



Appeal Decision

Site visit made on 6 December 2022

by **P Storey BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14th March 2023

Appeal Ref: APP/W4515/W/22/3307690

11-13 Station Road North, North Tyneside, Forest Hall NE12 7AR

- 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 Papa John's (GB) Ltd against the decision of North Tyneside Council.
 - The application Ref 22/00884/FUL, dated 20 May 2022, was refused by notice dated 19 July 2022.
 - The development proposed is following subdivision, change of use from Class E to a Hot Food Takeaway unit (Sui Generis) including associated external alterations.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on the health of residents in the area.

Reasons

3. The appeal site is a vacant commercial unit in a local shopping centre described by the Council as the Forest Hall District Centre. The site lies in the Council's Benton ward. The centre is home to a variety of retail and related commercial uses. It is surrounded predominantly by residential areas.
4. Policy DM3.7 of the North Tyneside Local Plan (Adopted July 2017) (the 'NTLP'), sets out 5 criteria ('a' to 'e') against which proposals for hot food takeaways will be assessed. Criterion 'd' states that in order to promote healthier communities, the Council will prevent the development of A5¹ use in wards where there is more than 15% of the year 6 pupils or 10% of reception pupils classified as very overweight.
5. The Council's evidence includes a consultation response from the Council's Director of Public Health, which contains a link to the Council's most recent data relating to the National Child Measurement Programme (NCMP). This provides data per ward for the prevalence of obesity among reception and year 6 children across 5 time periods: the earliest being 2013/14 to 2015/16, and the latest being 2017/18 to 2019/20. The data demonstrates for the most up-to-date period that in Benton ward, there is a reception obesity rate of 8.9% and a year 6 obesity rate of 21.2%. For clarification in terms of the policy criteria, the data makes clear that the terms 'obese' and 'very overweight' are

¹ The Use Classes Order has been updated since the adoption of the NTLP. Hot food take-aways were previously categorised as Class A5 and are now categorised as Sui Generis.

used interchangeably. Whilst there would be no conflict with regard to reception aged children, the proposed development would therefore conflict with criterion 'd' of Policy DM3.7 with regard to year 6 pupils.

6. I am satisfied, on the basis of the evidence provided, that there would be no conflict with criteria 'a', 'b' or 'c' of Policy DM3.7. Criterion 'e' seeks to assess the impact of hot food take-aways on the well-being of residents on an individual basis. Whilst this criterion appears somewhat wide-ranging in scope, I have identified no specific conflicts against this objective. As such, I am satisfied that the only conflict with Policy DM3.7 would arise in relation to criterion 'd', and that this conflict would only be against one of the two stated measures. However, the policy is worded such that hot food take-away proposals will not be supported unless they comply with all 5 criteria. Although it is asserted that conflict with one strand of the policy does not necessarily result in conflict with the policy when read as a whole, criterion 'd' is an important component of the policy's aim to promote healthier communities, and failure to meet its requirements should not be understated.
7. It has been put to me that Papa John's includes healthy menu options, show calorific values and do not fry products in contrast to other takeaways. It is also stated that Papa John's target customers are not school children. Coupled with the policy compliant position in relation to criterion 'c' of Policy DM3.7 regarding this site being more than 400 metres from a middle or secondary school, the appellant considers that allowing the appeal would not encourage unhealthy eating habits or exacerbate obesity among children. In the event of the appeal being allowed, the appellant has also suggested a condition could be imposed to limit occupancy of the unit to Papa John's only.
8. However, I have been provided with limited substantive evidence that Papa John's would provide an inherently healthier alternative than other hot food take-aways or shops selling food. I also give limited weight to the target market. Just because the development is located more than 400 metres from a middle or secondary school does not mean that children will not be exposed to its products, and it seems to me that the location within a ward with such high rates of childhood obesity means particular care should be taken in this regard, even if other services and available products, including snacks, may also be a driver of childhood obesity. Furthermore, whilst Policy DM3.7 refers to children and schools among its assessment criteria, it seeks to promote healthier communities as a whole and is not explicitly concerned with only the health of children. As such, I do not find imposing such a condition would address the requirements of the development plan policy or meet the tests outlined at Paragraph 56 of the National Planning Policy Framework (the 'Framework') concerning the imposition of conditions. Allowing the proposed hot food takeaway on the site would therefore not promote healthier communities.
9. The appellant states that Policy DM3.7 'd' effectively places a blanket ban on hot food takeaways within North Tyneside, as every ward except for one (Monkseaton North) exceeds at least one of the policy thresholds. The appellant asserts that this is not in the spirit of the Planning Practice Guidance (the 'PPG'), which states that policies should only seek to limit certain uses for health reasons. The appellant notes NTL Policy S1.2 refers to 'controlling' unhealthy eating outlets rather than limiting them. Notwithstanding that this planning appeal is not the correct forum to question the wording of adopted development plan policy, I do not find the wording of Policy DM3.7 'd' to be

overly restrictive as it allows development to proceed under certain circumstances. The purpose of the policy is clear in that it is directly linked to the health of residents, particularly school aged children, and is underpinned by data. Even if the current data does place stricter controls on development in this ward, this is not necessarily the case for all wards and may not be the case in future. As such, whilst the policy does place certain limits on the development of hot food take-aways within the Council area, I do not find the application of Policy DM3.7 'd' to be overly restrictive and it would accord with the PPG.

10. I refer to the appeal decision at 33 Station Road North² forming part of the evidence, which refers to an effective blanket ban on hot food take-aways in the Council area and a consequent conflict with the principles of the Framework. However, the context of the current appeal is notably different to that of 33 Station Road, which was determined prior to the adoption of the NTLP and also subject to a different set of data for assessing the policy. As such, I have given very limited weight to this previous decision.
11. I have been provided with limited details of the relevant development plan policies relating to the Cheshire West and Chester appeal decision³ provided as part of the appellant's evidence, which granted planning permission for a hot food take-away subject to conditions. Accordingly, I have given this decision very limited weight in my assessment.
12. For the above reasons, I conclude that the proposal would harm the health of residents in the area. As set out above, it would fail to comply with criterion 'd' of Policy DM3.7 of the NTLP. This objective seeks to tackle childhood obesity, which forms a key component of the policy's overall aims to promote healthier communities. Accordingly, I conclude that this criterion carries sufficient importance to result in failure to comply with Policy DM3.7 as a whole.

Planning Balance and Conclusion

13. Paragraph 12 of the Framework states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. Decisions that depart from an up-to-date development plan should only be taken if material considerations in a particular case indicate that the plan should not be followed.
14. In this instance, the key harm arising through the development would be the introduction of an additional use that is identified through development plan policy as intrinsically linked to adverse effects on the health of residents. Whilst I have taken on board the appellant's comments regarding the specific nature of the operation and the operator, I find no reason to treat this development as an exception to the policy tests, and there are no controls or limitations that could be reasonably imposed through conditions to control adverse effects on the health of residents.
15. Despite the submitted evidence indicating compliance with other relevant NTLP policies, the conflict I have identified with Policy DM3.7 is sufficient in this instance to bring the appeal proposal into conflict with the development plan

² APP/W4515/W/16/3154960

³ APP/A0665/W/22/3296922

when read as a whole. This conflict, and the resulting adverse effects on the health of residents that would occur if the appeal were allowed, carry significant weight in the planning balance.

16. I acknowledge that the proposed development would deliver certain benefits in terms of occupying a vacant unit, providing additional choice for consumers, providing jobs and supporting the supply chain. However, at the time of my visit the centre appeared to be busy and vibrant, with a high footfall. There are also several existing hot food take-aways in very close proximity to the appeal site. Whilst I note the appellant's statement that the property has been vacant for two years, I have also been provided with no details of any marketing. Based on the current low vacancy rate in the centre, it appears unlikely the property could not be readily occupied for an alternative use if effectively marketed.
17. Although it has been put to me that the site lies in a preferable location for a hot food takeaway in comparison to other areas because it is among the wards where only one of the two thresholds in criterion 'd' of Policy DM3.7 are met, this does not indicate that the appeal proposal is acceptable. As such, I do not identify any specific benefits or other material considerations that would outweigh the harm previously identified or the conflict with the development plan.
18. For the above reasons, taking account of the development plan when read as a whole, the PPG, the Framework and all other matters raised, I conclude that the appeal should be dismissed.

P Storey

INSPECTOR



Appeal Decision

Site visit made on 23 July 2020

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2020

Appeal Ref: APP/H4505/W/20/3250222

58 Front Street, Winlaton NE21 6AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant 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 Mrs Atefeh Ahmadibonakdar against the decision of Gateshead Council.
 - The application Ref DC/20/00057/FUL, dated 24 January 2020, was refused by notice dated 31 March 2020.
 - The application sought planning permission for continued use of premises as hot food takeaway without complying with a condition attached to planning permission Ref DC/09/01583/FUL, dated 4 January 2010.
 - The condition in dispute is No 2 which states that: the premises shall be open for business between 09.00am and 11.30pm Monday to Thursday and 09.00am and 12.00 midnight Friday to Sunday. The premises shall not operate at any time outside these hours.
 - The reason given for the condition is: to ensure that no disturbance is caused to neighbouring properties as a result of unreasonable trading hours at the premises having regard to policy H2 of the adopted Unitary Development Plan and policy DC2 of the Replacement Unitary Development Plan for Gateshead.
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Decision

1. The appeal dismissed.

Main Issues

2. The main issue is the effect of the proposed longer opening hours on the health of the local community in respect of the availability of unhealthy food.

Reasons

3. The result of the proposed alteration to the relevant condition would be to extend the opening hours of the premise by half an hour each day.
4. Policy CS14 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle Upon Tyne 2010-2030 (2015) (the Local Plan) is a broad policy which seeks to promote wellbeing and health through, amongst other things, controlling the location of, and access to, unhealthy eating outlets.
5. The Hot Food Takeaway Supplementary Planning Document 2015 (SPD) is a material consideration and provides relevant detailed guidance in support of the above policy, specifically identifying 12 considerations to be applied in the determination of planning applications for hot food takeaways (Use Class A5).

6. The Council has referred to consideration 2 which states that "planning permission will not be granted for A5 use in wards where there is more than 10% of the year 6 pupils classified as obese". Based on the information within the SPD, the level of obesity in the Winlaton and High Spen ward clearly exceeds this threshold. While consent is not sought for a new hot food takeaway the effect of allowing additional opening hours is nonetheless the same, increasing access to unhealthy eating outlet.
7. The Appellant states that customers accessing the hot food takeaway late at night are not children, but I note that the SPD details that the use of figures relating to the level of obesity among year 6 school pupils is as a proxy to the health of the wider community. On this basis, I find that the appeal is contrary to consideration 2 of the SPD.
8. In support of the appeal the Appellant states that, amongst other matters, the varied condition would lead to the creation of additional employment and that other businesses in the area are open until 1am. I have been provided with no substantive evidence in this regard, in particular with regards the opening hours of other businesses in the area. As such, I afford these matters little weight and they do not outweigh the harm I have identified previously.
9. For the reasons detailed above I find that the proposed variation of the relevant condition contrary to Policy CS14 of the Local Plan and the SPD.

Conclusion

10. For the reasons given above the appeal is dismissed.

Mark Brooker

INSPECTOR



Appeal Decision

Site visit made on 30 August 2024

by D Hartley BA (Hons), MTP, MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th SEPTEMBER 2024

Appeal Ref: APP/H4505/C/24/3341100

Unit C1, 592 Durham Road, Gateshead, NE9 6HX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr David Milburn (Davey's Breakfast and Sandwiches) against an enforcement notice issued by Gateshead Metropolitan Borough Council.
 - The notice was issued on 15 February 2024.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land from a café (use class E) to hot food takeaway (*sui generis*).
 - The requirements of the notice are to cease the use of the Land known as Unit C1, 592 Durham Road, Gateshead, NE9 6HX as a hot food takeaway.
 - The period for compliance with the requirement is 16 weeks.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. The Government consulted on reforms to the National Planning Policy Framework 2023 (the Framework) on 30 July 2024 (Consultation Draft Framework). The consultation closes on 24 September 2024. I afford the Consultation Draft Framework limited weight in decision making terms as a material planning consideration. Considering the deemed planning application main issues below, there are no proposed reforms in the Consultation Draft Framework which have a material bearing on how this appeal should be considered. In this regard, it has not been necessary for me to seek comments from the main parties in respect of the Consultation Draft Framework.
3. The evidence is that the deemed planning application fee was paid by Mr David Milburn in respect of the above appeal made under ground (a) of section 174(2) of the Act. An appeal was also lodged by Mr Robert West in respect of the same enforcement notice. However, as a ground (a) fee has not been paid by Mr Robert West, and no other grounds of appeal are pleaded by him, linked appeal APP/H4505/C/24/3341099 has lapsed.

4. A retrospective planning application was considered by the Council in 2023 for the same development which is the subject of this appeal.¹ I have been provided with a copy of the officer report for the refused planning application and have taken it into when determining this appeal.

Main Issues

5. An appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reasons for issuing the notice and the main issues are the effect of the development on (i) the health of young people in the area, and, (ii), whether it is likely to lead to indiscriminate and unlawful on-street car parking to the detriment of the highway safety of road users.

Health of young people

6. The Council's adopted Hot Food Takeaway Supplementary Planning Document 2015 (SPD) supplements policy CP14 of the adopted Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne Local Plan 2015 (LP). The SPD includes specific criteria for controlling the number and location of hot food takeaways.
7. The hot food takeaway which is the subject of this appeal was considered against the SPD as part of the assessment of the above retrospective planning application. I do not doubt that a new extraction system has been installed in the property. While I have not been provided with technical details of the extraction system, I nonetheless I find that the acceptability of the extraction system would be capable of being addressed by a planning condition. In this regard, consideration No. 7 of the SPD would be capable of being met.
8. Notwithstanding the above, the evidence is that the appeal development does not accord with the other requirements of the SPD. Firstly, the evidence is that the site is located within 400 metres of Kells Lane Park which is classified as a location where children and young people would congregate. The SPD does not permit hot food take-aways within a 400-metre radius of entry points to secondary schools, youth centres, leisure centres and parks.
9. Secondly, the site is within a ward where the evidence is that there are more than 10% of the year six pupils being classified as obese. The most up to date information before me is that for the period 2015/16 to 2017/18 the percentage for Low Fell ward was 19.1%, an increase from 15.0% when the SPD was adopted. I have no evidence to indicate that obesity levels have decreased since 2017/18 or that they are now at an acceptable level.
10. Finally, the evidence before me, which has not been disputed by the appellant, is that in the Low Fell ward there are 1.51 hot food takeaways per 1000 people. The SPD does not permit further hot food takeaways within a ward where the UK national average of 0.86 hot food takeaways per 1000 people would be exceeded.
11. For the reasons outlined above, I conclude that the development does not accord with the requirements of the SPD. If allowed, the evidence is that it would lead to an over proliferation of hot food takeaways in the ward and, given its location, would have the effect of likely attracting young children and

¹ Planning application reference DC/23/00888/COU

hence exacerbating high levels of obesity in the ward relative to the UK national average. Consequently, the development does not accord with the health objectives of policy CS14 of the LP, the SPD, and paragraph 96 of the Framework.

12. In reaching the above conclusion, I have considered the appellant's comment that he uses fresh ingredients and quality meats and that as the prices are '*not exactly cheap*' it means that the breach of planning control does not exacerbate the level of child obesity in the area.
13. I do not doubt that the business offers fresh and tasty food and with the use of good quality ingredients. However, I have been provided with a copy of the breakfast menu and a photograph of the wall menus displayed inside the premises. The evidence is that the hot food takeaway includes the sale of items such as 'loaded wraps', 'ice cream shakes', 'double hash and cheese', 'loaded hash browns', 'loaded bagels' and 'cereal infused milkshakes'. Some of these items are sold between £5.00 and £5.50. I am not persuaded that these are the sort of prices that would discourage all young people from purchasing such items in conjunction with say a visit to or from Kells Lane Park. Consequently, the matters raised by the appellant do not alter or outweigh my conclusion on this main issue.

Highway safety

14. The SPD states that planning permission for hot food takeaways will only be granted where there would not be an adverse impact on highway safety and that regard will be given to existing traffic conditions including the availability of parking spaces and safe loading areas.
15. There are car parking restrictions on Durham Road. This includes the area immediately outside the appeal premises. Where nearby on-street car parking exists, it is in the form of a limited number of car parking bays. Some of these are near several other commercial properties such as a public house, takeaways and shops. The evidence is that a delivery takeaway service is also operated from the premises and that Uber Eats is used.
16. I visited the site on a Friday evening. While I acknowledge that this was only a snapshot in time, it was nonetheless evident that the car parking bays on Durham Road were almost fully utilised. During the site visit, I did not witness any Uber Eats delivery service movements to or from the property. However, in the absence of any car parking surveys relating to Durham Road, I find that the site visit evidence supports the Council's concern that a lack of likely available on-street car parking would, on occasion, result in indiscriminate car parking on nearby pavements, or within restricted highway areas, to the detriment of either the safe and convenient movement of pedestrians, or the free flow of traffic on Durham Road.
17. It remains possible that there could be a significant number of hot food takeaway deliveries taking place from the appeal property and using Uber Eats drivers. Given the time pressures associated with a delivery service, I find that it is possible that some indiscriminate and unlawful car parking would take place within the immediate vicinity of the appeal site.
18. In reaching the above conclusion, I have also considered the appellant's comment that some unauthorised car parking has previously taken place at the

private garage which is very near the appeal site. This casts doubt about the appellant's claim that on-street car parking spaces are always available on Durham Road. Moreover, I have also considered the Council's Transport and Planning Service comment that '*officers have liaised with the Council's Network Management team It has been advised that parking in the area has been identified as a concern, resulting in requests for the police having to be involved*'.

19. I acknowledge that the last lawful use of the property appears to be a café/restaurant. However, in my judgement there is a difference in car parking terms from those wishing to have a sit-down meal and the operation of a hot food takeaway with a delivery service. I find that those wishing to have a sit-down meal are more likely to find a car parking space further afield (if necessary) and including away from restricted areas. In contrast, I find that the time pressures associated with an Uber Eats hot food takeaway delivery service is likely to be such that the convenience associated with indiscriminate car parking, including within restricted areas, is more likely to occur.
20. The appellant states that there is only a '*small amount*' of Uber Eats deliveries. I am not certain from the evidence what is meant by a small amount, but it remains possible that this could in fact be considerable. In any event, there is nothing to indicate that the business would turn Uber Eats custom away. Moreover, this is not a matter that could be reasonably controlled from a planning condition point of view: it would not be enforceable.
21. It is important that I also emphasise that the evidence is that the hot food takeaway also offers the opportunity for some customers to have a sit-down meal or drink. Therefore, the car parking requirements associated with the delivery side of the business also need to factor in that some would likely arrive at the premises by car to consume food and drink inside the building. It is likely that if car parking spaces were available on Durham Road, it would be used by customers for this purpose. In other words, the appeal development needs to be considered from a cumulative car parking requirement point of view. As the evidence indicates that there are likely to be on-street car parking demand pressures in the immediate area, it is possible that even a '*small amount*' of Uber Eats deliveries would lead to harmful impacts in this regard.
22. For the above reasons, I am unable to find that the development would not lead to indiscriminate and unsafe car parking in the area to the detriment of road users. Consequently, I cannot conclude that the development accords with the highway safety requirements of policies CS13 and MSGP15 of the LP, the SPD, and paragraph 115 of the Framework.

Other Considerations

23. I acknowledge the economic benefits associated with the breach of planning control from the point of view of facilitating the provision of direct and indirect jobs. Moreover, I note that the appeal building is in use and that it offers some food choice for the local community and passers-by. However, these positive material planning considerations must be weighed against my conclusions on the main issues. I afford such conclusions very significant adverse weight in decision making terms. They are overriding in the planning balance and hence the other considerations are not sufficient to justify the grant of planning permission.

Ground (a) Appeal Conclusion

24. For the reasons given above, I find that the development does not accord with the development plan for the area taken as a whole. In this case, there are no identified material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails.

Overall Conclusion

25. I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

D Hartley

INSPECTOR



Appeal Decision

Site visit made on 22 August 2023

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th October 2023

Appeal Ref: APP/M2372/W/23/3318776

33 Blackburn Road, Darwen BB3 1EJ

- 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 Mrs Jabeen Kauser against the decision of Blackburn with Darwen Borough Council.
 - The application Ref 10/21/1059, dated 20 August 2021, was refused by notice dated 29 November 2022.
 - The development proposed is the change of use from café which was selling hot food to a hot food takeaway.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The use of the appeal site as a hot food takeaway has already commenced and therefore approval is being sought retrospectively. I have considered the appeal on this basis.

Main Issues

3. The main issues of the appeal are the effect of the development on:
 - the character and vitality of the District Centre;
 - public health, having regard to the proximity of the appeal site to local schools and the concentration of existing takeaway premises; and
 - the living conditions of neighbouring occupiers, with particular regard to odour, noise and disturbance.

Reasons

4. The appeal site, 33 Blackburn Road, is a mid-terrace property comprising a ground floor commercial premises, currently operating as a hot food takeaway. The previous use of the site was as a café, which also served hot food. The site is located within the Duckworth Street District Centre, within the urban area of Darwen.
5. Although within a District Centre, there are residential dwellings in relatively close proximity in all directions, so the area is mixed in character. There is also a self-contained flat directly above the takeaway, which is unrelated to the ground floor commercial use.

Vitality of District Centre

6. Policy 27 of the Blackburn with Darwen Borough Local Plan - Part 2 2015 (LP) states that proposals involving conversion and adaptation of premises or involving changes of use should take place within existing buildings and frontages in order to consolidate and strengthen the vitality of the centre. They should retain or provide shop fronts in order to maintain active frontages and retain the character and vitality of the centre.
7. The appellant argues that the hot food takeaway use will complement the existing offer and increase footfall and activity within the District Centre, which is important given the challenges facing high streets. However, any increased footfall to the District Centre would be limited to evenings, when the full range of businesses on Blackburn Road will be typically closed and only hot food takeaways will be open. Furthermore, it has not been demonstrated that the use of the premises as a café, nor for any other use which falls into Use Class E which would contribute to strengthening the vitality of the centre was no longer viable.
8. Whilst the use of the premises as a hot food takeaway retains a commercial use and appearance, it will by virtue of its use, be typically closed during the daytime. It is also located in an area with a high concentration of similar uses which are also mostly closed during the daytime. This both individually and cumulatively with the other hot food takeaways in the vicinity of the area would fail to provide active frontages and therefore be detrimental to the vitality and viability of the District Centre.
9. I acknowledge that in the late 1980's, planning permission¹ was granted for use of the appeal site as a hot food takeaway. However, the evidence before me suggests that the premises, until recently, has been in use as a café. Since this planning permission was granted there have been changes to both local and national policy. In particular, the current LP was adopted in 2015 and the Planning for Health Supplementary Planning Document (SPD) was adopted in 2016. Whilst the planning history of the site is a material consideration, due to the changes in local and national policy since this application was considered, I afford this limited weight.
10. Paragraph 81 of the National Planning Policy Framework (the Framework) states that planning policies and decisions should help create conditions in which businesses can invest, expand, and adapt. I also recognise that the development would lead to some economic benefits, including the creation of jobs in the local area. However, these benefits are limited and are not considered sufficient to outweigh the unacceptable harm I have identified to the vitality and viability of the District Centre.
11. Consequently, I therefore find on this main issue, that the development results in a closed frontage for long periods during daytime hours which is detrimental to the character and vitality of the District Centre. This is contrary to Policy 27 of the LP which requires, amongst other things, that proposals involving the change of use should strengthen the vitality of the centre.

¹ Appeal Ref: 2305/A/87/75643/A4

Public Health

12. Policy 33 of the LP states that where a form of development is proposed that has the potential to impact on public health, with particular reference to obesity and related disorders, the Council will require the developer to demonstrate how public health issues have been taken into account in formulating the development proposal and how any impacts are to be mitigated.
13. The SPD provides further guidance which seeks to reduce the impact of unhealthy lifestyles, including the consumption of unhealthy food. It requires the submission of a Health Impact Assessment for all developments which would have a potential impact on public health. However, no assessment has been provided by the appellant.
14. Whilst I accept that a premises operating as a hot food takeaway does not necessarily provide unhealthy food choices, in this particular case, the Council's Public Health team assessed the submitted food menu against their own menu analysis tool and concluded that considerable improvements would be required to provide healthier food choices. On this basis, they object to the application. I have not been presented with any compelling evidence that would lead me to reach an alternative conclusion.
15. I have had regard to the appellant's statement that they are looking to review their menu to provide healthier choices and would be willing to work with the Council to achieve this. However, I have not been presented with any evidence to suggest that this will be achieved, nor that a suitable mechanism could be put in place to ensure this was delivered. In any event, this does not address the conflict with Policy 33 of the LP in so far as the appellant has not demonstrated that the use would not negatively impact health of the population of the Borough.
16. Policy 33 of the LP also seeks to restrict hot food takeaway uses around schools. The SPD states planning permission will not be granted for any new Use Class A5 (takeaway), or hybrid uses incorporating such uses, where proposals are located within the 400m exclusion zones around any primary or secondary school, madrassa, nursery or tertiary college; unless there are less than 5 existing takeaways within the 400m exclusion zone and the proposed hours of operation are outside the hours of use of the educational facility, in order to avoid influence.
17. Avondale Primary School is located within 400m of the appeal site, with Crosshill School buildings located just outside of the 400m radius, its grounds fall within the exclusion zone. The evidence provided by the Council indicates that there are already more than 5 takeaways, potentially up to 15, within the 400m exclusion zone. With approximately 8 of these located on Blackburn Road/Duckworth Street, close to the appeal site.
18. The appellant asserts that because Avondale Primary School, is a primary school that pupils will be accompanied by a parent. However, whilst this may be the case, there is no substantive evidence to support this suggestion. Nevertheless, the proposed opening hours of the hot food takeaway would be 16:00hrs to 00:30hrs Mon-Fri, Sundays, and Bank Holidays, 16:00hrs to 01:30hrs Saturdays. This would not conflict with typical school hours but would open shortly after the end of the school day.

19. However, whilst the opening hours of the premises could be controlled by condition so that they meet this requirement of the SPD, the appeal site would still be within the 400m exclusion zone of at least one school and in a location where more than 5 hot food takeaway uses already exist.
20. The appellant cites various studies which consider the link between childhood obesity and proximity to hot food takeaways, including a study by Brighton and Hove City Council which considered the impact of hot food takeaways near to secondary schools. I agree with the appellant in so far as this report, published in 2011, found that there are many factors which influence pupil's behaviours and food choices, but that the policies of the individual schools had the greatest influence in that they decided whether or not pupils are allowed to leave school premises during the day. However, the report also recognised the role of planning policy in influencing these behaviours as part of a collaborative approach. Therefore, whilst I have had regard to its findings it does not alter my findings on this main issue.
21. My attention has also been drawn to an appeal decision² which found that the no evidence was shown that the location of a single takeaway within walking distance of schools has a direct correlation to childhood obesity". I have not been provided with any specific details of this scheme, which would enable me to draw any direct comparable to the appeal scheme.
22. Consequently, in relation to the concentration of existing hot food takeaway premises close to the appeal site and the proximity of the development to local schools, I find that it would be likely to lead to an increase in the consumption of takeaway food by young people, thereby conflicting with Policy 33 of the LP and the guidance contained within the SPD.
23. Accordingly, I therefore conclude on this main issue that the development would have an unacceptable impact on public health, having regard to the proximity of the appeal site to local schools and the concentration of existing takeaway premises. This is contrary to Policy 33 of the LP which states that development will only be permitted where it is demonstrated that it will not, in isolation or in conjunction with other planned, committed or completed development, contribute to a negative impact on the health of the Borough's population.

Living Conditions

24. The hot food takeaway is located directly below an upper floor flat, with the flue for the kitchen extraction equipment situated between two upper floor windows at the rear of the property. Whilst it appears from the evidence provided that the extraction system has been in situ for some time, and prior to the commencement of the current use, no details have been provided to enable an assessment of the acceptability of the unit in relation to its use in conjunction with a hot food takeaway and its effect on the living conditions of neighbouring occupiers. I note that a Noise and Odour Emission Report was requested by the Council but has not been provided. Furthermore, the Council's Public Protection Officer undertook a site visit to assess noise levels and was unable to be satisfied that the living conditions are not being compromised.

² Appeal Ref: APP/E5900/A/10/2141935

25. Whilst I have also had regard to the letter of support from the current occupiers of the upper floor flat, I also have to consider the effect of the hot food takeaway use on the living conditions of any future occupiers.
26. Whilst I have had regard to the appellant's suggestion of imposing a condition requiring further information to be provided such information would usually be required prior to confirming that a use is acceptable. In this particular case, the assessment of the amenity impacts of the takeaway are integral to the acceptability of this application, and based on the evidence before me, I therefore find that this could not be satisfactorily addressed by imposition of a condition.
27. Consequently, in the absence of any detailed technical evidence, the appellant has failed to demonstrate that extraction equipment is designed to achieve a level of no more than 35db when measured 1 metre from the bedroom window of the first floor flat. As such, it has not been demonstrated that the premises would benefit from an acceptable system to prevent the dispersal of cooking odours into surrounding neighbouring properties, or that noise from the unit can be adequately mitigated, particularly in relation to the occupiers of the first floor flat.
28. In terms of general noise and disturbance, Blackburn Road is a busy vehicular and pedestrian route and is subject to a high level of movement throughout the day and into the night, as well as being home to a number of commercial uses nearby. It is also acknowledged that there are already a number of similar premises in the area. There is therefore likely to be a notable degree of background noise in the vicinity of the site, including other neighbouring takeaway uses.
29. However, the opening hours requested by the appellant would permit the premises to remain open until 01:30 on Saturdays and 00:30 on all other days. This would enable the premises to stay open later than many other premises in the local area. The level of noise and disturbance would be difficult to control, including the comings and goings of customers, staff, and delivery drivers both on foot and by vehicle, people conversing both inside and outside, disturbances associated with car doors opening and closing, noise from engines and car music.
30. I accept that given the location of the appeal site, a certain level of noise can be expected by nearby residents and that such uses are not uncommon in this location. I also acknowledge that the appeal premises has a 'modest' area for customers to wait to collect food and that some of the journeys, given the proximity of nearby residential streets could be on foot, reducing some of the noise generated. However, background noise later into the evening and early morning would be lower due to there being less traffic and fewer people around. Therefore, the sudden and intermittent types of noise associated with the use would be unreasonable and excessive in the early hours of the morning in such a setting where residents would expect it to be much quieter.
31. By way of mitigation, the Council has suggested the use of a planning condition to limit the opening hours to 22:30, which would align with other premises in the local area. Whilst I understand the appellant was not previously agreeable to such a restriction, they have now confirmed that they would be willing to accept a suitably worded condition to restrict opening hours in line with nearby premises.

32. Consequently, I am therefore satisfied that a suitably worded planning condition could be imposed to restrict opening of the premises in line with neighbouring business. This would ensure that the scheme would not cause unacceptable harm to the living conditions of neighbouring occupiers in the surrounding area with regards to noise and disturbance.
33. In conclusion, I have found that a suitable planning condition limiting opening hours could be imposed to mitigate the effects of the hot food takeaway use on the living conditions of neighbouring occupiers with regards to noise and disturbance. However, it has not been satisfactorily demonstrated that the use of the premises as a hot food takeaway would not adversely affect the living conditions of the present or future occupiers of the first floor self-contained flat, by virtue of noise and odour emissions associated with the kitchen extraction system.
34. I therefore find in relation to this main issue that it has not been demonstrated that the development does not harm the living conditions of neighbouring occupiers, with particular regard to odour and noise and disturbance. The development is therefore contrary to Policy 8 of the LP which requires, amongst other things, development to demonstrate that it would secure a satisfactory level of amenity and safety for surrounding uses and for occupiers or users of the development itself, with reference to noise, vibration, odour, light, dust and other pollution or nuisance.

Other Matters

35. I have had regard to the appellants assertion that the development constitutes sustainable development which is promoted by the Framework. However, whilst I have had regard to the economic benefits of the scheme, these benefits are limited and therefore not sufficient to outweigh the unacceptable harm I have identified to the character and vitality of the District Centre, the health of the local community and to the living conditions of the occupiers of the upper floor flat.

Conclusion

36. For the above reasons, the development would not accord with the development plan when taken as a whole. There are no material considerations of sufficient weight that indicate the appeal should be determined other than in accordance with the development plan. The appeal is therefore dismissed.

K Lancaster

INSPECTOR



Appeal Decision

Site visit made on 2 July 2019

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2019

Appeal Ref: APP/A4520/W/19/3226421

1 Victoria Road East, Hebburn NE31 1XG

- 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 Mr Gary Craig of Gary Craig Building Services Ltd against the decision of South Tyneside Metropolitan Borough Council.
 - The application Ref ST/0097/19/FUL, dated 4 February 2019, was refused by notice dated 22 March 2019.
 - The development proposed is described as "change of use of vacant shop to hot food takeaway (A5) with new roller shutter to rear."
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the health and well-being of the local community.

Reasons

3. The appeal site is located within the defined boundaries of Hebburn Town Centre with the area surrounding the site characterised by a mixture of residential and commercial properties. The site is also located within the Hebburn South Ward.
4. Paragraph 91 of the National Planning Policy Framework (the Framework) states that planning decisions should aim to achieve healthy, inclusive and safe places which enable and support healthy lifestyles, especially where this would address identified local health and well-being needs.
5. HFT1 of the South Tyneside Local Plan Supplementary Planning Document 22: Hot Food Takeaways and Health 2017 (SPD) states that planning permission will not be granted for A5 uses in areas where the levels of obesity in Year 6 pupils is over 10%. Proposals for A5 uses should be assessed against the most up to date annual National Child Measurement Programme (NCMP) data.
6. The Council Officer Report states that the most up to date NCMP data for the area is 2016/2017 data which indicates that 25% of Year 6 children in the Hebburn South Ward are classed as over weight or obese. No evidence has been submitted to dispute this figure and I therefore consider that the proposal would be contrary to HFT1 of the SPD. I also note the Council's Public Health

Team have objected to the proposal and concerns have been raised from local councillors and residents with regards to obesity levels.

7. At my site visit, I observed a number of hot food takeaways within the surrounding area of the appeal site and the proposal would only add to this number, contributing towards unhealthy eating within the local community.
8. I have had regard to the appellants statement of case and that the premises would only serve healthy food options. The proposal is for an open Class A5 use and whilst there may be intentions to only sell healthy food, there would be no means to restrict this.
9. I therefore find that the proposal would have a harmful effect on the health and well-being of the local community. The proposal would not comply with the Framework and the SPD which seeks to enable and support healthy lifestyles.

Conclusion

10. I conclude that for the reasons given above, the appeal should be dismissed.

Chris Baxter

INSPECTOR