposed is change of use of a beauty salon (Sui Generis) to a pizza takeaway (Sui Generis).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the appeal site is a suitable location for the proposed use with particular regard to the retail function and character of the local centre.

Reasons

3. The appeal site is located in a local centre as shown on the Core Strategy¹ Policies Map. The proposed development is for a change of use from a hair and beauty salon to a pizza takeaway. There are several units within very close proximity to the appeal site which provide services and facilities which primarily serve local residents. The evidence before me (including the observations during my site visit) indicates that these comprise: a florist², two takeaways, a hair and beauty salon, a convenience store, a village hall, a pharmacy, and a pub/restaurant.
4. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force and amended various use classes. There is contention between the main parties as to the lawful use class which applies to the appeal site. Nonetheless, both main parties refer to the use of the site as a hair and beauty salon. There is insufficient evidence before me to establish the precise lawful use class relevant to the appeal site, given that this would depend on the nature of the uses, how they related to one another and whether parts of the unit were used in different ways.

¹ Gravesham Local Plan Core Strategy (adopted September 2014)

² Albeit the evidence indicates that this unit is vacant.

5. Nonetheless, whether or not the existing lawful use comprises of partly Class E is not the determinative factor in considering this appeal³. This is because Core Strategy Policy CS08 and retail policies contained within the Framework do not solely apply to development falling within Use Class E. A hair and beauty salon is a use which would be expected to be found alongside other retail uses. Indeed, the function of such a use – involving the sale of services and goods in a customer-facing retail environment – is synonymous with retail development. This is reflected by the proximity of this use and the neighbouring hair and beauty salon to other retail units in the Local Centre. Whether or not the use falls within a sui generis use class does not alter my conclusions with regard to the retail function of the use.
6. The proposed development would result in a significant proportion of the uses within the local centre providing a very similar service involving the sale of hot food (four of the nine services and facilities identified above). This would be detrimental to the provision of a wide range of services and facilities within the local centre given that there would be a predominance of takeaways and restaurants and a very limited selection of other services and facilities. As a result, the proposal would lead to a dysfunctional mix of uses within the local centre.
7. Even accepting that the appellant has suggested a change in the proposed opening hours (1200-2300 daily), the unit would remain closed during the morning. Given the proliferation of restaurants and takeaways which would result, there would be a significant number of units which would very likely remain closed during the morning. As such, this would further compound the harm which would be caused by the proliferation of dysfunctional uses. There is insufficient evidence to indicate that increased footfall during evening hours would outweigh this harm.
8. For the reasons given above, the proposed development would conflict with Core Strategy Policy CS08, which requires in part that development safeguards the retail character and function of existing local centres.
9. Saved Local Plan⁴ Policy S7 relates to changes of use from existing retail shops to uses falling within the now revoked Use Class A3, which related to food and drink establishments. Based on my earlier conclusions with regard to the retail function and character of hair and beauty salons, the use of the site as a hair and beauty salon falls within the remit of a 'retail shop' as described in Policy S7. Policy S7 requires that former A3 uses (within which the proposed development would have fallen) are not clustered with other similar uses to create a dead frontage. For the reasons already given, the proposed development would not meet this requirement. It would therefore conflict with Policy S7.

Other Matters

10. I note the appellant's contention that the unit has been vacant since May 2020. However, I give very little weight to this as a consideration given the lack of substantive evidence to explain what has been done to market the unit within the remit of the existing lawful use. Furthermore, little if any substantive evidence has been provided to demonstrate why other retail uses would not be

³ And the appellant does not assert any fallback position in this regard.

⁴ Gravesham Local Plan First Review – Saved and deleted policies version (September 2014)

suitable in this location. That a planning application may be required in order to achieve this is not sufficient reason to discount such alternatives.

11. I accept that there is already an existing hair and beauty salon within the local centre. However, the provision of two facilities that are similar is far less harmful to the function of the local centre than the provision of four which are similar. Furthermore, insufficient substantive evidence has been provided to demonstrate that the presence of the other hair and beauty salon has led to the use on the appeal site becoming unviable.
12. The appellant asserts that one of the other retail units (comprising a florist) in the Local Centre is vacant. However, no details have been provided of the duration of that vacancy or what measures have been taken to market that unit.
13. Saved Local Plan Policy S7 pre-dates the most recent amendments to the Use Class Order and precludes some changes of use that are allowed under the latest permitted development rights. As such, I do not afford any significant weight to the conflict with it. Nonetheless, this is a moot point in the case of this appeal, given that Core Strategy Policy CS08 serves a similar purpose in seeking partly to protect the function and character of Local Centres.
14. Core Strategy Policy CS08 is consistent with Framework Paragraph 93a which requires that planning policies and decisions should plan positively for the provision and use of community facilities (including local shops) and other local services to enhance the sustainability of communities and residential environments. Indeed, the proposed development would conflict with the Framework in this regard for the reasons already outlined.
15. Given that the more recently adopted Core Strategy Policy CS08 is consistent with the Framework, the most important policies for considering this appeal are not out of date for the purposes of applying Framework Paragraph 11D.
16. There would be some economic benefits associated with employment provision, which I accept would likely be higher than that provided by a hair and beauty salon. The proposal would also result in footfall in the Local Centre which would likely have some positive economic effect on other surrounding local services and facilities.
17. However, given the lack of substantive evidence to demonstrate why the hair and beauty salon use is not viable, it is not possible to completely discount the economic benefits which would already exist if the unit was not vacant. Furthermore, the social and economic benefits of the development would be limited given the relatively small scale of the proposal. As such, the benefits would not outweigh the harm which would be caused by the proposed development.
18. Whilst the proposed takeaway would reduce the need for local residents to travel further afield, there are already two takeaway restaurants within the local centre and therefore this is not a significant environmental benefit of the proposal.
19. The appellant has referred to a planning permission granted by the Council on 12 January 2022 under reference 20211061. The permission was for a 'change of use of a shop (class E) to a hot food take away (Sui Generis)' at 148 Parrock Street, Gravesend.

20. In contrast to the proposed development, the Parrock Street decision related to a use which included opening hours in the morning between Monday and Friday (0700 to 1030). The evidence before me also indicates that rather than being within a Local Centre, the Parrock Street site is within a town centre opportunity area as defined by the Core Strategy. It was therefore subject to Core Strategy Policy CS05, which has not been cited within the reasons for refusal relevant to this appeal. Indeed, the Officer Report in the Parrock Street case did not consider compliance with Core Strategy Policy CS08.
21. As such, whilst the Council's consideration of the clustering of uses in the Parrock Street case is similar to the circumstances relevant to the proposed development, there are material differences between the context of that decision and the circumstances relevant to this appeal. As such, this decision does not outweigh or alter by findings.

Conclusion

22. The proposed development conflicts with the development plan taken as a whole and there are no material considerations raised which would outweigh this conflict. The appeal is therefore dismissed.

Luke Simpson

INSPECTOR