



Appeal Decision

Site visit made on 21 August 2012

by **M T O'Rourke BA(Hons) DipTP MRTPI**

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

Decision date: 26 September 2012

Appeal Ref: APP/Q1445/A/12/2173339

Kemp Cafe, 43 Upper St James's Street, Brighton BN2 1JN

- 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 A Utkusavas against the decision of Brighton & Hove City Council.
 - The application Ref BH2011/02975, dated 30 September 2011, was refused by notice dated 16 February 2012.
 - The development proposed is 'change of use from A1 to A3 including extend of air ventilation pipe'.
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Procedural Matter

1. The description above is taken from the application form. The Council describes the development as change of use from a sandwich bar/café (A1) to a restaurant/café (A3). The latter more accurately describes the development proposed and I have determined the appeal on that basis.

Decision

2. The appeal is dismissed.

Main Issue

3. The main issue is whether the proposed change of use would materially harm the vitality and viability of the local shopping centre.

Reasons

4. The appeal premises comprise the ground floor of No. 43, which is on the corner of Upper St James's Street and Wyndham Street, within the East Cliff Conservation Area. The appellant has been operating at the premises since April 2010 and currently sells sandwiches, snacks and cold food and drinks. It has not been disputed that the use falls within class A1. He is now seeking to extend the use to provide a full 'eat in' restaurant menu, preparing and serving hot food to include traditional English meals as well as Turkish style cuisine. Opening hours would be 07.00 hours through to 20.00 hours. The proposal includes an extension of the existing extraction system to meet the Environmental Health Officer's requirements.
5. The adopted Brighton and Hove Local Plan 2005 shows No. 43 in the St George's Road, Kemp Town local centre where policy SR6 applies. The policy permits the change of use of existing class A1 shops to class A2, A3, A4 or A5 uses subject to all of the 5 policy criteria being met.

6. The appellant has referred to Planning Policy Statement 4 on Planning for Sustainable Economic Growth. This has been replaced by the National Planning Policy Framework. In delivering sustainable development Section 1 of the Framework refers to '*building a strong competitive economy*' and planning operating to encourage and not act as an impediment to sustainable growth. Section 2 on '*ensuring the vitality of town centres*' encourages local planning authorities to recognise town centres as the heart of their communities and to pursue policies to support their vitality and viability. In that the aim of policy SR6 is to maintain and enhance the vitality of the defined local centres and makes clear which uses will be permitted in them, it is consistent with the Framework and should be given due weight.
7. The local centre of St George's Road, Kemp Town stretches along Upper St James's Street and St George's Road and includes some 82 units, including a number of restaurants, cafés, bars and pubs. Policy criterion a) requires that a change of use from A1 should not result in '*either the number of non-retail units or the proportion of frontages exceeding 35% of the centre*'. Whilst no evidence has been provided on the proportion of non-retail frontages, on the basis of a survey of the local centre in April 2011, the Council has calculated that 38% of the units (31 in number) are in non-retail use. As the threshold is already exceeded, the appellant has suggested that the Council has already been flexible in the application of the policy. However allowing an A3 use here would increase that proportion to 39%, in conflict with the terms of criterion a) and contrary to the aim of the policy to retain a good predominance of A1 uses.
8. Paragraph 6.28 of the Local Plan advises that policy SR6 will be strictly applied and as drafted the policy requires all the criteria to be met if permission for a change of use from A1 is to be permitted. The Plan text goes on to say that '*where the proportion of non-retail units has risen above the threshold already, then the further loss of retail units will only be permitted in exceptional circumstances.*' The policy is silent as to what might constitute exceptional circumstances. However criterion b) does refer to where it has been adequately demonstrated that an A1 retail use is no longer economically viable and paragraph 6.29 sets out indicators to be taken into account.
9. The Framework in pursuing sustainable development is also concerned that decision makers have regard to viability issues when considering proposals for economic growth. However in this case there is no evidence that the characteristics of the unit, its position in the centre or the pedestrian flows along St James's Street are such as to make it unviable for an A1 use. On my visit I did not see a significant number of vacancies in the immediate area that might suggest a limited demand for retail units and the appellant has not tested this by any marketing of No. 43. It may be that the current business is struggling but that could be due to a number of factors, about which I have no information, and does not necessarily mean that another retail business might not succeed here and also provide jobs. I conclude on criterion b) that I cannot be satisfied on the limited evidence I have that an A1 use would not be viable in this particular location or in the local centre as a whole.
10. I accept that an A3 use would continue to attract pedestrian activity (criterion c). The café's appeal to both residents and visitors to the nearby seafront might even increase during the daytime if both hot and cold food is available and in its own way the A3 use would make a positive contribution to the centre's vitality and viability.

11. The premises are already used as a café and subject to limiting the opening hours which could be secured by the imposition of a suitable condition, an extension of that use to serve hot meals would not significantly impact on those residents living nearby or on the general character of the area (criterion d). The effective venting of cooking smells away from windows and doors in the neighbouring properties and the soundproofing of equipment could also be secured by conditions. Thus I find no conflict with Local Plan policy QD27.
12. Finally policy SR6 requires that the location and prominence of the proposed use should not lead to a significant break of more than 10m in the frontage (criterion e). There is a barbers/hairdressers to the west. However on the opposite corner of Wyndham Street there is a Thai restaurant then an A2 use estate agents/letting agents. A3 use of the café would increase the length of frontage not in A1 use and result in a significant break, contrary to criterion e).
13. Drawing these points together, the balance of arguments weighs against the appeal proposal. It would conflict with both the aim and terms of Local Plan policy SR6 and would be likely to undermine the vitality and viability of the local centre. For the reasons given above, I conclude that the appeal should be dismissed.

Mary O'Rourke

Inspector

