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# Appeal Decision

Site visit made on 30 July 2013

**by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI**

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

**Decision date: 14 August 2013**

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## **Appeal Ref: APP/Q0505/A/13/2192500**

### **Mickey Flynn's Pool and Snooker Club, 103 Mill Road, Cambridge, CB1 2AZ**

- 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 Dawecroft Ltd against the decision of Cambridge City Council.
  - The application Ref 12/1071/FUL, dated 17 August 2012, was refused by notice dated 4 December 2012.
  - The development proposed is Change of use from Pool and Snooker Club to A1 (Shops), A2 (Financial and Professional Services), A3 (Restaurant and Cafes) and A4 (Drinking Establishments).
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## **Decision**

1. The appeal is dismissed.

## **Main Issues**

2. The main issues in this case are the effects of:
  - the proposed servicing arrangements on highway safety on Mill Road;
  - the proposal on the availability of leisure facilities in the area;
  - the proposed Class A3 and A4 uses on the living conditions of neighbouring occupiers, traffic and the environment;
  - the proposed Class A1 use on the viability of the local centre.

## **Reasons**

### *Highway Safety*

3. The appeal premises is a free-standing building located on the north side of Mill Road. This local distributor road extends from the city centre and, in the vicinity of the appeal site, is lined predominantly by a mix of commercial uses, mainly in small units. In common with many of the other commercial units along Mill Road, the appeal premises is, and would continue to be, serviced from the front of the building. There is no provision for a lay-by and, therefore, service vehicles would continue to park in the carriageway.
  4. The road immediately adjoining the premises is subject to a restriction which prevents loading between the hours of 0830 to 1830 Monday to Saturday. The
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appellant has proposed a condition which would further restrict servicing times to the hours of 0700 to 0830 and 2000 to 2300 Monday to Saturday.

5. I recognise that the proposed condition would avoid service vehicles parking on Mill Road for large parts of the day. Nevertheless, the proposed morning servicing time takes in the period leading up to 0830 when, according to the appellant's transport evidence, two way traffic flows are at their greatest<sup>1</sup>.
6. The proposal would allow four alternative uses of the building including a Class A1 shop with no restriction on the range of goods which could be sold. The appellant's evidence advises that the servicing requirements for this use would be comparable with the Sainsbury's store at St Andrew's Street, Cambridge or the Tesco proposal at 167 Mill Road which was the subject of an appeal<sup>2</sup>. This suggests that in the order of four or five light goods vehicles and two to six larger (10.35m long) rigid vehicles per day would service the site if it were in Class A1 use. This number of deliveries would be significantly greater than that associated with the current use of the site where up to three deliveries per day take place, some of which are combined with the nearby White Swan public house.
7. The larger vehicles servicing the Class A1 use could be expected to spend a significant period of time unloading (more than an hour in the case of one of the vehicles at the Sainsbury's store and two 30-40 minute visits according to the Tesco appeal decision). The evidence from the Sainsbury's store also indicates that servicing is more likely to take place during the morning than the evening. This suggests that the morning servicing period would be particularly busy with a combination of shorter stay light goods vehicles and longer stay larger vehicles.
8. Mill Road adjoining the site is 6.1m wide. Parked service vehicles visiting the site would, therefore, require east bound traffic to move into the west bound lane in order to pass. Whilst east bound flows in the morning are lighter than west-bound, the potential for conflicting movements would, nevertheless, be significant. A larger service (3.0m wide according Manual for Streets, figure 6.18) parked at the site would leave a carriageway width of some 3.1m. Manual for Streets (paragraph 7.2.3) advises that widths of between 2.75m and 3.25m should be avoided since they could result in drivers trying to squeeze past cyclists. Cyclists make up a high proportion of the traffic using Mill Road.
9. I recognise that only two of the accidents reported in the appellant's transport evidence appear to involve cyclists and parked service vehicles. However, taken as a whole, the accident data indicates that 32 of the 48 reported incidents involved cyclists and five involved service vehicles. Therefore, I consider that highway safety risks associated with these categories of road users are particularly important in this case.
10. I also noted on the site visit that the footpath adjoining the site narrows suddenly at the boundary with number 106. Any cyclists tempted to use the footpath in order to avoid manoeuvring around parked vehicles on the main carriageway would, therefore, be likely to face further conflict with pedestrians.

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<sup>1</sup> SLR Site Transport and Servicing Appraisal Appendix 1

<sup>2</sup> Appeal Decisions APP/Q0505/A/08/2066756 and APP/Q0505/A/08/2073579

11. I recognise that other commercial units along Mill Road use frontage servicing. However, I consider that the servicing requirements of the proposed Class A1 use in particular, combined with the road conditions outline above, would lead to a significant reduction in highway safety along Mill Road.
12. Circular 11/95 advises that conditions should not be used to substantially modify the development originally proposed. Therefore, it would be inappropriate to use a condition to exclude Class A1 use from the proposal. Having reached that conclusion, there is no need to consider in detail the servicing requirements of the other alternative uses.
13. Consequently, the proposal would not accord with Cambridge City Local Plan (LP) policy 8/2 which presumes against developments which have an unacceptable transport impact or policy 8/9 which requires proposals to make suitable provision for service and delivery vehicles.

#### *Availability of Leisure Facilities*

14. The appeal premises is limited by condition<sup>3</sup> to use as a snooker/pool club. Currently it operates as a private members club and has only pool tables. Therefore, it provides a quite specific leisure activity. The ancillary food and drink, internet cafe, large screen television and jukebox facilities are available at a wide variety of other outlets in the area. Moreover, by virtue of the terms of reason for refusal 3, it appears that the Council does not favour food and drink uses in isolation at the site. The leisure activity available at the appeal premises is replicated less than 1km away at a venue known as WT's. This venue is also operated by the appellant and offers all the activities at the appeal premises plus snooker and poker tables. Members have access to both venues.
15. WT's is at first floor level and access is via a staircase. I accept that this arrangement is less inclusive than the access to the appeal premises. However, as the officer's report notes, the number of current members who cannot use the stairs is likely to be small. Whilst a number of club members have objected to the proposal, none have given as a reason any specific difficulty in accessing WT's. Moreover, the operators have indicated that staff are on hand to assist members if necessary. Planning permission has been granted to extend WT's. This would allow the installation of a lift and increase the capacity of the venue.
16. The Council provides no evidence on the demand for, or spatial distribution of, pool and snooker clubs. The objectors refer to the development of further housing in the area. However, I am not convinced that this would lead to significant additional demand for pool and snooker facilities. The appellant's evidence indicates that demand for these facilities has fallen in recent years. This, along with the permission to extend, suggests that WT's would be able to accommodate additional members transferring from Mickey Flynn's if necessary.
17. The appellant has also provided some evidence indicating that membership of the clubs is drawn from across the City and beyond. This seems reasonable given the rather specialist nature of the activities involved. They are not the kind of day to day facilities which might be expected to be widely distributed. As such, having two similar venues 1km apart seems rather unusual. It would not be unreasonable to expect some members to travel slightly further in the

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<sup>3</sup> Condition 2 of permission reference 01/0862/FUL

event that the appeal premises closed. There is nothing to indicate that WT's is any less accessible by a wide range of travel modes than the appeal site.

18. Therefore, I am satisfied that WT's would provide an adequate and suitably located alternative to the leisure facilities at the appeal premises. Consequently, it would satisfy the aims of LP policy 6/1 which allows for the relocation of leisure facilities to another appropriate premises of similar accessibility.
19. The Council argues that policy LP 6/1 seeks to protect leisure facilities in principle and that the appeal premises could be put to another leisure use. However, other leisure uses at the premises are expressly precluded by the terms of the relevant planning permission and the site falls within a local centre where LP policy 6/7 favours Class A uses rather than leisure uses. Moreover, I saw that other nearby facilities including Cambridge Leisure and Kerridge Sports Centre offer a wide range leisure activities. There is no firm evidence to suggest that the appeal proposal would lead to a shortfall in leisure facilities generally in this part of the City. Therefore, I am not persuaded that the notional possibility of attracting, and obtaining planning permission for, an unspecified alternative leisure use provides a robust justification for withholding permission in this case.
20. The Council places weight on paragraph 70 of the National Planning Policy Framework (the Framework) which advises that planning decisions should guard against the unnecessary loss of valued facilities, particularly where this would reduce the community's ability to meet its day to day needs. Whilst there has been significant local opposition to the appeal proposal, the number of objectors who have identified themselves as members of the club, and therefore derive value from it, is quite small. Moreover, I have already concluded that the pool and snooker facilities available at the premises are not of the day to day kind. Therefore, I consider that its loss would not be contrary to the aims of paragraph 70 of the Framework. For these reasons, the circumstances in this case can also be distinguished from those in the Royal Standard public house appeal decision<sup>4</sup> referred to by the Council. Neither the Framework or the relevant local plan policies require leisure facilities to be marketed for that use before consideration is given to alternative uses.

#### *Effect of the Proposed Class A3 and A4 Uses*

21. The Council's evidence refers to the site being within a Cumulative Impact Zone for the purposes of premises licensing. However, there is nothing to indicate the existence of an equivalent planning policy and it is not the purpose of the planning system to replicate the controls of other regulatory regimes. Local Plan policy 6/7 favours Class A3 and A4 uses of an appropriate scale in local centres if they serve the local community.
22. Policy 6/10 presumes against such uses where, individually or cumulatively, they give rise to environmental problems or nuisance. I recognise that there are a number of other Class A3 and A4 uses in the area and that there are residential uses on the upper floors of nearby properties in Mill Road and in the adjoining roads. Nevertheless, the Council has not identified the scale or nature of the impacts which the proposed Class A3 and A4 uses may give rise to, or where those impacts may be felt.

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<sup>4</sup> Appeal Ref: APP/Q0505/A/12/2174210

23. Objectors refer to the noise impact of external plant and deliveries at unsocial hours. The existing use of the premises has the potential to lead to such impacts, although it has not been clearly demonstrated that it has done so. Conditions could be used to require sound attenuation of any additional external plant which may be required as part of the proposal. The appellant has suggested a condition to control delivery times for highway safety purposes. Had I been minded to allow the appeal, this condition could have been adapted to also limit deliveries on Sundays and Bank Holidays in order to safeguard the living conditions of neighbouring occupiers. With these conditions potentially in place, and in the absence of firm evidence to the contrary, there is no good reason to believe that the proposed Class A3 and A4 uses would have a harmful effect on the living conditions of neighbouring occupiers, traffic or the environment. Therefore, it would not conflict with LP policy 6/10.

*Effect on the Viability of the Local Centre*

24. The proposal could result in the introduction of a new Class A1 use in the Mill Road local centre. This outcome is favoured by LP policy 6/7 which, amongst other things, seeks to ensure that the number of Class A1 uses in local centres does not fall below 60%. The Mill Road centre is currently below that threshold. However, the Council is concerned that the introduction of a Class A1 use at the appeal site may prevent it from invoking the policy in order to resist the loss of such a use elsewhere in the centre. The appeal site could then revert to an alternative use under the terms of the permission sought and this would result in an overall loss of Class A1 uses in the local centre.

25. The Council has not provided evidence on the proportion of Class A1 uses in the Mill Road centre currently. Therefore, it is not possible to establish whether the scenario it is concerned about would actually result in the proportion of Class A1 uses reaching, and then falling below, the 60% threshold. Moreover, the scenario is based in a particular sequence of events with little to indicate how likely they are to occur. Conversely there are a number of other, seemingly no less likely, scenarios which would not give rise to the Council's concerns. One of those scenarios, the implementation and retention of a Class A1 use, would further the aims of policy 6/7. In my view therefore, the balance of probabilities is that proposal would not have the harmful effect on the viability of the centre feared by the Council and so would not conflict with the aims of policy 6/7.

*Conclusions*

26. I have had regard to the other concerns expressed locally, but they have not led me to different overall conclusion.

27. I have found that the proposal would not have damaging effects on the availability of leisure facilities in the area or the viability of the local centre. Nor have I found firm evidence that the proposed Class A3 and A4 uses would have unacceptable impacts. However these matters do not outweigh my concerns regarding the impact of the servicing arrangements on highway safety. For that reason, the appeal should be dismissed.

*Simon Warder*

INSPECTOR