



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."
-

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



Appeal Decision

Site visit made on 5 December 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 March 2025

Appeal Ref: APP/C5690/C/23/3327709

271 New Cross Road, London SE14 6AR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr My Quang Ho against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The notice was issued on 20 July 2023.
 - The breach of planning control as alleged in the notice is the unauthorised construction of extraction units and change of use without planning permission in conservation area.
 - The requirements of the notice are:
 1. Cease the use of the property as a hot food takeaway.
 2. Remove fixtures and fittings (namely, but not limited to, cooking facilities and fridges) from the property in their entirety that facilitate the unauthorised used as a hot food takeaway.
 3. Remove all extraction units (namely, but not limited to, ducts, flues, vents, and any supporting structure) in its entirety.
 4. Make good all damage resulting from compliance with the requirements of this notice.
 5. Remove all materials, debris, waste and equipment resulting from compliance with the above requirements of this notice from the land.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) 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.
-

Decision

1. It is directed that the enforcement notice is corrected by:
 - In section 3 the deletion of the alleged breach of planning control in its entirety and replacement with “The material change of use of the premises to a hot food takeaway and the installation of extraction units”.
2. Subject to the above correction, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Preliminary Matters

3. The appeal was made under ground (a). However, in his submissions the appellant has stated that, in his view, the development is a restaurant and not a hot food takeaway as alleged in the enforcement notice. That argument amounts to a hidden ground (b) appeal. Both parties were afforded the opportunity to comment on the ground (b) appeal, and I have had regard to the comments received in my determination of the appeal.
4. The revised National Planning Policy Framework (“the Framework”) was published in December 2024. I afforded the main parties the opportunity to comment on the

Framework revisions, however no responses were received. I have therefore had regard to the revised Framework in my consideration of this appeal.

The Notice

5. It is important for me to get the notice in order. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Town and Country Planning Act 1990 as amended, or the terms varied, where the correction or variation will not cause injustice to the appellant or the local planning authority.
6. The alleged breach of planning control in section 3 of the notice alleges two types of development, operational development comprising the installation of extraction units, and a “change of use”. The “change of use” of the premises is, in itself, not development requiring planning permission. I shall therefore correct the notice to refer to a “material change of use” of the premises as defined in section 55(1) of the 1990 Act.
7. The allegation in section 3 of the notice also fails to specify what the use of the premises has been changed to. This is a significant omission, nevertheless it is clear from reading both the reasons for issuing the notice and the requirements that the allegation relates to a hot food takeaway operating from the premises. I am therefore content that the notice is clear within its four corners what the breach of planning control is, and what must be done to remedy it. Furthermore, having read the appellant’s case and their appeal under ground (a), it is clearly understood that the allegation relates to the material change of use of the premises to a hot food takeaway. I am therefore satisfied that this correction of the notice would not cause injustice to either party in this case.

Ground (b)

8. To succeed on this ground, the onus is on the appellant to demonstrate on the balance of probabilities that the breach of planning control has not occurred as a matter of fact.
9. There is no dispute that the extraction units have been installed. However, the appellant considers that the premises is in fact a restaurant and not a hot food takeaway. The appellant refers to the premises having a seating capacity of around twelve people. This is made up of four tables, each capable of seating two people, and a further counter table providing additional seating capacity. This accords with the layout of the premises at the time of my site visit.
10. Other than the availability of seating, the appellant has provided no supporting evidence to demonstrate that hot food takeaway sales have not been taking place at the premises. On the contrary, the appellant has confirmed that hot food takeaways are available.
11. It was readily apparent from my site visit that the internal layout and seating arrangements were more suited to people waiting for food to be cooked rather than eating in and enjoying a meal. Much of the ground floor is taken up for cooking/food preparation and there is a counter with food and drink on display where customers will place their order. The prominent location of the counter opposite the shop window and main entrance gives the appearance of hot-food being for sale for consumption mostly off the premises.

12. Whilst some customers may on occasion choose to eat in the premises, I find it highly probable that these would be in the minority and there is no doubt in my mind that the primary use of the premises is as a hot food takeaway. Accordingly, the appeal on ground (b) fails.

Ground (a) – the deemed planning application

13. The main issues in this case are the effect of the development on:

- The health of local people, in particular school-aged children; and
- The living conditions of the occupiers of neighbouring residential properties, having particular regard to noise and odour.

Health

14. The appeal site is located on the north side of New Cross Road within New Cross District Centre. The property is a three-storey building with the hot food takeaway operating from the ground floor, with residential accommodation on the floors above. The surrounding area comprises a mix of different properties and uses, although ground floor units are predominantly commercial properties including shops, public houses, and hot-food takeaways.
15. Policy E9 of the London Plan 2021 (LP) states at sub-paragraph D that proposals including hot-food takeaways should not be permitted within 400 metres walking distance from the entrances and exits of existing or proposed primary or secondary schools. Policy DM18 of the Lewisham Development Management Local Plan (adopted November 2014) (DMLP) also sets out that planning permission will not be granted for new hot food takeaway shops that fall within 400 metres of the boundary of a primary or secondary school.
16. The appellant does not dispute that the appeal site is located within 400 metres from St James Hatcham Church of England School, and therefore the use is contrary to Policy E9 of the LP and Policy DM18 of the DMLP. I acknowledge that there are other hot-food establishments near to the appeal site, however the distance is set out within both the LP and DMLP and is not subjective. Additionally, I do not know the circumstances leading to the establishment of the other take-aways.
17. The appellant contends that the hot food currently available at the premises is low-calorie, healthy food which is made using only fresh, unprocessed ingredients including vegetables, herbs, and protein. As a result, the appellant does not consider there to be any negative health impacts arising. It is further stated that his customers are not school children but are instead local people and students from the nearby University.
18. I have given consideration to whether a personal planning condition could restrict the use, given the appellant's position that the food for sale is healthy. The Planning Practice Guidance makes it clear that planning permission runs with the land and that it is rarely appropriate to provide otherwise, stating that it would be exceptional to do so. The submitted evidence does not indicate that there are any exceptional circumstances in this case. The appellant also suggested a planning condition stipulating that any permission would be granted for a temporary period of two years. Such a condition though would not overcome the policy conflict set out above.

19. Policy E9 of the LP states at sub-paragraph E that where development proposals involving hot food takeaway uses are permitted, boroughs should encourage operators to comply with the Healthier Catering Commitment standards (HCCS). Where justified, boroughs should ensure compliance with the HCCS through use of a condition. I have not been provided with any suggested wording for a HCCS planning condition. Nevertheless, it would seem extremely difficult for the Council to effectively and continually monitor what food is sold from such a business or who it is sold to. Consequently, such a condition would fail at least one of the tests for planning conditions as set out in the Framework as it would not be enforceable.
20. Based on the evidence before me, the site is located within 400 metres of a school and therefore the development does not comply with LP Policy E9 or DMLP Policy DM18. It has not been demonstrated that the continued use of the premises as a hot food takeaway would not have a harmful effect on the health of local people, and in particular school-aged children.
21. Paragraph 97 of the revised Framework also sets out that applications for hot food takeaways and fast food outlets should be refused a) within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre; or b) in locations where there is evidence that a concentration of such uses is having an adverse impact on local health, pollution or anti-social behaviour. The approach of both the LP and DMLP in these respects is largely consistent with the most recent government policy as set out within the Framework. Whilst the Framework does afford some discretion where sites are located within town centres, this does not outweigh my conclusion on this main issue.

Living Conditions

22. The appeal site is in a district centre location, with a range of other commercial uses nearby including shops, public houses, and other hot food takeaways. Accordingly, prior to the commencement of the use and installation of the extraction units, the occupiers of neighbouring residential properties probably already experienced a certain amount of noise and disturbance, including from vehicular traffic, deliveries, and pedestrian comings and goings. Nevertheless, there are residential units on the upper floors of the appeal building, and therefore there is the potential for the living conditions of neighbouring occupiers to be affected by the new hot-food takeaway use.
23. Hot food takeaways have the potential to adversely affect the living conditions of nearby residents by virtue of noise and odour caused by cooking inside the premises and any associated extraction units. The Council are of the view that as the extraction units are located at a low level directly below the residential accommodation above, the living conditions of occupiers are adversely impacted by way of noise and odour.
24. In support of this appeal the appellant has provided a description of the air extraction system and process, photographs of the extraction system and units, and a quotation for the ventilation system. However, no site-specific technical assessments such as a noise assessment, noise mitigation measures, or details of odour abatement technologies have been submitted with this appeal to demonstrate that neighbouring residential occupiers are not being affected by this new use.

25. In the absence of a detailed technical assessment, and particularly given the proximity of neighbouring residential properties, there is no reasonable assurance that the extraction units are not exposing neighbours to levels of noise and odour at a level which would have an adverse impact on their living conditions. In my view, it would also not be appropriate to grant planning permission subject to a condition requiring the submission to and approval by the Council of further details regarding the control of noise and odour emissions from the extraction units. This is due to it being unclear whether it would be capable of successfully addressing any issues, or that it may potentially involve the installation of a new extraction unit which would likely require planning permission to be granted for development which is not, and not part of, the development enforced against.
26. For the above reasons, and in the absence of further clear evidence, I conclude that the development harms the living conditions of occupiers of neighbouring residential properties, with regard to noise and odour. The development is therefore in conflict with Policy S11 of the LP, Policy 9 of the Lewisham Core Strategy Development Plan Document (adopted June 2011), and Policy 23 of the DMLP. These seek, amongst other things, to ensure that developments improve air quality, and do not lead to further deterioration of existing poor air quality,

Other Matters

27. I note that the appellant has put significant financial resources into the business, which provides employment for both him and other staff. This provides an economic benefit to those people employed as well as the local area, which are positive factors that weigh in favour of the development.
28. Finally, the appellant alleges that other hot food takeaways have opened in the vicinity of the appeal site without the necessary planning permission. The investigation of alleged breaches of planning control are matters for the Council, and in any event the existence of other unauthorised uses do not justify the appeal scheme or overcome the harms identified.

Conclusion on ground (a)

29. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. For all the reasons outlined above, the development conflicts with the development plan taken as a whole. None of the other matters raised outweigh the harms identified. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
30. I therefore conclude that for the reasons set out above and with regard to all other matters, the appeal on ground (a) fails.

Conclusion

31. For the reasons given above I conclude that the appeal does not succeed. I have upheld the enforcement notice with a correction and refuse to grant planning permission on the deemed application.

David Jones

INSPECTOR



Appeal Decision

Site visit made on 27 August 2025

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2025

Appeal Ref: APP/B2002/W/25/3366279

287 Wellington Street, Grimsby DN32 7JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Sanjeeth Manotheesan against the decision of North East Lincolnshire Council.
 - The application Ref is DM/0781/24/FUL.
 - The development proposed is the premises are currently being used as a retail unit (other than hot food). It is proposed to use the premises as a fried chicken shop with a table or two for customers to sit; for the sale of hot food for consumption on and off the premises.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (i) Whether the proposal would be suitably located having regard to relevant development plan and national planning policies concerning the location of hot food takeaways; and
 - (ii) The effect of the proposal on the living conditions of nearby occupiers.

Reasons

Location

3. Part 5C of Policy 23 of the North East Lincolnshire Local Plan 2018 (LP) requires that proposals for hot food takeaways demonstrate that account has been taken of the relationship with any school located within 400m of the proposed use. The National Planning Policy Framework (the Framework) states at paragraph 97 that local planning authorities should refuse applications for hot food takeaways and fast food outlets within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre.
4. In this instance, there is secondary school provision within 400m of the appeal site and the appeal site does not fall within a designated town centre. There is also a park and youth centre nearby. Whilst it is proposed that there would be one or two tables for customers to sit, the description includes reference to hot food for consumption off the premises, and it is likely that a considerable portion of sales would be the takeaway of hot food.

5. The appellant considers that no potential harm to children from the appeal proposal has been demonstrated. However, the harm arises on health grounds in respect of the type of food usually sold by hot food takeaways and the proximity of the appeal site to the school and other spaces that young people frequent. In their reference to limiting the number of pupils allowed on the premises at any given time the appellant tacitly accepts that the proposal would be used by children. The link between what is described as being a fried chicken shop and unhealthy eating habits in children is self-apparent.
6. The submission does not therefore show that the relationship with the nearest school would be acceptable for the purposes of Policy 23 of the LP. Furthermore, the Framework provides a clear steer that hot food takeaways within walking distances of schools and other places where children and young people congregate should be resisted. This applies in the case of the appeal proposal. The proposal therefore fails to accord with both Policy 23 Part 5B of the LP and with the aims of the Framework in terms of promoting healthy communities.

Living conditions

7. The appeal site is located at the end of the row of terraced properties, on a crossroads and on the corner of two roads. Directly opposite is a convenience store that displays opening hours that extend late into the evening and diagonally opposite is an existing hot food takeaway. Although only a snapshot in time, from what I observed at my site visit it would appear that there is frequent traffic movement along Wellington Street and adjoining roads
8. The appellant advises that they would be agreeable to the suggested amended opening times put forward by the Council, which would see the proposal open no later than 11pm. There is no substantive evidence provided that the proposed use would give rise to an increase in crime, anti-social behaviour or litter.
9. Given the existing surrounding uses, the mixed character of this particular part of Wellington Street and existing traffic movements, on the basis of the closing time referred to above I am satisfied that there would be no conflict with the aims of Policies 5 and 23 Part 5A of the LP, where collectively they seek to protect living conditions.

Other Matters

10. The proposal would bring an existing commercial unit back into use, making efficient use of land and bringing economic benefits. The appeal property is close to residential properties, which means that many customers would be able to visit by means other than by vehicle. However, these benefits do not justify the harm resulting from the location of the proposed use.

Conclusion

11. Whilst I have not found harm to living conditions, I have found that harm would arise due to the location of the proposed use and consequently that the proposal would fail to accord with the development plan and with national planning policy. Therefore, the appeal should be dismissed.

Graham Wraight

INSPECTOR



Appeal Decision

Site visit made on 9 December 2025

by Thomas Courtney BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2025

Appeal Ref: APP/E2205/W/25/3371741

Churchfield Way, Churchfield Green, Wye, Ashford, TN25 5ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Mahmut Savas against the decision of Ashford Borough Council.
 - The application Ref is PA/2025/0526.
 - The development proposed is a street food van business.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 16 December 2025, the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework). Whilst broad changes to the structure of the Framework are proposed as part of this consultation, these proposals could be subject to further change and can only be given very limited weight at this stage. It has therefore not been necessary to consult the parties on the changes, and in reaching my decision, I have had regard to the Framework published in December 2024.

Main Issues

3. The main issues are:
 - whether the proposal would preserve or enhance the character and appearance of the Wye Conservation Area and the landscape and scenic beauty of the North Downs National Landscape;
 - the effect of the proposal on the living conditions of nearby residents, with particular regard to noise and disturbance; and
 - whether the proposal would conflict with national planning policy relating to hot food takeaways in close proximity to schools and places where children and young people congregate.

Reasons

Character and appearance

4. The appeal site is located on Churchfield Way within the built-up area of Wye, adjoining Churchfield Green, which is an important and attractive feature of the settlement. This part of the village is characterised by a spacious and verdant townscape, where residential development is set within generous green margins

and softened by mature trees and planting. Churchfield Green provides a sense of openness within the settlement and allows longer views across grassed open land towards the surrounding countryside and rising hills beyond. Along Churchfield Way, the gently curving alignment of the road, together with the presence of established trees and open space, creates a visually cohesive and tranquil environment, with intermittent views of the village church adding to the area's historic and scenic interest.

5. The appeal site lies within the Wye Conservation Area (CA), which is designated for its special architectural and historic interest. The significance of the CA derives not only from individual listed and historic buildings, but also from its medieval origins, distinctive linear settlement pattern, historic street hierarchy, and the contribution of open spaces and views that connect the village to its surrounding landscape. The Conservation Area Appraisal identifies views across Churchfield Green and towards the wider landscape as important components of the area's character and appearance.
6. Churchfield Green performs an important role in visually and functionally framing the CA. It provides visual relief, maintains openness, and reinforces the historic relationship between the built form of the village and the wider landscape. Its uncluttered character and absence of commercial development is integral to the way the CA is experienced.
7. In addition, the site lies within the North Downs National Landscape (NDNL). The Framework requires great weight to be given to conserving and enhancing the landscape and scenic beauty in these areas, which is the statutory purpose of such landscapes. Of particular relevance is the identified view corridor across the Downs and Stour Valley and key vista point on Churchfield Way, which is recognised by the Wye Neighbourhood Plan (identified in Policy WNP1c and Figure 2.3) as an important view contributing to the village's setting and its relationship with the wider landscape.
8. From Churchfield Way and the adjoining green, this view is experienced as a largely uninterrupted and uncluttered outlook across open space towards the rolling landform of the Downs and the Stour Valley beyond. The absence of built or commercial features within the foreground allows the landscape to be read clearly, reinforcing a sense of openness and visual continuity between the settlement and its rural context.
9. The proposal would introduce a visually apparent and activity-led commercial use into the foreground of this view corridor. Although the appellant emphasises that the van is mobile and modest in scale, the regular presence of a street food van, together with associated customer activity, vehicle movements and operational paraphernalia, would introduce visual clutter and movement into what is currently a calm and open vista. This would interrupt established sight lines, eroding the clarity and appreciation of the identified view, and would also materially alter the character of this space.
10. This activity-led change would introduce visual clutter into an area valued for its openness and tranquillity, and create a focal point of commercial activity that would appear incongruous within the historic spatial framework of the CA. The proposal would therefore erode the contribution that this area makes to the CA's significance.

11. The appellant contends that the proposal would not result in visual clutter, citing the absence of illuminated signage, external furniture or advertising, and suggests that such matters could be controlled by condition. The harm identified arises not merely from ancillary items, but from the regular stationing of a commercial vehicle and the associated activity within a space that contributes to the significance of the CA and the appreciation of the identified vistas. Even without signage or external fittings, the presence of the van itself, together with customer activity, queuing and associated movement, would introduce visual clutter and distraction into what is presently an open and uncluttered townscape and view corridor. Conditions could not prevent this fundamental change in visual experience or avoid the resulting harm.
12. In reaching this view, I have had special regard to the statutory duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 1990 Act), which requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. Furthermore, Paragraph 212 of the Framework advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
13. Given the above, the proposal would fail to preserve or enhance the character and appearance of the Wye Conservation Area and would result in harm to its significance. Accordingly, the proposal would fail to satisfy the requirements of the 1990 Act and conflict with Policies SP6, and ENV14 of the Ashford Local Plan 2030 (the 'Local Plan') and insofar as they seek to ensure proposals demonstrate a careful consideration of local character, preserve or enhance the character and appearance of conservation areas, and do not prejudice important views out of conservation areas.
14. The proposal would also not conserve or enhance the landscape and scenic beauty of the NDNL. It would therefore conflict with the Framework, which requires great weight to be given to this objective, and would be contrary to Policies SP1 and ENV3b of the Local Plan insofar as they seek to ensure proposals conserve and enhance the special qualities of protected landscapes.
15. Furthermore, the proposal would not adhere to Policies WNP1b, WNP1c, WNP2 and WNP8 of the Wye Neighbourhood Plan insofar as they seek to safeguard open spaces, important views and protect local distinctiveness and the surrounding designated landscape.

Living conditions

16. The proposal would operate during evening hours in close proximity to existing residential properties along Churchfield Way. Whilst the appellant indicates that a silent battery rather than a generator would be used to power the appliances, this would not address the other sources of disturbance likely to arise, namely customer arrivals and departures, vehicle doors, voices, queuing and general activity associated with a takeaway use.
17. Given the site's relationship to nearby dwellings and the public nature of the space, I am not persuaded that conditions could adequately control or mitigate the effects of customer behaviour and associated disturbance. In this context, the proposal would result in undue harm to the living conditions of nearby residents.

18. The appellant suggests that any impact on residential amenity could be mitigated by restricting opening hours, including by limiting evening trading or by operating within a daytime window. I accept that daytime operation would be likely to result in a lower level of disturbance than evening use. However, the concern in this case arises from the introduction of a takeaway use into a residential environment adjoining open public space, where customer arrivals, departures, queuing and general activity would remain readily perceptible. Even if confined to daytime hours, this level and type of activity would be at odds with the prevailing character of the area and would continue to give rise to an unacceptable degree of disturbance to nearby residents. In these circumstances, restricting or amending the hours of operation would not be sufficient to avoid harm to living conditions.
19. Given this, the proposal would harm the living conditions of neighbouring occupiers with regards to noise and disturbance. It would conflict with Policies SP1 and SP6 of the Local Plan and paragraph 135 of the Framework insofar as they seek to ensure proposals are appropriate to their context and provide a high standard of amenity.

Location of hot food takeaway

20. The appeal site lies within walking distance of Wye School and Lady Joanna Thornhill Primary School and directly adjoins Churchfield Green, a well-used area of public open space where children and young people are likely to congregate outside formal school hours.
21. The appellant argues that there is no adopted local development plan policy which defines a specific exclusion radius for hot food takeaways or mobile food vendors in proximity to schools. I accept that the development plan does not set out a fixed distance threshold or locally prescribed buffer zone in this regard. However, the absence of a defined radius does not mean that the issue carries no weight, nor does it prevent the application of national policy.
22. Paragraph 97(a) of the Framework advises that planning decisions should refuse applications for hot food takeaways within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre. This policy is deliberately framed in locational and qualitative terms rather than by reference to a precise distance, reflecting the fact that walking distance and patterns of movement will vary according to local context. In this case, the appeal site is clearly accessible on foot from nearby schools and lies adjacent to a space frequently used by children and young people.
23. The appellant also contends that the proposal would operate outside typical school hours and that this would mitigate any policy concern. Whilst I acknowledge that evening or restricted daytime trading would reduce the likelihood of direct interaction with pupils during the school day, the Framework does not confine its concern solely to school hours. Rather, it refers more broadly to the presence and availability of hot food takeaways within walking distance of schools and places where children and young people gather. Churchfield Green, in particular, is likely to be used by children and families beyond formal school times, including after school and at weekends.
24. Moreover, the appeal site is not within a designated town centre, where such uses might otherwise be anticipated and accommodated. In these circumstances, I find

that the proposal would conflict with the aims of paragraph 97(a) of the Framework.

Other Matters

25. The proposal would provide some limited economic benefit through the support of a small business. However, this benefit carries limited weight due to the modest scale of the enterprise. A letter of support states the proposed business would broaden the food choices in Wye. This is noted but there are already several restaurants, a supermarket and other food outlets offering hot food takeaway in what is a modestly sized settlement. This consideration therefore attracts limited weight.
26. These considerations would not outweigh the harm identified to the character and appearance of the Wye Conservation Area, the Kent Downs National Landscape, the living conditions of nearby residents, and the conflict with national policy regarding hot food takeaways near schools.

Conclusion

27. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.
28. For the reasons given above the appeal should be dismissed.

Thomas Courtney

INSPECTOR



Appeal Decision

Site visit made on 13 February 2025

by **M J Francis BA (Hons) MA MSc MCIfA**

an Inspector appointed by the Secretary of State

Decision date: 13 June 2025

Appeal Ref: APP/X1355/W/24/3354227

122 The Avenue, Seaham, Durham SR7 8PE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Salah Aldine Aljumaily and Mrs Habiba Yousfi Aljumaily of ZH Business Limited against the decision of Durham County Council.
 - The application Ref is DM/24/01666/FPA.
 - The development proposed is change of use of ground floor commercial unit to hot food takeaway, with collection and delivery; new shopfront; new extraction canopy/duct/flue/cowl system existing to rear elevation; and formation of staff toilet and rear bin store in existing rear extension and outbuildings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published in December 2024 and the main parties have been consulted on the implications of the revised Framework's publication on the appeal.

Main Issues

3. The main issues are the effect of the proposal on:
 - the health and lifestyle of young people; and
 - the living conditions of neighbouring residents with regards to noise and odour.

Reasons

Health

4. The appeal site is at the end of a small parade of shops within a largely residential area. The proposal is located on the ground floor and has previously had a commercial use as a sandwich shop.
5. Policy 30 of the County Durham Plan, 2020 (CDP) is concerned with minimising the impact of an over concentration of hot food takeaways. The supporting text to the policy explains that a key objective of the Council is to reduce levels of obesity and to encourage healthy eating. The Council has found that there is a correlation between the density of fast-food outlets and obesity levels amongst children.

6. The site is not in any of the designated centres listed in CDP Policy 30. However, the policy does state that proposals for A5 uses outside of defined centres, but within 400 metres of an entry point of an existing, or proposed, school or further education college, will not be permitted.
7. Paragraph 96 c) of the National Planning Policy Framework (the Framework) refers to planning decisions that should enable and support healthy lives through both promoting good health and preventing ill-health, especially where this would address identified local health and well-being needs and reduce health inequalities between the most and least deprived communities, for example through access to healthier food. Furthermore, it says at paragraph 97, that applications for hot food takeaways and fast-food outlets within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre, should be refused.
8. The appeal site is, according to the Council, and not disputed by the appellants, within 190 metres of the entrance to Seaview Primary School and Deneside Nursery. In fact, their playing fields are located to the rear of the houses on the opposite side of The Avenue to the appeal site. Therefore, the proposed change of use would conflict with CDP Policy 30.
9. I acknowledge that the school is for primary and nursery age children, therefore, most children would not be accessing a takeaway premises on their own. However, as it is a primary school, children up to the age of eleven would be attending who may be walking to and from school on their own. Additionally, I have no evidence that the school does not have after school clubs and childcare provision, which means that children would be leaving the school after traditional school leaving times.
10. Whilst unhealthy food can be purchased from supermarkets and other outlets, having a takeaway so close to the school premises would undermine the policy to minimise the detrimental impacts of hot food takeaways. A condition to restrict opening hours so that it would not conflict with arrival and leaving times at the school, has been suggested. However, CDP Policy 30, as well as what is set out in paragraph 97 of the Framework, points to the proposal being within a location that should be refused. Therefore, a suitably worded condition with relevant opening hours, would not mitigate the harm.
11. I have had regard to paragraph 85 of the Framework whereby planning decisions should create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Although the appeal site is a vacant shop, other options for the use of the premises, which would not conflict with Policy 30, have not been provided. Therefore, whilst there would be some economic and employment benefits from the retail premises being re-opened, this would not outweigh the conflict with development plan policy and the harm to the health of young people.
12. I therefore conclude that the proposal would harm the health and lifestyle of young people. It would conflict with Policy 30 of the CDP as set out above, as well as chapter 8 of the Framework.

Noise and Odour

13. The site is within a residential area, with residential use on the 1st floors of the shops within the parade, including the appeal site. Additionally, on the vacant site next to No 122 Seaham Avenue, there is planning permission for six dwellings, although there are no details of this development in the evidence. Policy 30 of the CDP states that where a hot food takeaway is considered acceptable, consideration will need to be given to the impact that the development would have in terms of amenity, particularly in relation to noise and odours. Policy 31 of the CDP requires that, amongst other things, development would not lead to inappropriate odours, noise or other sources of pollution.
14. The proposed plan shows the intended equipment and the external duct and duct termination. Although these are not technical drawings, they do show the position and form of odour attenuation that is proposed, and product details of what is intended to be installed has been provided. Hot food was previously sold from the premises, although I did not see, from views outside the site, any existing ducting.
15. Therefore, based on the size of the premises and the proposed scale of operation, a suitably worded condition, to provide further details of the extraction system, including a schematic drawing, would ensure that the proposal would not harm the residents of neighbouring properties. Moreover, the site has previously operated as a commercial premises within an existing parade of shops and there is nothing before me to suggest that it would result in any noise issues.
16. I therefore conclude that the proposal would not harm the living conditions of residents of neighbouring properties with regards to noise and odour. It would not conflict with Policies 30 and 31 of the CDP as set out above.

Other Matters

17. As the proposal is not located within any town, district or local centre or primary retail frontage, Policy 9 of the County Durham Plan (CDP) is not relevant, and a sequential test is not required. Furthermore, the effect of the proposal on the character and appearance of the area and parking are not in dispute.
18. The appellants contend that there is a fallback position, as the premises has an existing Class E use¹, and an ancillary amount of hot food could be sold, as was previously done at the site. However, this would likely be less harmful to the health of young people than if a hot food takeaway was operating from the site. Furthermore, whether the Council would take any enforcement action against such a use is not for me to consider. Consequently, this is of limited weight in my determination of the appeal.
19. The appellants have referred to planning applications where the Council allowed hot food takeaways within 400m of schools. That at 17A Seaside Lane, Easington Colliery² was in a local shopping centre with 21 out of 41 units vacant. The proposal at 74 High Street South, Langley Moor³ was considered acceptable as it was close to a local shopping centre and closed between 15.00-17.30 Monday to Friday during school term time. Although there should be consistency in planning decisions, each case must be assessed on its own merits. Based on the limited

¹ The Town and Country Planning (Use Classes) Order 1987

² DM/23/03627/FPA

³ DM/23/02104/FPA

evidence that I have, I cannot be sure that these cases are directly comparable to the appeal.

20. The appellants have provided two appeal decisions within the South Tyneside Council area that have been allowed. The decision⁴ for Tino's cafe is an existing café and restaurant which already serves fast-food, and the premises are not close to either a primary or secondary school. That at 79-81 Fowler Street⁵ is within a defined shopping centre, and it did not conflict with any identified development plan policy. Therefore, from the information that I have available, I do not consider that these two cases are comparable to the appeal before me.

Conclusion

21. The proposed development conflicts with the development plan when considered as a whole. Whilst the proposal would not harm the living conditions of neighbouring residents, this does not outweigh the identified harm and associated development plan conflict.
22. For the reasons given above, I conclude that the appeal is dismissed.

M J Francis

INSPECTOR

⁴ APP/A4520/W/24/3347878

⁵ APP/A4520/W/24/3349010



Appeal Decision

Site visit made on 21 May 2025

by **D Ellis MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 June 2025

Appeal Ref: APP/U5930/W/25/3360723

3 The Broadway, Chingford, Waltham Forest E4 9LQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Ms Sezer Garip against the decision of Council of the London Borough of Waltham Forest.
 - The application Ref is 242493.
 - The development proposed is described as 'change of use from shop (Use Class E) to hot food take away (Sui Generis) with installation of extract ventilation system at roof level. Retention of new shopfront. Opening hours: Monday to Friday – 16:00 – 22:00, Saturdays – 12:00 – 22:00, Sundays – Closed.'
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application form refers to the applicant as Mr Sezer Garip. However, Ms Sezer Garip is referred to on the appeal form and supporting documentation. I have therefore used this in the header above.
3. The change of use has already been carried out and the takeaway appeared to be open at the time of my site visit. As this was at approximately midday, it was therefore operating outside of the proposed opening hours. In the interests of clarity, I have assessed the proposal on the basis of the submitted details.

Main Issue

4. The Council raises no objection to the new shopfront or the installation of the ventilation system and, based on the evidence before me, I can find no reason to disagree. The main issue therefore is the effect of the development on community health.

Reasons

5. The appeal site is a ground floor unit in a parade of shops. The site is within a designated district centre and primary shopping area.
6. Policy 51 of the Waltham Forest Local Plan Part 1 (2024) (WFLP) and Policy E9 of the London Plan (2021) (LP) are both concerned, in part, with restricting the number of hot food takeaways in walking distance of educational establishments and youth facilities and minimising the impact of an over concentration of hot food takeaways. The supporting text to the policies further explains that a key objective

is to reduce levels of obesity and to encourage healthy eating in order to promote healthier communities.

7. WFLP Policy 51, LP Policy E9 and Policy BED2 of the Highams Park Neighbourhood Plan (2020) (NP) all require hot food takeaways to not be located within 400 metres walking distance of educational establishments including nurseries, primary schools and secondary schools. These policies align with paragraph 97 of the National Planning Policy Framework (the Framework), which states that applications for hot food takeaways should be refused in locations within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre.
8. The appellant accepts that a nursery, a primary school and a secondary school are all within 400 metres walking distance of the appeal site. While the site is within a district centre and primary shopping area, WFLP Policy 38 sets out the hierarchy of centres and confirms that the site is not within a designated town centre.
9. Although children attending the nursery and primary school may not purchase a takeaway themselves, it is possible that a parent or carer could buy food from the takeaway and share it with the child.
10. The school day at Highams Park School ends at 15:15, although the submitted timetable shows that some pupils may have an additional lesson or attend extra-curricular clubs or activities which would end at 16:20. Moreover, not all pupils may head home immediately and could congregate and socialise with friends in the vicinity of the appeal site after school. As such, the proposed opening times of either 16:00 or 17:00 would allow children the opportunity to purchase food from the takeaway.
11. Even if the schools serve fish and chips every Friday, I have no evidence before me to demonstrate how many pupils at the school eat fish and chips. It is also unknown whether the cooking methods, such as deep fried or oven baked, are the same at the school and the takeaway. In any event, the schools may serve fish and chips once a week as a lunchtime meal whereas the takeaway would offer the opportunity for fish and chips to be consumed every day as an evening meal or as an additional snack.
12. Whilst unhealthy food can be purchased from convenience shops, having a takeaway so close to schools undermines the policies that aim to minimise the detrimental impacts of hot food takeaways on the health of the community.
13. Although the submitted 'Local indicators for Waltham Forest' shows that, for the borough as a whole, the proportion of children both at reception age and at Year 6 age who are overweight are slightly lower than the 2023/24 average, this would still represent a significant number of overweight children in the borough. Furthermore, the indicators show that a considerable proportion of year 6 age children are obese. The Health Impact Assessment (dated February 2025) argues that there are a range of adverse impacts and benefits from the takeaway. However, it accepts that there would be a moderate adverse effect due to the provision of fried food.
14. I note that the takeaway has signed up to the Healthier Catering Commitment for London. Nevertheless, as the takeaway would offer a daily opportunity for children to consume fried food, the takeaway could contribute towards a negative impact

on the figures for overweight and obese children in the borough. As such the development does not make a positive contribution towards the health of the community.

15. I note that the main parties agree that there is not an over-concentration of hot food takeaways within the vicinity of the appeal site, and from the evidence before me I can see no reason to disagree with this conclusion. However, this does not override my concerns set out above.
16. The development therefore conflicts with WFLP Policies 48 and 51, LP Policies E9 and GG3 and NP Policy BED2, which seek, amongst other things, that developments promote the creation of healthy places and communities.
17. The Council also cite a conflict with WFLP Policy 49, which requires the submission of a Health Impact Assessment (HIA) for development proposals which meet selected criteria. As an HIA was submitted with the appellant's appeal documents, the requirements of Policy 49 are satisfied.

Other Matters

18. Representations have been received from local residents praising the service and conduct of the takeaway as well as the quality of the food, and I have no reason to doubt the contribution that the appellant has made to the community. However, this does not alter the harm identified above. Whilst the proximity of the schools to the district centre may restrict new takeaways opening, there are existing hot food takeaways already in operation. I have no details before me of any planning permissions for these takeaways, including when planning permission was granted. It is therefore possible that some or all of these other takeaways are exempt from planning enforcement action, or that the planning applications for these were assessed against a previous local and national policy context, which may have had different policies regarding hot food takeaways.
19. The development contributes to the local economy, being a small business within a district centre. Nevertheless, given the scale of the development, this benefit is modest and does not outweigh the harm that I have identified above.

Conclusion

20. The proposal conflicts with the development plan as a whole and the material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. The appeal is therefore dismissed.

D Ellis

INSPECTOR