



Appeal Decision

Site visit made on 2 October 2019

by Kate Mansell BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th October 2019

Appeal Ref: APP/H0724/W/19/3234665

Unit 4, The Saxon, Easington Road, Hartlepool TS24 9QU

- 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 M Jagpal on behalf of Ingleby Barwick Land and Property Developments against the decision of Hartlepool Borough Council.
 - The application Ref H/2019/0155, dated 28 March 2019, was refused by notice dated 15 July 2019.
 - The development proposed is a change of use from A1 to A5 hot food takeaway.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on:
 - The vitality and viability of the local centre;
 - The health and well-being of local residents.

Reasons

Vitality and viability

3. Fronting onto the busy Easington Road, the appeal site is one of four ground floor units that constitute the original Former Saxon Pub Local Centre (FSPLC). It was created from the conversion of the public house¹ with permission given at that time for three A1 retail units and a hot-food take-away (A5) (HFT). The immediate surrounding area is predominantly residential with a public park directly opposite.
4. The centre presently comprises a HFT (A5) in Unit 1 and a convenience store (A1) in Unit 2. Unit 3 is in use as a dentist's surgery (D1), prior to which planning permission was refused for its conversion to a HFT. This was subsequently, dismissed on appeal on the grounds of harm to the vitality and viability of the retail character and function². Unit 4, the subject of this appeal, is currently vacant. The first floor of the centre, principally above Unit 2, is also vacant but has planning permission for use as a restaurant (A3)³.
5. Policy RC16 of the Hartlepool Local Plan (May 2018) (HLP) relates specifically to local centres, seeking broadly to diversify, support and protect them. It

¹ Council Ref: H/2014/0159

² Council Ref: H/2017/0325 and Appeal Ref: APP/H2074/W/17/3190602

³ Council Ref: H/2018/0075

- identifies them as sequentially preferable locations for a range of uses below 300m², including retail (A1), non-residential institutions (D1) and hot food take-aways (A5). Policy RC16 also clarifies that applications for HFT A5 uses will be determined in accordance with Policy RC18.
6. Policy RC18 specifically states that within the FSPLC, the amount of A5 floorspace should not exceed 15%. I appreciate that at the time the HLP was adopted, Unit 1 already amounted to approximately 16.7% of the centre's total floorspace and breached Policy RC18. However, it secured planning permission prior to the adoption of the HLP. Furthermore, the supporting text to Policy RC18 clarifies that the percentages were determined by a combination of factors, including A5 occupation levels and vacancy rates. In this regard, how the policy threshold for this centre or other centres was derived or why the policy relates only to A5 uses rather than including other 'retail' premises selling hot food, is not a matter for me to consider as part of a S78 appeal.
 7. Nonetheless, both parties agree that adding the floor area of the proposal at Unit 4 to the existing HFT at Unit 1 would result in approximately 24.2% of the total floor area of the FSPLC being in A5 use. This would clearly exceed the threshold set out in Policy RC18. Given the small scale of the local centre, and even though the HFT uses would not be directly adjacent to each other, it would still constitute a significant proportion of A5 floorspace to the detriment of its retail function.
 8. Policy RC16 of the HLP does acknowledge the need to consider the length of time a unit has been vacant when considering other uses. Having been completed in January 2017, Unit 4 has effectively been unoccupied since, except for a period of 3 months in early 2018. The letter of March 2019 from the agents marketing the property also indicates that no offers for retail use were received up to that point, even taking into account the inclusion of a material rental discount.
 9. I appreciate that there was interest from a hot-food take away operator and hot food type uses. I also acknowledge that a vacant premise with closed shutters and an absence of signage would not be as visually attractive as an occupied unit, such that it could detract from the vitality of the area as a whole. However, the lease to Unit 3 was only taken up in March 2019 and the premises has recently opened as a dentist. Whilst not a retail use, this would nonetheless indicate some interest in the centre.
 10. The appellant also refers to turmoil in the retailing sector. Although I have no general evidence to support this assertion, the recent occupation of Unit 3 indicates that the vacant appeal site did not negatively impact upon the attractiveness of the premises. The appellant further advises that both Unit 1 and Unit 2 are trading well, and the opening of Unit 3 will also bring people to the local centre, which might be beneficial in attracting a tenant to the appeal premises. Taking all these factors together, I am not persuaded that the vacant status of the appeal site sufficiently justifies an excess of A5 floorspace in this centre beyond the threshold established by Policy RC18.
 11. For these reasons, I conclude that the proposal would result in an unacceptable concentration of HFTs within a small local centre. This would be harmful to the vitality and viability of the centre's retail character and function overall. It would therefore be contrary to Policies RC16 and RC18 of

the HLP (2018) which seek, amongst other matters, to protect the vitality and viability of retail centres, having regard to the service they can provide to local communities. These policies are consistent with the objectives of the National Planning Policy Framework (the Framework), including the requirement to achieve strong neighbourhood centres and local shops.

Health and well-being

12. The supporting text to Policy RC18 of the HLP (2018) advises that in order to consider the health impact of development, one of the factors used to set the A5 floorspace thresholds for particular local centres was ward level obesity data for adults, childhood obesity data for schools within the Borough, and the proximity of each area to residential properties. It states that an unhealthy diet is a proven causal link for many illnesses.
13. As a consequence, Policy RC18 identifies that one measure to confront the issue is to limit the number of fast-food take-away outlets. It does not refer to an individual proposal being directly attributable to a material decline in the health and well-being of residents. Rather, it seeks to ensure that there is not a proliferation of hot food takeaways across the Borough with the amount of permitted A5 floorspace in each centre being controlled by virtue of the stated policy provisions, being 15% for the FSPLC.
14. This approach is consistent with guidance within the Framework, which highlights the importance of healthy communities as a social objective and ensuring that decisions support healthy lifestyles, particularly where this would address identified local health and well-being needs. Further advice is provided within the Planning Practice Guidance (PPG), which clarifies that planning can influence the built environment to improve health and reduce obesity and excess weight in local communities. The PPG also confirms that planning policies can, where justified, seek to limit the proliferation of particular uses where evidence demonstrates this is appropriate.
15. In dismissing the appeal for a hot-food take-away at Unit 3 in the decision cited above, the Inspector found that there was insufficient justification to dismiss the appeal in relation to health and well-being. This was, in part, because no ward data on overweight/obesity was provided and no clear link between the proposal and a decline in health and well-being was evidenced. Moreover, at that time, Policy RC18 was within an emerging plan and attributed only limited weight. Consequently, I do not find it directly comparable and in any event, each case must be considered on its individual merits.
16. In this case, however, the consultation response from the Council's Public Health officer, upon which the appellant has had the opportunity to comment, does provide ward-specific data. It identifies that approximately 30% of reception children (age 4-5) and 40% of Year 6 children (age 10-11) within the ward are classified as having excess weight. Of these, approximately 13% and 24% respectively are classed as obese. This is higher than England averages. The percentage of adults classified as overweight or obese is also greater in Hartlepool than the England average by almost 10%.
17. On the evidence before me, excess weight levels in particular amongst reception and Year 6 children within the ward are reasonably high but both childhood and adult excess weight levels/obesity generally within the ward and the wider Hartlepool area are above national averages. Within this context,

whilst controlling and/or modifying eating habits through education and addressing inactivity may also be valid, the measure to control the floorspace of hot-food takeaways within retail centres established by Policy RC18 is clearly part of the Council's strategy to reduce the extent of obesity and improve the health of its residents. The proposal would run counter to this.

18. Furthermore, even though the appeal site might be a reasonably lengthy distance by foot to the three nearest primary schools, it would nonetheless be opposite a park that incorporates children's play equipment, as well as being in close proximity to a residential area. Consequently, it would not be unreasonable to assume that the proposal would increase the opportunities for children and adults to purchase take-away food. This would be to the detriment of specific local health and well-being needs.
19. Policy RC18 does acknowledge the need to consider the length of time that a unit has been vacant, in order to strike a balance between economic development, and, in this case, residents health. With the first-floor restaurant, the vacancy rate would be approximately 40%. However, the appeal site is the only vacant premises within the local centre at ground floor level and even with the shutters down, the centre has the appearance of being well-maintained. The recent occupation of Unit 3 would also suggest that it is not presently subject to spiralling decline. I am therefore not persuaded that the objective in respect of residents' health is outweighed by economic considerations.
20. For these reasons, I conclude that the proposal would result in harm to the health and well-being of local residents, contrary to Policy RC18 of the HLP (2018). This policy seeks, amongst other matters, to ensure that HFT proposals have suitable regard to the health and well-being of residents. It would further conflict with guidance within the Framework, including at Paragraph 91, to achieve healthy, inclusive and safe places that enable and support healthy lifestyles, including access to healthier food.

Other Matters

21. The appellant makes reference within their statement to Paragraph 11 of the Framework and the matter of the 'tilted balance'. I appreciate that paragraph 11(c) recognises that decisions should apply a presumption in favour of sustainable development and proposals that accord with an up-to-date development plan should be approved without delay. In this case, however, I have found the proposal to conflict with the development plan.
22. I also recognise that no specific concerns have been raised about the effects of the scheme on a number of issues, including its design and layout, its effect on highway safety, parking and servicing, litter, and on the living conditions of occupiers of nearby residential properties. I also do not dispute that matters to address issues including cooking fumes, odour and opening hours could be regulated through appropriately worded conditions. However, in order to demonstrate compliance with the development plan, these are requirements that would have to be met for any scheme to be acceptable. They are not matters that diminish the harm I have identified in respect of the main issues above.
23. Furthermore, I acknowledge that the Framework advises that significant weight should be placed on the need to support economic growth and productivity. In this case, there would be some economic and social benefits arising from the

proposal. It would create job opportunities, both direct and indirect, during fit-out and trading. It would also attract additional footfall to the local centre overall and provide a further meeting place for social interaction. However, given the modest size of the unit, the extent of these benefits would be limited and would not outweigh the harmful effects that I have already identified.

Conclusion

24. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning appeals must be determined in accordance with the development plan, unless material considerations indicate otherwise. I have found that the proposal would have an unacceptably harmful effect on the vitality and viability of the local centre's retail character and function, and it would result in harm to the health and well-being of local residents. It therefore does not comply with Policies RC16 and RC18 of the Local Plan. No material considerations have been identified that would indicate making a decision other than in accordance with the development plan and consequently, the appeal must fail.
25. For these reasons, and having regard to all other matters raised, the appeal is dismissed.

Kate Mansell

INSPECTOR