The Planning Inspectorate

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: 23 November 2016

Appeal Ref: APP/W4515/W/16/3154710
East-Side Sub-unit Ground Floor Anderson House, 29 Coast Road, Wallsend NE28 8DA

- 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 Khizer Pervez of NCL Retail against the decision of North Tyneside Metropolitan Borough Council.
- The application Ref 16/00910/FUL, dated 20 May 2016, was refused by notice dated 15 July 2016.
- The development proposed is part sub-division of existing Retail Use Class A1 building and part change of use to create individual hot food takeaway (Use Class A5) sub-unit.

Decision

1. The appeal is allowed and planning permission is granted for part sub-division of existing Retail Use Class A1 building and part change of use to create individual hot food takeaway (Use Class A5) sub-unit at East-Side Sub-unit Ground Floor Anderson House, 29 Coast Road, Wallsend NE28 8DA in accordance with the terms of the application, Ref 16/00910/FUL, dated 20 May 2016, subject to the 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. 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 regards to promoting sustainable economic development and protecting the amenity of occupants of land and buildings.

4. The proposal is not located within a designated shopping centre and should therefore be assessed against the criteria of Policy S12 and DCPS 16 in relation matters including the amenity of nearby residents. I note that the Council does not object to the proposal on the basis of these criteria subject to conditions. I acknowledge that objections to the proposal have been received expressing

concerns about issues including odour from the proposal. However, whilst there are residential properties located in the area of the appeal site, 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 therefore conclude that the proposal would comply with the provisions of Policy S12 and DCPS 16 of the UDP.

5. 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.

6. 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.

7. The reason for refusal refers to specific criteria based on Policy DM3.7 and I will address these in turn.

8. First, the proposal would be located within 400m of Arboretum Park which is located some distance to the south of the appeal site on the opposite side of the A1058 Coast Road. I assume that a distance of 400m has been specified to represent a suitable walking distance from the park. However, the dual carriageway of the A1058 is a barrier between the park and the appeal site, and pedestrians wishing to access the proposed HFT from the park would need to take an extended route via a busy roundabout to the west. I consider that the convoluted nature of the route would act as a deterrent to pedestrians who may otherwise access the proposed HFT from the park. Due to the obstacles to access from the park to the HFT, I consider that the proposal does not conflict with the principle of criterion (i) of Policy DM3.7.

9. Second, the proposed use would also be located in a ward where more than 10% of Year 6 pupils are classed as obese. The Council states that the appeal site is within Wallsend Ward where more than a quarter of year 6 pupils are obese i.e. 26.6%. The proposal therefore conflicts with criterion (ii) of Policy DM3.7. However, I note that the appeal site is located directly adjacent to a retail unit which sells a variety of snacks, sweets and other high calorie produce.

10. 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. Also, 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.

11. I have found the proposal is only contrary to criterion (ii) of 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 operates as a blanket ban for all wards where obesity is over 10%. They argue this could cover the whole Borough. While this is speculation at this point, I have no evidence either way. 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.

Other Matters

12. Objections to the proposal have been received expressing concern about the number of takeaways in the area, antisocial behaviour, litter, vermin and storage of waste. However, there is no substantive evidence that the proposal would give rise to antisocial behaviour or generate litter in the area and these matters would not justify withholding planning permission. Whilst there is an existing HFT nearby I consider that the number of HFTs in the area would not be excessive. Concerns in relation to vermin and the storage of waste can be addressed by a suitable condition in relation to refuse storage.

Conditions

13. 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.

14. 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 refuse storage, construction works, ventilation, noise, hours of opening and deliveries are necessary in the interests of living conditions of nearby residents.

15. The appellant has stated that the specifications in relation to refuse storage are too onerous and should solely relate to the location of bins within the rear yard. However, due to the nature of the refuse likely to be generated by the proposed use and the proximity of nearby uses, I consider that a condition relating to the form of refuse storage is reasonable. Notwithstanding this, I have amended the wording of the suggested condition to require details to be submitted for approval rather than the specifications suggested by the Council.

Conclusion

16. 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 be carried out in accordance with the following approved plans: 807/01, 807/02, 807/03, 807/04, 807/05, Proposed Ground Floor Plan – Extent of HFTA.

2) The development hereby permitted shall begin not later than 3 years from the date of this decision.

3) Demolition or construction works (including deliveries) shall take place only between 0800-1800 on Monday-Friday, 0800-1400 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.

4) Prior to the occupation of the development details of facilities to be provided for the storage of refuse at the premises shall be submitted to and approved in writing by the local planning authority. The facilities shall be provided in accordance with the approved details prior to the occupation of any part of the development and be retained permanently thereafter.

5) 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.

6) 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.

7) The premises shall only be open for business between the hours of 0800 – 2300 on any day.

8) Collections/deliveries to the premises shall only take place between the hours of 0800 – 2100 on any day.