Appeal Decision

Site visit made on 27 May 2009

by Peter Bird BSc DipTP MRTPI MRICS

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

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Decision date: 17 June 2009

Appeal Ref: APP/M3835/A/09/2096156

11 Warwick Street, Worthing, West Sussex BN11 3DF

- 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 Stuart Rood against the decision of Worthing Borough Council.
- The application Ref WB/08/0728/FULL, dated 7 July 2008, was refused by notice dated 27 October 2008.
- The development proposed is described as "Change of use from Class A1 Retail to Class A3 Cafe/Restaurant".

Decision

1. I allow the appeal, and grant planning permission for the change of use from Class A1 Retail to Class A3 Cafe/Restaurant at 11 Warwick Street, Worthing, West Sussex BN11 3DF in accordance with the terms of the application, Ref WB/08/0728/FULL, dated 7 July 2008, and the plans submitted therewith, subject to the conditions set out in the schedule at the end of this decision.

Main Issues

2. The main issues are the proposal's effects on firstly, the character and appearance of the area, in particular whether the proposed development would preserve or enhance the character or appearance of the South Street Conservation Area; and secondly, on the living conditions of the occupiers of nearby residential properties.

Reasons

3. The appeal property is a vacant shop unit with ancillary accommodation above. It is situated in the Central Core Shopping Area Primary Zone (Zone B), as designated by the Council, and the South Street Conservation Area. Significant influences on the Conservation Area's character and appearance are the pier and adjacent sea front, together with a substantial part of the town centre. Whilst the latter contains a range of buildings of differing age, size and design, the vibrancy and vitality of this area is influenced in particular by the mix of uses, the quality of the shop fronts and vistas. The appeal premises is close to the western end of properties along Warwick Street adjacent to which is a focal point from which the pier lies to the south. Along this side of Warwick Street there is a variety of uses normally found in town centres, particularly cafés/restaurants. Although one adjoins the property, the proposal would not result in a block of non-shop uses contrary to Policy S8 of the Worthing Local Plan 2003. Furthermore, I understand that on the Council's information it would not result in the proportion of non-shop uses exceeding 35% within Zone

B of the Primary Area as a whole. On this basis the Council does not appear to object to the principle of a Class A3 use in this property.

4. It seems to me that the thrust of the Council's case relates to the quality of information provided with the planning application. I appreciate the Council's position in seeking information that may be part of its local list in relation to the validation of planning applications. A ventilation/extraction statement would normally be expected to accompany applications for the use of premises in Use Class A3. This would show the position and design of ventilation and extraction equipment, including odour abatement techniques and acoustic noise characteristics. However, in this instance, there is no specific occupier for the proposal.

5. *Circular 02/2008* states that it is particularly important that local planning authorities only seek information that is necessary for a decision and should not require a level of detail to be provided that is unreasonable or disproportionate to the scale of the proposal. Not all the information on the local planning authority's published local list will be necessary in every case. Bearing in mind the advice of *Planning Policy Statement 6: Planning for Town Centres* (PPS6) in assessing proposed developments, the Council appears to have had sufficient information not to have raised objections in this regard in relation to the principle of the use.

6. Amongst the Council's documents I note that it accepted that within the A3 use class certain establishments, such as a coffee shop, would not require extraction equipment if no "primary cooking" was undertaken. It seems to me that it would therefore be unreasonable for the Council to expect details of equipment that would not be involved in the use. To address the operation of such equipment by other occupiers could be undertaken by a suitable planning condition. Whilst there are residential properties in the area, particularly at the rear, there are nevertheless other cafés/restaurants elsewhere in this frontage along the northern side of Warwick Street. Should equipment for ventilation/extraction etc be required, to my mind and having regard to the material consideration of the other Class A3 establishments nearby, the resolution of this matter would not appear insurmountable. Moreover, PPS6 makes clear that conditions can be used by local planning authorities in seeking to resolve issues relating to the impact of the development amongst other things in relation to the amenity of neighbouring residents.

7. No alterations are proposed to the shop front, and at this stage no ventilation/extraction equipment proposed, but in any case this would not be likely to effect the Warwick Street elevation. In the absence of external alterations the character and appearance of the Conservation Area would be preserved. Furthermore should a suitable occupier be secured, the use of these premises would remove the vacancy at this point in the street scene and, to my mind, enhance the vitality and vibrancy of the frontage.

8. In relation to the effect on living conditions, from what I have seen and read, this appears to be concerned essentially with the effect of the operation of ventilation/extraction equipment etc and the hours of use. Other Class A3 uses are located nearby. Whilst the circumstances of these are not before me, equipment to control the emission of smells and fumes, together with noise

generated by the operation of other equipment such as for ventilation, can be installed to the required standard. I see no reason why such equipment could not be installed at this property so as not to harm the reasonable living conditions of nearby residents. Therefore, having regard to the circumstances of this appeal, I consider that it would be appropriate to address the effect of such equipment as well as internally generated sound from the use of the premises by suitable planning conditions. Furthermore, in relation to the hours of use, the living conditions of residents in town centres cannot be expected to reflect the same degree of tranquillity as would characterise an exclusively residential neighbourhood. Visitors to a town centre, as well as a seaside resort are entitled to expect catering facilities to be available throughout the day and evening. In this case the appellant does not appear to have proposed hours of use, but he has not objected to those suggested by the Council in the relevant condition.

9. At my visit I observed a number of properties in the wider area of the town centre that were either vacant or being marketed. Rather than allow this property to remain vacant, I consider it prudent, especially in the present economic conditions, to explore a suitable use that would comply with the relevant national and local planning policies in relation to town centres and shopping areas. Therefore, in my view and reflecting the Government's objective as set out in PPS6, the best interests of the town centre are served by enabling its viability and vitality. The concerns for the effect on Conservation Area and the living conditions of the occupiers of nearby residential properties are still relevant, but can be given further consideration in relation to the submission of details for a particular prospective occupier of the appeal premises.

10. I find that on the information before me, the proposal would not harm the character and appearance of the area, in particular it would preserve and enhance the character and appearance of the South Street Conservation Area; nor would it harm the living conditions of the occupiers of nearby residential properties. In this regard the proposal would not conflict with the aims and objectives of Policies CH1, CH4 and DEV1 of the West Sussex Structure Plan 2001-2016 and Policies BE1, H18 and S8 of the Worthing Local Plan 2003.

11. For the reasons given above, and having regard to all other matters raised, I conclude that, subject to the conditions set out in the schedule at the end of this decision, the appeal should be allowed.

Conditions

12. I have considered the use of conditions in relation to the advice contained in *Circular 11/95*. I have doubts as to whether some of the measures suggested by the Council's conditions are necessary. Therefore I have amended them accordingly to more closely reflect the relevant advice and models contained in the Circular.

13. Although within a town centre, a restriction on the hours of opening is reasonable to protect the living conditions of the occupiers of residential properties in the area. Whilst the hours suggested would seem to be early, to my mind, this is in keeping with the character of a seaside resort, especially

where the sea front is not far from the premises. Nevertheless, further conditions would control internally generated noise arising from the use of the building as well as the operation of equipment, including air conditioning and extraction etc. With regard to the latter, further details will be required in relation to the circumstances of the particular Class A3 use to be undertaken. Moreover, in the absence of a specific user, it is reasonable to restrict the upper floors only to ancillary use so that the effect of the use can be given further consideration, as well as having regard to the limitations on the use of those floors, particularly in relation to the headroom I saw at my visit.

Schedule

1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.

2) Notwithstanding the details submitted and shown on the submitted plans, details of the proposed air conditioning, extract ventilation and odour systems, including details of extract fans, filters, internally located fan unit and ducting together with the method of noise abatement, as well as details of grease traps and extraction hoods, shall be submitted to and approved by the local planning authority before the use hereby approved commences. The equipment approved under this condition shall be installed before the use begins and shall thereafter be operated and maintained in accordance with the manufacturer's instructions.

3) The use hereby permitted shall not be open to customers outside the following times: 08:00 to 23:00 on any day.

4) Construction work shall not begin until a scheme for protecting adjoining property from the internally generated noise from the proposed use has been submitted to and approved in writing by the local planning authority; all works which form part of the scheme shall be completed before the use hereby approved commences.

5) All plant and machinery shall not be operated outside the hours of the use hereby permitted.

6) The Class A3 use hereby permitted shall be restricted to the ground floor of the premises and the upper floors shall not be used at any time other than for purposes ancillary to the use of the ground floor.

7) Before the use hereby permitted commences, details of the storage and disposal of refuse, including waste food and bottles, within the site shall be submitted to and approved in writing by the local planning authority. Development shall be undertaken in accordance with the approved details

Peter Bird
INSPECTOR