



Penderfyniad ar yr Apêl

Appeal Decision

Ymweliad â safle a wnaed ar 26/03/13

Site visit made on 26/03/13

gan Gareth A. Rennie BSc(Hons) DipTP
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 15/05/13

by Gareth A. Rennie BSc(Hons) DipTP
an Inspector appointed by the Welsh Ministers
Date: 15/05/13

Appeal Ref: APP/H6955/A/13/2191368

Site address: 7 Penyllan Street, Overton on Dee, Wrexham, LL13 0EF

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Richard Done against the decision of Wrexham County Borough Council.
- The application Ref OVE P/2012/0485, dated 20 June 2012, was approved on 3 September 2012 and planning permission was granted subject to conditions.
- The development permitted is the continued use of part of the ground floor delicatessen as ancillary café (previously granted under code no. P/2011/0198).
- The conditions in dispute are No's 1. & 3., which state that: '1. - the premises shall not be used for any purpose within class A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or any statutory instrument revoking and re-enacting that Order with or without amendment). Other than as a restaurant/café ancillary to the delicatessen on the approved floor plan. For the avoidance of doubt, no hot food or drinks shall be sold for consumption off the premises. 3. - No use of the development shall be made before 9.00 am or after 6.00 pm on any weekday and at no time on a Sunday or Bank Holiday.'
- The reasons given for the conditions are: '1. - the unrestricted use of the premises for any purpose within Class A3 in the Schedule to the Town and Country Planning (Use Classes) Order, 1987 would prejudice the amenities of the occupiers of nearby properties, be contrary to Council policy in respect of the siting of hot food take-aways within 400 metres of a School, and would be a detriment to road safety, and 3. - To ensure that the premises is not used at a time which would be likely to cause nuisance or disturbance to nearby residents.'

Decision

1. The appeal is allowed in part and the planning permission Ref OVE P/2012/0485 for the continued use of part of the ground floor delicatessen as ancillary café (previously granted under code no. P/2011/0198) at 7 Penyllan Street, Overton on Dee, Wrexham, LL13 0EF granted on 3 September 2012 by Wrexham County Borough Council, is varied by deleting condition 1.

Main Issues

2. The main issues in this case are the effect of the proposal on the living conditions of nearby residents, the effect of the proposal on highway safety, and the effect of the proposals on policies designed to protect community health.

Reasons

3. The application in this case was for a café ancillary to the main use of the property as a delicatessen. This is the basis of the existing permission and that use is further controlled through condition 2 to that permission restricting the extent of the café to that which would be commensurate with such an ancillary activity.
4. Condition 1, which is in dispute in this case, seeks to further restrict the permitted development in order to prevent use as a hot food takeaway. The appeal premises is close to a local primary school and local planning guidance note 9 (LPGN) seeks to ensure/promote healthy lifestyles by preventing the location of hot food takeaways close to schools. It also seeks to prevent such development in locations that would lead to a risk to road safety or impact on the living conditions of nearby residents.
5. Nevertheless, the development in this case is for an ancillary activity to the retail use of the premises, as such the sale of hot food is an incidental part of that ancillary activity and there is no evidence that the business has traded as a hot food takeaway during the life of the previous permission or that there is an intention to operate as a hot food takeaway. I consider that the occasional sale of hot food for consumption off the premises does not mean that the premises would be operating as a hot food take-away.
6. If the premises were to operate as a hot food takeaway *sensu stricto* then it is likely that it would be outside of the scope of the current permission in any case and would be subject to normal enforcement proceedings. Nearby retail establishments also sell hot food for consumption off the premises as an ancillary activity. This does not make them hot food take-aways.
7. Moreover, the location of the appeal premises is such that pupils of the nearby school would have to pass at least one hot food take-away on their journey to the appeal premises and I consider that it is unlikely that the sale of hot food from the appeal premises would represent a further significant contribution to unhealthy eating habits or lifestyles as a result.
8. The appeal site has some on-street parking to the front and is located very close to a large public car park. Any additional parking generated by the development would be easily absorbed within this provision. In addition, I consider that the scale of hot food sales is also so small and incidental in this case that it is unlikely to lead to additional indiscriminate parking at the front of the premises as a result.
9. For the same reasons, it would have little further impact on the living conditions of neighbouring residents as a result of general noise and disturbance from traffic or other sources.
10. I therefore conclude that Condition 1. is unnecessary and unnecessarily restrictive, having regard to road safety, the living conditions of the occupiers of nearby residential properties, and the promotion of healthy lifestyles. Allowing the premises to sell occasional hot food for consumption off the premises as an incidental activity and would not lead to conflict with guidance within the LPGN.
11. I do agree that the hours of operation of the café should be linked to that of the shop. This together with the restriction of the area to be used as a café will ensure that the relationship between the shop, café and the sale of hot food remains as I have described it above. Consequently, I conclude that the disputed condition 3. should remain unaltered.

12. Therefore, for the reasons given above and having considered all other matters raised, the appeal should succeed in part. I will vary the permission by deleting the disputed condition 1., taking account of Circular 35/95 *The Use of Conditions in Planning Permissions*. I am retaining the other conditions on the original permission.

Gareth A. Rennie

Inspector