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## Appeal Decision

Site visit made on 13 November 2017

by **Robert Parker BSc (Hons) Dip TP MRTPI**

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

Decision date: 27<sup>th</sup> November 2017

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**Appeal Ref: APP/R3325/W/17/3180083**

**5 Wyndham Street, Yeovil BA20 1JJ**

- 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 Gerrard Matthews of Matthews Properties Ltd against the decision of South Somerset District Council.
  - The application Ref 17/01890/FUL, dated 25 April 2017, was refused by notice dated 16 June 2017.
  - The development proposed is extension to existing A5 hot food takeaway.
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### Decision

1. The appeal is allowed and planning permission is granted for extension to existing A5 hot food takeaway at 5 Wyndham Street, Yeovil BA20 1JJ in accordance with the terms of the application, Ref 17/01890/FUL, dated 25 April 2017, subject to the conditions set out in the attached schedule.

### Application for costs

2. An application for costs was made by Gerrard Matthews of Matthews Properties Ltd against South Somerset District Council. This application is the subject of a separate decision.

### Main Issues

3. The main issues in this case are:
  - a) the effect of the proposal on the living conditions of nearby residents, with particular reference to noise and disturbance; and
  - b) whether the proposal would prejudice the safe and efficient operation of the local highway network.

### Reasons

#### *Living conditions*

4. The appeal property is located within, but on the periphery of Yeovil Town Centre, as defined in the South Somerset Local Plan (2006-2028) (SSLP). The building forms the end of a terrace, its side gable facing onto a small parking area and beyond that a busy traffic junction on the A30 Reckleford Road. The surrounding area contains a varied mix of commercial and residential uses. This includes flats on the upper floors of the appeal property itself and within No 6 Wyndham Street adjacent.

5. The ground floor was originally a fish and chip shop but it has been occupied as a Domino's pizza takeaway since 2001. There are no planning restrictions over the established use, but the premises are licensed to trade until 0300 hrs. Data provided by the appellant shows that pizza orders have risen year-on-year, tripling over the last decade. The Council is concerned that continued growth would be detrimental to residential amenity in the area.
6. I agree with the appellant that trading figures are driven more by the demand for pizza than the size of the appeal premises. There is no greater likelihood that a person will order a pizza simply because the premises have been extended. This is not least because many customers never set foot in the building, having placed their order by telephone for delivery. That said, the internal layout of the existing unit does present certain limitations and by expanding the floorspace and providing a small eating-in area the proposal would have the potential to facilitate continued growth in trade. I consider the appeal with this in mind.
7. One of the Council's primary concerns is that the proposal would lead to an increase in comings and goings from customers and delivery drivers. This is difficult to quantify as it relies partly on the future demand for pizza. However, despite the growth in orders over recent years there is no substantive evidence to show that current activity is a particular source of annoyance for local residents. The Senior Environmental Protection Officer does not object to the application and no representations were received, despite the posting of a site notice and letters being sent to 35 addresses. This suggests to me that the business co-exists in relative harmony with its neighbours.
8. Residents already live cheek by jowl with town centre uses and in this context some evening and late night noise is to be expected. According to figures provided by the appellant, business at Domino's varies from day-to-day but peak trade is during the evening, with orders tailing off between 2100 and 2200 hrs onwards. This pattern would be unlikely to change, even if orders continue to rise in line with past trends.
9. The proposal would increase the floorspace of the building by approximately 54m<sup>2</sup> or 36 percent. The Council describes this as large but in my opinion it would be a relatively modest extension. Whilst future increases in trade cannot be ruled out, the evidence fails to persuade me that the proposal would lead directly to unacceptable noise or disturbance for nearby residential occupiers. Accordingly, I conclude that there would be no material harm to living conditions and no conflict with Policy EQ2 of the SSLP or the National Planning Policy Framework (the Framework) insofar as they seek to secure a good standard of amenity for local residents.

#### *Highway issues*

10. Wyndham Street is one-way, with the traffic flowing in the direction of Reckleford Road. There are a handful of short stay parking spaces within a designated bay on the side of the street nearest the appeal premises. Elsewhere, parking is restricted using double yellow lines. Pavement widths are relatively generous.
11. Notwithstanding the availability of on-street parking in the vicinity and a car park for staff and delivery mopeds at the side of the premises, the Council is concerned that the proposal would encourage customers and delivery drivers to park illegally. Photographs have been supplied to illustrate that this happens already, with parked cars straddling the kerb and double yellow lines

opposite the appeal premises. Despite this breach of traffic regulations, there is no firm evidence to demonstrate that the practice creates a significant hazard or obstructs the flow of traffic or pedestrians. Even if it did, there are enforcement powers available. It would be unreasonable to withhold planning permission in such circumstances.

12. Neither the Highway Authority nor the Council's own highway consultant objected to the planning application. Based on my own observations, I concur with these consultees that there are no highway grounds on which to dismiss the appeal. I therefore conclude that the proposal would not prejudice the safe and efficient operation of the local highway network. As such, there would be no conflict with the transport policies of the Framework.

### **Other Matters**

13. I note that there are plans to rejuvenate the area through the Yeovil Refresh initiative. Public realm schemes have been drawn up for Sherborne Road and Newton Road, to be funded by S106 monies, in order to attract private investment. There are similar aspirations for Wyndham Street. It is argued that the appeal proposal would create a dominant use that impacts disproportionately on the locality and undermines regeneration efforts. In my opinion, this significantly overstates the potential effects. The scheme would not prejudice the Council's position and, if anything, the works to the frontages of Nos 5 and 6 Wyndham Street and bin store would represent a modest enhancement to the street scene.
14. The Council raises no objections to the design of the proposed development. I have no reason to take a different stance. The flat roof extension would be hidden from public view behind existing boundary walling and the proposed installation of a new shop window in the side gable would be neutral in terms of its effect on the character and appearance of the area.

### **Conditions**

15. In addition to the standard time limit condition I have attached a condition to specify the approved plans, to provide certainty. In the interests of the character and appearance of the area a condition is necessary to ensure that the Council retains control over external materials, colours and finishes, including in relation to the bin store, railings and forecourt surfacing. A condition is also required to secure details of all new plant and machinery, to protect the living conditions of adjoining residents.
16. The Council has requested a condition to restrict trading past 2300 hrs daily. Given my findings above, and the fact that the premises have been trading up until now without demonstrable harm to local amenity, such a condition would be unreasonable. The Council retains an adequate level of control under the premises licensing process, should problems occur in the future.

### **Conclusion**

17. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Robert Parker*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing nos. DB355-EX-01, DB355-EX-02, DB355-EX-03, DB355-GA-04, DB355-EL-05 and DB355-EL-06 Rev A, 1194/11C, 1194/12A, 1194/13A, 1194/14A, 1194/16 and manufacturer specification of Manchester Cast Iron Bollard SFD560.
- 3) No development shall take place until details of all external materials, colours and finishes for the following have been submitted to and approved in writing by the local planning authority:
  - a) Rear extension
  - b) Bin store
  - c) Brick paviments
  - d) Railings/gate
  - e) Shop fronts

Development shall be carried out in accordance with the approved details.

- 4) No development shall take place until details of the specification for all new plant and machinery, including the air handling unit and extraction system, have been submitted to and approved in writing by the local planning authority. The plant and machinery shall be installed in accordance with the approved details and maintained in working order thereafter, in accordance with the manufacturer's recommendations.



## Costs Decision

Site visit made on 13 November 2017

by **Robert Parker BSc (Hons) Dip TP MRTPI**

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

Decision date: 27<sup>th</sup> November 2017

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### **Costs application in relation to Appeal Ref: APP/R3325/W/17/3180083 5 Wyndham Street, Yeovil BA20 1JJ**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Gerrard Matthews of Matthews Properties Ltd for a full award of costs against South Somerset District Council.
  - The appeal was against the refusal of planning permission for extension to existing A5 hot food takeaway.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. The appellant is seeking a substantive award of costs with reference to paragraph 049<sup>1</sup> of the PPG, on the grounds that the Council's refusal reasons were vague and generalised and unsupported by any objective analysis to demonstrate why expert advice from professional consultees was overridden.
4. There were no objections to the proposal from the Highway Authority, or from the Council's highway consultant or Environmental Protection Unit. However, the case officer was not obliged to accept this advice, provided that relevant evidence could be provided on appeal to support a contrary decision.
5. The decision to refuse planning permission was taken having regard to the appellant's own trading figures, which show that there has been a steady growth in orders over the past decade. Whether the proposal would facilitate a continuation of this trend and the consequent effects on highway safety and residential amenity are primarily matters of planning judgement. At times such considerations can be finely balanced.
6. Although I have not found in favour of the Council, the decision to refuse was based on a rational and coherent line of argument. Specific evidence in the form of photographs was provided at the appeal stage in order to illustrate the particular concerns regarding illegal parking on Wyndham Street.

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<sup>1</sup> Reference ID: 16-049-20140306

7. Overall, I am satisfied that the Council has met its obligation to give proper consideration to the application and has adequately substantiated its decision to refuse planning permission with evidence. I therefore consider that the Council has not been shown to have behaved unreasonably. Thus the appellant's costs in mounting the appeal were not unnecessarily incurred. For this reason, an award of costs is not justified.

*Robert Parker*

INSPECTOR