



Appeal Decision

Site visit made on 21 December 2015

by **L Gibbons BA (Hons) MRTPI**

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

Decision date: 31 March 2016

Appeal Ref: APP/D3640/W/15/3135464 150-152 London Road, Bagshot, Surrey GU19 5DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Mark Kinkead (Notcutts Woodbridge Limited and Chelstone Management (Bagshot) Limited) against Surrey Heath Borough Council.
- The application Ref 15/0332 is dated 11 April 2015.
- The application sought planning permission for a part single storey, part two storey building to provide 2 retail units (Class A1) with ancillary cafe and storage facilities as well as parking, landscaping, and access following the demolition of existing garden centre. (Amended info rec'd 05/11/2013) (Additional info rec'd 13/12/13) without complying with conditions attached to planning permission Ref 13/0435, dated 27 February 2014.
- The conditions in dispute are Nos 3 and 10 which state that:
- No 3. Unit 2 (the garden store) with a total net retail sales area floorspace of 2,454 sq metres shall only be used under Class A1 of the Town and Country Planning (Use Classes) Order 1995 as amended (or any order revoking or re-enacting that Order) for the sale of goods, as listed below, unless otherwise agreed in writing with the Local Planning Authority:
 - i) A minimum of 1,270 sqm (60% of the total net retail sales area floorspace) shall be used for the sale of goods and services related to: gardens, gardening and wildlife, horticultural products, trees, plants, shrubs, house plants, flowers of all types and cut, silk and dried flowers, garden equipment, machinery, tools, garden furniture, barbecues and outdoor living and their accessories, sheds, garden buildings and outdoor play equipment, fencing, trellis and landscaping materials, including aggregates, paints and stains, outdoor and indoor aquatics and water garden equipment and their accessories, pet care, pet advice, pet accessories and products; and, ancillary cafe/restaurant with a maximum floor space of 350 sq.m.,
 - ii) In addition to the floorspace in (i) above, up to a maximum of 984 sqm (40% of the total net retail sales area floorspace) may be used in any combination for the sale of the following ancillary goods: a) No more than 25% of floorspace (245 sqm) to be used for the purposes of the sale of furniture and household goods; b) No more than 25% of floorspace (245 sqm) to be used for the purposes of the sale of DIY and home improvement goods; c) No more than 25% of floorspace (245 sqm) to be used for the purposes of the sale of china, glass, kitchen appliances and cookware; d) No more than 10% of floorspace (98 sqm) to be used for the purposes of the sale of bath and body (health and beauty) goods; e) No more than 25% of floorspace (245 sqm) to be used for the purposes of the sale of outdoor adventure equipment, country sports equipment, sportswear and bicycles; f) No more than 25% of floorspace (245 sqm) to be used for the purposes of the sale of giftware, hobbies, crafts, and toys; g) No more than 10% of floorspace (98 sqm) to be used for the sale of groceries, beverages, and related

ancillary items; h) No more than 25% of floorspace (245 sqm) to be used for the sale of clothes and footwear and related ancillary items; i) No more than 10% of floorspace (98 sqm) to be used for the sale of books, cards, stationery, DVD and media items; and j) No more than 5% of floorspace (49 sqm) to be used for the sale of pharmaceutical goods.

- *No 10.* Apart from the cafe concession floor space and for the sale of pet food and aquatic related items, the retail premises as approved shall not be subdivided and used by separate retail operators or amalgamated into one retail unit without the prior written approval of the Local Planning Authority.
 - The reasons given for the conditions are:
 - *No 3.* To retain control in order to prevent unrestricted retail use having regard to the impacts on existing, committed and planned investment in the catchment area; and, in the interests of the vitality and viability of Camberley Town Centre, Bagshot and other designated centres, to comply with Policies CP9 and CP10 of the Surrey Heath Core Strategy and Development Management Policies 2012 and Paragraphs 24 And 26 of the NPPF.
 - *No 10.* To retain control in order to prevent unrestricted retail use having regard to the impacts on existing, committed and planned investment in the catchment area; and, in the interests of the vitality and viability of Camberley Town Centre, Bagshot and other designated centres, to comply with Policies CP9 and CP10 of the Surrey Heath Core Strategy and Development Management Policies 2012 and Paragraphs 24 and 26 of the NPPF.
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Decision

1. The appeal is dismissed and planning permission for a part single storey, part two storey building to provide 2 retail units (Class A1) with ancillary cafe and storage facilities as well as parking, landscaping, and access following the demolition of existing garden centre. (Amended info rec'd 05/11/2013). (Additional info rec'd 13/12/13) is refused.

Application for costs

2. An application for costs was made by Surrey Heath Borough Council against Mr Mark Kinkead (Notcutts Woodbridge Limited and Chelstone Management (Bagshot) Limited). This application will be the subject of a separate Decision.

Procedural Matters

3. The Council resolved, at its Planning Applications Committee on 13 October 2015, that had it been in a position to determine the application, it would have refused planning permission for the reasons that the applicant had failed to demonstrate there are no sequentially preferable sites and that the proposal would not result in an adverse impact on the vitality and viability of Camberley Town Centre and other centres or on planned investment in these centres.
 4. In 2014, planning permission was granted for 2 retail units (Class A1) with ancillary cafe and storage facilities. Unit 1 is now occupied by Waitrose. Unit 2 was intended to be a replacement store for the previous occupants of the site, this was a garden centre.
 5. The appellant seeks the variation of conditions No 3 and 10. Condition 3 relates specifically to Unit 2 (the garden store). Part (i) sets out the total net sales area floorspace to be used for Class A1 (retail) floorspace. This is expressed as a minimum of 1,270 square metres (sq m) floorspace for a range of garden centre goods and an ancillary café/restaurant with a maximum floorspace of 350 sqm. Part (ii) sets out the total area to be used for the sale
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- of other ancillary goods set out as a maximum. The maximum floorspace and percentage for each category are also set out. The appellant proposes that the wording of condition 3 should be varied by removing the word 'ancillary' for part (i) in respect of the café/restaurant. They also propose to remove the word 'ancillary' for other goods in part (ii). No other changes are proposed and the condition would continue to refer to Unit 2. The appellant proposes that the wording of condition 10 is altered to state that 'Unit 2 can only be subdivided to create a maximum of 4 independent units without the need for planning permission'.
6. Following the receipt of legal advice¹, the appellant considers that condition 10 already allows the physical subdivision into 3 separate retail units and that on this basis it follows there is no material difference between providing 3 or 4 units. However, neither an application for a certificate of lawful development use nor the Council's response to such an application is before me. Rather, the Council considers the original permission relates to two units only and therefore the proposal is materially different. In these circumstances, I give this little weight as a fallback position.
 7. Condition 10 refers to the café concession floor space and for the pet food and aquatic related items. Apart from these uses the condition sets out that there should be no subdivision or use by separate retail operators. The intention would be that separate retail operators would occupy each of the four units. Condition 10 also refers to the units not being amalgamated into a single unit. This condition is therefore not just specific to Unit 2.
 8. The appellant submitted a new drawing as part of the appeal process that shows the proposed internal layout of Unit 2 with 4 separate units, Unit 2a, 2b, 2c and 2d (13001-23-P4). The appellant proposes that this is now referred to in condition 8 which sets out the approved plans. The Council have not commented on the submission of the plans although I note that the Council's retail consultant refers to the need to indicate what is proposed in terms of individual unit layout. I have dealt with the appeal on the basis that the scheme would be as set out on this drawing.
 9. As part of the appeal process the appellant also submitted two drawings which have been approved as part of an application for a non-material amendment in 2015 (13001-53-P1 and 13001-54-P1). These show new doors and a fire exit, but retain the original internal layout of Unit 2. The Council and other parties would not be prejudiced by my taking these plans into account in coming to my decision and I have done so.
 10. For the sake of clarity, I have used the address of the appeal site as set out on the Appeal form and the Council's Decision notice.

Main Issues

11. The main issues are:
 - i) Whether there are any sequentially preferable sites;
 - ii) The effect of the proposal on the interests of planned investment in Camberley Town centre and other centres; and,

¹ Dated 2 April 2015

- iii) Whether conditions 3 and 10 are necessary, relevant to the development permitted and reasonable in all other respects in the interests of the vitality and viability of Camberley Town Centre and Bagshot District Centre.

Reasons

12. Policy CP9 of the Surrey Heath Core Strategy and Development Management Policies Document (CSDMPD) 2012, states that Town and Village centres will continue to have a multi functional role as centres for local services, local employment and in particular as retail centres in the period up to 2027. Camberley is identified as a Town Centre and Bagshot as a District Centre. Policy CP10 of the CSDMPD amongst other things refers to consolidating enhancing Camberley's role and regeneration of the town to sustain vitality and viability.
13. The National Planning Policy Framework (the Framework) seeks to ensure the vitality of town centres. The scheme would not be small scale rural development and both parties agree that the site is in an out-of-centre location. Paragraph 24 of the Framework states that local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. Paragraph 26 of the Framework states that when assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment. The default threshold is 2,500 sq m which would be relevant in this instance.
14. A retail assessment² was submitted as part of the original planning application in 2013. I note that the appellant originally considered that undertaking a sequential test or a retail impact assessment would not be proportionate to the current application to vary the conditions as the proposal would not increase the range of goods sold or floorspace. Nevertheless, as part of the appeal process a Retail Assessment Update (RAU)³ was provided. This includes a sequential test and a retail impact test.

Sequential Test

15. The approach of the sequential test in the RAU follows the original methodology of assessing the scheme against the overall floorspace of Unit 2. It does not disaggregate into the smaller units proposed. The smaller units would range in size from 232 sq m up to 1041 sq m (gross). The Council refer to vacant units within Camberley Town Centre which could provide the level of accommodation proposed for the café/restaurant unit which would be the smallest unit. However, I note that the Framework does not refer to the need to disaggregate proposals in terms of the sequential test but looks separately at the potential impact of the whole development. The existing single unit, at over 2,700 sq m (gross), is over the default threshold in paragraph 26 of the Framework and I have not been made aware of any sequentially preferable sites by the Council which would match the size of the development as a whole. When considered as a single entity I conclude that the sequential test has been met and the proposal would be in accordance with paragraph 24 of the Framework.

² Barton Willmore, June 2013

³ Barton Willmore, November 2015

Planned investment

16. The Council have referred to the effect of the proposal on planned investment within the town centres. I note that the Camberley Town Centre Area Action Plan (AAP) has recently been adopted. However, the Council do not refer to any particular schemes within the AAP or other development that is in progress or in the pipeline that would be affected. No investment schemes are referred to for other centres. On this basis, I consider that the proposal would not have a negative effect on planned investment within Camberley or any other centre. It would be in accordance with bullet 1 of paragraph 26 of the Framework.

Vitality and viability

17. The proposed changes to condition 3 would remove the words 'ancillary' in relation to both the café/restaurant and other A1 goods to be sold. I consider this could result in an unfettered use of Class A1 even though it is not proposed to alter the percentages or the amounts of floorspace. The appellant indicates that discussions have been held with several potential alternative occupiers. Currently these are a coffee shop, a pet shop and an outdoor adventure shop. However, it is not guaranteed that this would be the case and the eventual occupants could be somewhat different in nature. In addition, no occupiers have been identified for the remaining unit. It is not clear whether this would be a garden centre operator or a further comparison goods outlet.
18. In my assessment, the extent of goods which would be permissible under a revised condition would be likely to lead to a significant increase in turnover and competition with retailers in the other centres. When considering the effect of the proposed changes to the town centres of Bagshot and Camberley as a whole, it is likely that the changes would affect consumer choice. Moreover, for some customers, the potential extent of comparison goods available at the overall development would be likely to turn it into more of a shopping destination in its own right. The scheme would then act as a significant draw to the development to the detriment of those centres. One of the consequences of the proposed changes to condition 10 would be to remove the restriction on amalgamating the 2 existing units, which would also have a potentially significant effect on the nature of the retail offer at the appeal site. This element of the proposed change does not appear to have been assessed by the appellant.
19. I note that the Council's retail consultant indicates that the overall methodology for the retail impact assessment in the RAU is sound. Nevertheless, a number of areas of concern are highlighted. These include the use of older data and lack of clarity about base dates for some of the information provided. The appellant submits that it would be inconsistent and confusing to provide updated data on the price base and it would be disproportionate to provide new household surveys. However, the reason for this is not explained further. As the information is suggested to be read alongside the 2013 assessment, the retail impact assessment is difficult to follow. Moreover, the 2013 retail assessment was also predicated on the original proposals for a replacement garden centre and food store scheme, which was a very different context.
20. Appendix 6 of the RAU sets out the data for the retail impact assessment. Table 3 assesses the turnover of a garden centre, outdoor retailer and pet store. Tables 7 and 8 set out the comparison goods turnover of existing

centres, supermarkets and other facilities at 2015 and 2018. Table 9 estimates the comparison goods trade diversion flows to the proposed scheme. Tables 11 and 12 set out the estimated total and cumulative trade diversions from nearby defined centres. In my assessment, for the condition to be varied in the way proposed by the appellant, the RAU would need to assess the full range of comparison goods which could be sold. From the evidence provided it is not clear that this has been done. In addition, the inclusion of the former garden centre use within the calculations for turnover figures and subsequent scheme diversion could potentially dilute the effect of the proposed scheme. I am not persuaded from the information before me that it remains an appropriate assumption.

21. With respect to the effect of the proposal on Bagshot District Centre, the RAU predicts a 10.5% trade diversion. The appellant also refers to a lack of overlap between the interested occupiers and the retail offer in Bagshot. Given my concerns about the effect of the proposal I do not accept that this would be the likely outcome if the condition were varied in the manner proposed by the appellant. In relation to Camberley Town Centre, I note that there has been an increase in the vacancy rate partly due to planned development. However, it is not clear to me that this is the only reason for the changes and that the vitality and viability of Camberley has not been affected by the increase in the vacancy rate. The retail impact on Camberley Town Centre is predicted to be less than 1.0% based on the appellant's figures. In the absence of a full update of the retail impact assessment, I am not persuaded that the trade diversions for both town centres would be at the rates suggested if the proposals were to have maximum impact. I therefore find that when considering the town centres as a whole, the effect of the proposal would be significant and would have an adverse impact on the vitality and viability of Camberley and Bagshot centres.
22. I conclude that conditions 3 and 10 are necessary, relevant to the development permitted and reasonable in all other respects in the interests of the vitality and viability of Camberley Town Centre and Bagshot District Centre. To vary the conditions would be in conflict with Policies CP9 and CP10 of the CSDMPD and contrary to bullet (ii) of paragraph 26 of the Framework.

Other matters

23. The appellant sets out that the reason for seeking changes to the scheme relates to the lack of success in securing a garden centre operator for Unit 2. As part of the application, the appellant submitted a letter from the former garden centre occupier of the site that refers to further financial feasibility studies being undertaken to indicate that the garden store as proposed for Unit 2 would no longer be viable. No detailed information on this is submitted. A second letter from the letting agents acting on behalf of the appellant refers to marketing commencing on Unit 2 in the summer of 2014. Interest in the unit was shown by another garden centre operator, although I am informed that discussions stalled. It is not clear whether the marketing was continued during this period or has been continuing since the cessation of discussions with the alternative operator. No further details have been submitted in relation to marketing Unit 2. As such, I am not persuaded that Unit 2 could not be occupied in its entirety by this type of use.

Conclusion

24. No sequentially preferable sites for the whole development have been identified and there is no information before me to support a negative effect on planned investment in the centres. Nevertheless, the proposals would not be in accordance with an up to date Local Plan and would be likely to cause significant harm to the vitality and viability of Camberley and Bagshot Centres. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

L Gibbons

INSPECTOR

