

Appeal Decision

Site visit made on 26 October 2016

by M Seaton BSc (Hons) DipTP MRTPI

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

Decision date: 23 November 2016

Appeal Ref: APP/H0738/W/16/3155836

91 Lanehouse Road, Thornaby, Stockton-on-Tees, Cleveland, TS17 8AB

- 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 Hussein Hassan against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 15/3073/COU, dated 8 December 2015, was refused by notice dated 25 May 2016.
 - The development proposed is a change of use from retail (Use Class A1) to a hot food takeaway (Use Class A5).
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Procedural Matter

1. I note that the appellant initially proposed in the planning application form hours of opening of the premises of 10:00 to 23:00 Monday to Sunday and on Bank Holidays. Subsequently the appellant has indicated within the Grounds of Appeal a revision to the proposed hours of opening to 09:00 to 17:00 Monday to Sunday and on Bank Holidays. I am satisfied that all parties have had the opportunity to consider the proposed alteration to the hours of opening during the course of the appeal, and I have also had regard to the revised hours of opening in determining the appeal.

Decision

2. The appeal is allowed and planning permission is granted for a change of use from retail (Use Class A1) to a hot food takeaway (Use Class A5) at 91 Lanehouse Road, Thornaby, Stockton-on-Tees, Cleveland, TS17 8AB, in accordance with the terms of the application Ref 15/3073/COU, dated 8 December 2015, subject to the conditions set out in the Annex.

Main Issue

3. The main issue is whether the proposed development would result in an adverse impact on the highway safety of road users and pedestrians, having regard to parking.

Reasons

4. The appeal site is situated in a commercial centre of 10 units, which is within a predominantly residential area. Of the existing 10 units, the uses are identified as comprising four existing hot food takeaways, a café and 5 Class A1 retail units, including the vacant retail unit the subject of this appeal, and the vacant neighbouring unit at No. 89 Lanehouse Road, which is currently the subject of another appeal (Ref: APP/H0738/W/16/3157163). The commercial units are set
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back from the road behind the pavement and open forecourts, with the street immediately in front of the parade and the appeal premises restricted for parking through double-yellow lines. A bus stop and shelter are also located in front of the appeal premises.

5. The Council's concerns revolve around the potential for the proposed use to attract additional vehicles to the premises, which as a consequence of the absence of off-street parking would exacerbate existing problems created by excessive on-street parking in the area. It is particularly highlighted that the proposal would be likely to result in vehicles parking on the carriageway and pavement in front of the premises, which it is contended would lead to an adverse effect on the safety of highway users and pedestrians. In this respect, I note that the Council has opted not to submit an appeal statement to support the reason for refusal. Nevertheless, the reason for refusal is reflective of the objections which were raised by the Council's Highways Team. In their consultation response, my attention has been drawn to Supplementary Planning Document 3 (SPD3): Parking Provision for Developments 2011, which advises that in this instance the Class A5 unit should provide 1 parking space for staff, 1 space for customers, and 1 space for deliveries.
6. The existing commercial units, including hot food takeaways, are indicated as not possessing any off-street parking, although I have had regard to the availability of unrestricted on-street parking within a short walking distance of the appeal premises. In this respect, I have carefully considered the Council Highway Team's contention that the proposed use would likely to result in injudicious and indiscriminate parking by customers attempting to park as close as possible to the premises due to high levels of on-street parking in the area. However, whilst I accept that such behaviour may have the potential to occur, I do not consider that it could reasonably be said that this would relate solely to Class A5 units and not other Class A uses. Furthermore, it would seem to me that the existence of parking and waiting restrictions in front of the premises, if appropriately enforced, would provide a reasonable basis for the prevention of injudicious parking. I am also mindful that no technical evidence has been presented by the Council regarding the existing levels of parking or to indicate that the existing hot food takeaways in the vicinity are suffering from problems of inconsiderate parking to the detriment of highway safety.
7. For the reasons set out above, I am not persuaded that the proposed change of use would result in an unacceptable impact on highway safety, even having regard to any cumulative highway impacts arising were any change of use to the neighbouring premises to be implemented. I note that the Council has not specifically identified a Development Plan policy within the reason for refusal. However, I am satisfied from the submissions that there would not be conflict with saved Policy S14 of Alteration Number 1 to the adopted Stockton-on-Tees Local Plan 2006 (the Local Plan), which requires consideration of the level of traffic to be generated by Class A5 uses, and the provision of parking facilities in terms of general amenity. Furthermore, whilst I accept that there would be some conflict with the parking standards set out within SPD3, I do not consider the residual cumulative impacts of the development to be severe on highway grounds, and therefore for there to be conflict with paragraph 32 of the National Planning Policy Framework (the Framework).

Other Matters

8. I note that the Council concluded that the proposed change of use would be acceptable in principle. This conclusion is cited as having been reached for reasons including the sustainable location of the appeal premises, and the desirability of maintaining the vitality and viability of the parade through the occupation of an otherwise empty unit. However, I have had regard to the representations of interested parties on a variety of issues, including the need for another hot food takeaway, the impact on health and the proximity to existing schools, waste disposal and vermin, anti-social behaviour and noise.
9. The Council has addressed a number of these issues in its committee report but has not included the matters within its reason for refusal. In respect of the need for the take-away, whilst I have had regard to the Council's conclusions regarding the assessment of suitability of alternative sites, I have not been directed to a policy basis within the development plan setting out a requirement to assess need as part of the consideration of acceptability for such premises, and this is not therefore a matter to which I can attribute any significant weight.
10. Turning to matters related to health and proximity to schools, the Council has cited Policy TC10 within the emerging Regeneration and Environment Local Development Document (LDD) as a basis for allowing the limitation of Class A5 uses within 400m of schools. However, the Council notes within the Committee Report that the LDD has not been formally adopted and does not therefore attract any significant weight as a material consideration. Furthermore, I have not been directed to a policy basis within the Development Plan where there would be a direct limitation on health grounds to Class A5 uses.
11. In respect of the potential for littering, I accept that a proportion of takeaway customers do litter, although I am mindful that this accusation could also be made against some customers of shops which sell food including newsagents, and I consider that it would be unreasonable to withhold planning permission on this basis. However, I note that the Council has suggested a condition requiring the submission and agreement of a commercial and customer waste strategy, which I am satisfied would be a proportionate response to address this concern, as well as establishing an appropriate means of storing and dealing with food refuse.
12. Turning to concerns over the generation of odours, whilst the appellant has not submitted technical details of the means of extraction of odours, the Council has expressed a general acceptance that the proposed use of a brick clad flue on the rear elevation would provide an acceptable solution. I am also satisfied that with the brick flue terminating above the eaves of the building that, subject to the provision of a suitable technical specification for the means of extraction, odours from cooking at the premises would be adequately dispersed in a manner which would not result in an adverse effect on living conditions.
13. With regards to concerns over the potential for anti-social behaviour, I have had regard to the submissions from Cleveland Police regarding the need for CCTV if the proposals were to be approved. Whilst I would not disagree with the Council's summary that these are matters which could be attributed ultimately to the licensing of the premises, I am mindful that crime and the fear of crime are capable of being material planning considerations, as set out

at paragraph 69 of the Framework. Nevertheless, I noted at the site visit an existing external CCTV column is positioned close to the appeal site, and I consider that the facilities either exist or could be put in place to provide an appropriate response to such concerns.

14. I have also considered concerns in respect of the potential for noise and odours arising from the operation of the unit in respect of the use of extraction equipment, and noise arising from customers accessing the premises. However, in these respects I have noted that the Council has suggested the imposition of conditions to secure the appropriate technical specification of the extraction equipment, as well as the hours of operation of the unit. I am satisfied that the imposition and adherence to these conditions would ensure that the living conditions of neighbouring occupiers would be safeguarded to an acceptable degree.

Conditions

15. I am satisfied that conditions relating to timeliness and the identification of plans are necessary in the interest of proper planning and to provide certainty in respect of the development. I consider that conditions related to the hours of operation of the unit, and the submissions of details of noise and odour performance from kitchen extraction equipment, are necessary in the interests of safeguarding the living conditions of nearby residential properties. However, I have amended the conditions requiring details of the hours of opening of the premises and the noise surveys, in accordance with the revised hours proposed by the appellant.
16. A condition related to the provision of details of a grease trap would be in the interests of providing acceptable drainage for the premises, whilst securing details of the arrangements of waste provision and collection would be in the interests of the general amenity of the area.

Conclusion

17. For the reasons given above and subject to the conditions listed, the appeal is allowed.

M Seaton

INSPECTOR

Annex

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plan: Drawing Number SBC0001 dated 14 December 2015.
- 3) The premises shall not be open for customers outside the following hours 09:00 to 17:00 Monday to Sunday and on Bank Holidays.
- 4) Notwithstanding the submitted details, a noise consultant's report shall be submitted to the Local Authority prior to the premises being brought into use to demonstrate the rating level of sound emitted from any new kitchen extraction and ventilation associated with the development shall not exceed background sound levels by more than 5dB (A) between the hours of 0900-1700 (taken as a 15 minute LA90 at the nearest sound sensitive premises). All measurements shall be made in accordance with the methodology of BS4142: 2014 (Methods for rating and assessing industrial and commercial sound) and/or its subsequent amendments. Where access to the nearest sound sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the nearest sound sensitive property. Any deviations from the LA90 time interval stipulated above shall be agreed in writing with the Local Planning Authority.
- 5) Prior to the commencement of the A5 use, details of a ventilation and fume extraction system, including a full technical specification, specifying the position of ventilation, fume or flue outlet points and the type of filtration or other fume or odour control treatment at the premises, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the hereby approved use commencing and shall be retained thereafter and maintained in accordance with the specification, including the replacement of any filters.
- 6) Prior to the commencement of any A5 use, details of a drainage system to the premises, relating to the installation of a suitable grease trap to prevent the discharge of grease into the public sewer, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the use commencing and thereafter shall be retained and maintained in accordance with the agreed specification.
- 7) Prior to the commencement of the development hereby approved, details of the siting and provision of waste provision and collection shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the use starting and shall be retained thereafter and maintained in accordance with the specification.