
Appeal Decision

Site visit made on 18 October 2016

by David Cross BA (Hons), PGDip, MRTPI

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

Decision date: 22 November 2016

Appeal Ref: APP/W4515/W/16/3154960

33 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 Domino's Pizza UK & Ireland Plc against the decision of North Tyneside Metropolitan Borough Council.
 - The application Ref 16/00536/FUL, dated 30 March 2016, was refused by notice dated 26 May 2016.
 - The development proposed is change of use from a café (Class A3) to a hot food takeaway (Class A5); installation of extraction/ventilation equipment and other external alterations.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from a café (Class A3) to a hot food takeaway (Class A5); installation of extraction/ventilation equipment and other external alterations at 33 Station Road North, North Tyneside, Forest Hall NE12 7AR in accordance with the terms of the application, Ref 16/00536/FUL, dated 30 March 2016, subject to the conditions set out in the Schedule to this decision.

Main Issue

2. The main issue is the effect of the proposal on the health of the local community.

Reasons

3. The appeal site consists of a ground floor commercial unit located within the district centre of Forest Hall. There are residential properties located to the rear of the site. At the time of my site visit the unit was vacant but was previously occupied by a cafe i.e. a Class A3 use. It is proposed to change the use of the premises to a Class A5 hot food takeaway with associated external alterations.
 4. Saved Policy S12 of the North Tyneside Council Unitary Development Plan 2002 (UDP) states that proposals for hot food takeaways (HFTs) will be permitted in existing shopping centres and other locations subject to criteria in relation to the amenity of nearby residents. Development Control Policy Statement No 16 (DCPS 16) of the UDP provides further detailed criteria to be taken into account when considering individual proposals. These policies are broadly consistent with the aims of the National Planning Policy Framework (the Framework) with
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regards to promoting sustainable economic development and protecting the amenity of occupants of land and buildings.

5. The proposal is located within a District Centre and therefore complies with the locational requirement of Policy S12. In terms of the criteria to be applied when assessing individual proposals, I am mindful that an objection to the proposal has been received expressing concerns including potential noise and disturbance. However, I note that the Council does not object to the proposal on the basis of these criteria subject to conditions. I am of the opinion that concerns relating to the living conditions of nearby residents and the amenity of the wider area can be addressed through the use of suitable conditions. I conclude that the proposal would therefore comply with Policy S12 and DCPS 16 of the UDP.
6. The Council's decision refers to Policy DM3.7 of the North Tyneside Local Plan – Pre-submission Draft 2015 (LPPD). In comparison to the UDP, this emerging plan proposes a significant change in approach to assessing proposals for HFTs due to an emphasis on public health and the use of criteria based on levels of obesity and proximity to schools, parks etc.
7. Whilst the aim of Policy DM3.7 in relation to promoting healthy communities is broadly consistent with the Framework, I am aware that the LPPD has not been subject to an Examination in Public albeit I note that the Council state that no objections to Policy DM3.7 have been received. Notwithstanding this, and with regard to Paragraph 216 of the Framework, it is possible that the policy could be amended or deleted as a result of the examination into the overall soundness of the plan. As a consequence I can afford the policy only moderate weight as a material consideration in this matter at this time.
8. The reason for refusal refers to specific criteria based on Policy DM3.7 and I will address these in turn.
9. First, the proposed HFT would be within 400m of Forest Hall Primary School. I assume that a distance of 400m has been specified to represent a suitable walking distance from the school. However, due to the age of pupils at a primary school, I consider that children would be likely to be under the supervision of a parent or carer when travelling to and from the school and at lunchtimes. Consequently, children from the primary school would not have unsupervised access to the proposed HFT and it would therefore be unlikely to encourage unhealthy eating habits.
10. Second, the proposal would also be located within 400m of Springfield Park and it was apparent at my site visit that it would be the closest HFT to the park. The supporting text for Policy DM3.7 refers to the proximity of HFTs to schools, but does not elaborate on the reasons for including parks and other uses within the Policy.
11. Third, the proposed use would also be located in a ward where more than 10% of Year 6 pupils are classed as obese i.e. the Council Officer's report states that the appeal site is within Benton Ward where the obesity levels for year 6 pupils is 13.9%.
12. I conclude that the proposal therefore conflicts with criteria (i) and (ii) of Policy DM3.7 as it is located within 400m of a park and within a ward where more than 10% of the year 6 pupils are classified as obese.

13. The appellant has referred to the existing permitted use of the site, which as a Class A3 use could operate as a café or restaurant selling a similar range of food to the proposed use. In response, the Council has stated that the proposal should be determined on its own merits. However, I consider that the fallback position of the existing use is a material consideration and should be given considerable weight. The premises could continue to be used for a Class A3 use and the Council has not provided substantive evidence to demonstrate how the proposal would lead to a significant impact on the health of the community compared to the lawful use of the site.
14. The Council has referred to Appeal Decisions in Gateshead where proposals for HFTs were dismissed in areas with high levels of childhood obesity. However, I note that these decisions were based on an adopted Supplementary Planning Document (SPD) rather than emerging policy. I do not have the full details of the evidence in support of the adoption of the SPD or of the circumstances of the particular appeals. I cannot therefore be sure that they represent a direct parallel to the emerging policy or to the appeal proposal. In any case I have determined the appeal on its own merits.
15. I have found the proposal is contrary to Policy DM3.7. This is an emerging policy which I have already decided should be afforded only moderate weight. However, the appellant points out that it effectively prevents any HFT application from being permitted for all wards where obesity is over 10% and it would appear at present that this is every ward in the Borough. Such a blanket ban on HFTs for the whole or even substantial parts of the Borough does not, on the evidence before me, appear to be in accordance with the principles of the Framework and such an approach may be found to fail to balance the three strands of sustainability described in Paragraph 7. Consequently, this does at least cast doubt on whether the currently submitted policy will eventually be adopted wholesale and further reduces the weight I shall attach to it. In conclusion therefore I find the harm to the emerging policy insufficient to outweigh the requirements of the Framework to support a growing economy and the positive, albeit small, contribution the proposal would make to local job creation, especially as the fallback position suggests an A3 use could well operate from the site in any event.

Other Matters

16. An objection has been received expressing concern about the proposal bringing young adults to loiter in the area, litter and making the area feel unsafe and unkempt. However, there is no evidence that the proposal would give rise to antisocial behaviour in the area and these matters would not justify withholding planning permission. Furthermore, the proposal would bring a vacant unit back into a productive use which would potentially improve the appearance of the area.

Conditions

17. The Council has suggested a number of planning conditions which I have considered against the advice in the Planning Practice Guidance and retained Annex A (model conditions) of former Circular 11/95: Use of Conditions in Planning Permission. As a result, I have amended some of them for clarity.
18. In addition to the standard 3 year time limitation for commencement, I have imposed a condition requiring the development to be carried out in accordance

with the submitted plans. Conditions in relation to cooking equipment, ventilation, noise, hours of opening and deliveries are necessary in the interests of living conditions of nearby residents.

Conclusion

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

David Cross

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drg. No. 15149-XX-DR-0005, Block Plan (Drg. No. 15149-XX-DR-0006), Existing Elevations (Drg. No. 15149-ZZ-DR-0002); Existing General Arrangement Plan (Drg. No. 15149-00-DR-0001); Proposed Elevations (Drg. No. 15149-ZZ-DR-0004); and Proposed General Arrangement Plan (Drg. 15149-00-DR-0003).
- 3) There shall be no frying or deep frying equipment used on the premises, unless full details have been submitted to, and agreed in writing by the Local Planning Authority. Thereafter any cooking equipment shall not be installed or used other than in accordance with the approved details.
- 4) Before the use hereby permitted takes place, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.
- 5) Before the use hereby permitted takes place, a scheme which specifies the provision to be made for the control of noise emanating from the building shall be submitted to and approved in writing by the local planning authority. The approved scheme (including any noise insulation) shall be fully implemented prior to the commencement of the use and thereafter be retained in accordance with that approval and retained for so long as the use continues.
- 6) The premises shall only be open for business between the hours of 1100 – 2300 on any day.
- 7) Collections/deliveries to the premises shall only take place between the hours of 1100 – 2100 on any day, except for the delivery of food to customers.