
Appeal Decision

Site visit made on 11 May 2015

by **JP Roberts** BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 27 May 2015

Appeal Ref: APP/V4630/W/15/3009493 5-6 Day Street, Walsall, WS2 8EJ

- 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 J Singh against the decision of Walsall Metropolitan Borough Council.
 - The application Ref 15/0031/FL, dated 9 January 2015, was approved on 23 February 2015 and planning permission was granted subject to conditions.
 - The development permitted is a change of use from Bathroom/tile centre to A3 (restaurant) and A5 (takeaway).
 - The condition in dispute is No 7 which states that:
The use hereby permitted shall cease no later than five years from the date of this decision and the site shall be left in a neat and tidy condition.
 - The reason given for the condition is:
To enable the Local Planning Authority to retain effective control over the site and to progress wider regeneration of the Walsall Gigaport. An unlimited permission may prejudice this strategic development in accordance with the saved policies of the Walsall Unitary Development Plan, the Black Country Core Strategy and the National Planning Policy Framework.
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Decision

1. The appeal is allowed and the planning permission Ref 15/0031/FL for is a change of use from Bathroom/tile centre to A3 (restaurant) and A5 (takeaway) at 5-6 Day Street, Walsall, WS2 8EJ granted on 23 February 2015 by Walsall Metropolitan Borough Council, is varied by deleting condition 7 and substituting for it the following condition:

The use hereby permitted shall cease no later than five years from the date of this decision.

Main Issue

2. The effect of removing the condition on the regeneration prospects of the area.

Reasons

3. The appeal premises lies in a row of modern commercial properties in a small street in Walsall town centre. An adjoining unit is a fish and chip shop and the end of the row is occupied by a Subway sandwich shop.
4. The nub of the Council's concerns is that the unit lies within part of a large part of the town centre where planning permission has been granted for what is termed the "Walsall Gigaport", a mixed use re-development scheme which

includes 127,000 sq.m. of office space, a 4206 sq.m. data centre, a 4300 sq.m hotel and conference centre, 23,195 sq.m. of live/work space, a 5,890 sq.m health and sports facility, 621 sq.m of retail and/or restaurant use and car parking. Outline planning permission was granted in December 2008, and was extended in February 2012. Reserved matters were approved in respect of a nearby site off Littleton Street West for a business and sports hub for Walsall College in February 2014. A hybrid full and outline application was approved in April 2014 for offices and associated development on land at Littleton Street and Hatherton Street, not far from the appeal site.

5. The implementation of the Gigaport development would make an important contribution to meeting goals for economic development set out in the Black Country Core Strategy (BCCS), which aims to increase the amount of retail and office space within the region, and to focus new retail, office, leisure and cultural development in four centres, of which Walsall is one. The Gigaport is specifically identified in BCCS Policy SC3 as contributing towards the economic goals of the strategy. Other policies in the saved Walsall Unitary Development Plan promote the regeneration of a number of town centre sites, but it is not clear from the material with which I have been provided whether they specifically refer to the appeal site.
6. The officer report in respect of the Gigaport scheme explains that it is seen as being a design-led, high quality private sector re-development which would take place as and when sites become available, although I note that the Council has acquired some strategic sites within the overall development site. The appeal site lies within an area identified as being redeveloped for offices, with Day Street being extinguished. The long-term retention of the block in which the appeal site lies, and the use of the site as a takeaway would not be consistent with the vision of a high quality re-development. I attach considerable importance to the realisation of the Gigaport re-development, which lies at the heart of the town's ambitions for a prosperous and attractive town centre.
7. The national Planning Practice Guidance says, at Paragraph 014 in the section dealing with the approach to be taken to imposing conditions, that circumstances where a temporary permission may be appropriate include where it is expected that the planning circumstances will change in a particular way at the end of that period, and that a temporary planning permission may be appropriate on vacant buildings to enable use for a temporary period prior to any longer term regeneration plans coming forward. I consider that this advice is relevant to this position.
8. In my view, an unrestricted permission, or even one for a 10 year period would not be consistent with the approved re-development proposals for the area. Whilst this one site may not, on its own, add to the acquisition cost of the wider site to an extent that it would frustrate re-development, if I were to allow this appeal, it would make it difficult for the Council to apply such conditions elsewhere, and cumulatively the impact could be more substantial.
9. I therefore consider that the 5 year temporary permission is justified. I readily appreciate the dilemma that the appellant faces in deciding whether to invest in a business which is time limited in this way. If re-development prospects do not pan out as quickly as the Council hopes, exceptionally, a further temporary

permission may be granted at the end of the 5 year period, as occurred with the Enterprise car hire business nearby.

10. I recognise that the Council granted a permanent permission for a takeaway/restaurant at the adjoining premises (Ref: 09/0331/FL), subsequent to the grant of outline planning permission for the Gigaport re-development. Like applications should be determined in a like manner, regardless of whether the decision was made contrary to the officer's recommendation. However, that decision was made some 6 years ago, since when the Gigaport redevelopment has gained greater momentum, and economic conditions have improved. This, and subsequent decisions, including the dismissed appeal in 2012 in respect of proposed residential development in Bate Street opposite the site¹, which seek to protect the redevelopment scheme, have changed the planning circumstances since the approval of the neighbouring takeaway, and I do not see it as a precedent to follow in the light of the facts of this case.
11. I have taken into account the difficulties that the condition places on the proposed use and recognise that the property might remain empty and unused as a result. However, the harm that this would cause is outweighed by the harm that removing the condition may cause in frustrating or delaying the redevelopment of the area. I therefore conclude that removing the condition would result in material harm to the redevelopment prospects, and would conflict with BCCS Policy SC3 to which I have referred above.
12. On a more minor note, the condition requires that the site be left in a clean and tidy condition. This is not a precise requirement, and I shall delete it, as it fails the tests set out in the National Planning Policy Framework and the Planning Practice Guidance. To this very limited extent the appeal succeeds, but I shall re-impose the temporary duration restriction.

Conclusion

13. For the reasons given above, I conclude that the appeal is allowed to the limited extent referred to above.

JP Roberts

INSPECTOR

¹ Ref: APP/V4630/A/12/2170452