



Appeal Decision

Site visit made on 29 January 2020

by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 March 2020

Appeal Ref: APP/H4505/W/19/3221736

Team Valley Retail World, Tenth Valley West, Team Valley, Gateshead NE11 0BD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
- The appeal is made by Team Valley S.a.r.l against the decision of Gateshead Council.
- The application Ref DC/18/00807/FUL, dated 6 August 2018, was refused by notice dated 3 October 2018.
- The development proposed is the erection of a food and drink unit (Use Class A3/A5).

Decision

1. The appeal is dismissed.

Procedural Matters

2. The unit subject to this appeal (No.26) has been constructed under an earlier planning permission (DC/16/01335/FUL). From my inspection of the site it appears that the structure conforms to the plans that were approved under that planning permission.
3. It is not a matter of dispute between the parties that the application subject to this appeal is, in effect, for the removal of a planning condition imposed under a later planning permission (DC/17/01193/FUL) allowing certain variations to the initial consent. This condition limits the amount of hot food that can be sold for consumption off the premises (hot food takeaway) for Unit 26 to no more than 20% of turnover and prohibits out deliveries through motorised transport. I examine this issue further under Other Matters.

Main Issue

4. The main issues are:
 - the effect of the proposed development on the health of the local community in respect of the availability of unhealthy food; and
 - whether the health effects of the proposal have been properly assessed.

Reasons

Health of Local Residents

5. The appeal property is a detached retail unit located within the Team Valley Retail Park (TVRP). TVRP is a well-established destination providing large format accommodation. The units within TVRP are arranged in a horseshoe shape around a large car park. Close to the entrance to the car park are 2

- detached units, including the appeal unit, and a terrace of 4 units. The appeal unit would be operated by Kentucky Fried Chicken (KFC).
6. Because of the relatively poor level of health within the population it is the Council's policy to reduce the incidence of obesity across the district. To this effect it has produced a Hot Food Takeaway Supplementary Planning Document 2015 (SPD) which identifies 12 considerations to be applied in the determination of planning applications for new hot food takeaways (Use Class A5).
 7. Of particular note is Consideration 2 which seeks to prevent the development of new hot food takeaways (HFTs) in wards where the level of obesity among year 6 pupils exceeds 10% of the cohort. TVRP is located within the ward of Lamesley. The weight of school children is recorded at the age of 4-5 years (in Reception class) and again in year 6 at the age of 10-11 to assess overweight and obesity levels.
 8. According to the officer's report the level of obesity within the ward amongst year 6 children was 19.8% in 2015/16 which is nearly double the Council's target figure. Although the Council has not provided any up to date data for obesity levels in Lamesley I note that the most recent data for the area as a whole is still well above the 10% level. Thus, I find that on the balance of probabilities year 6 obesity levels in Lamesley are still well above the target level. There is no persuasive contrary evidence before me to indicate otherwise.
 9. The aim of the SPD, however, is to improve the health of the entire population of the district, not just school pupils. I consider that the use of data for year 6 school pupils is therefore a proxy for the health of the overall population for the ward rather than being simply a target for just one cohort. This is not to say, of course, that there is an exact correspondence between childhood and adulthood. However, data provided by the Council indicates that overweight or obese pupils are likely to become overweight or obese adults.
 10. It is a matter of agreement between the parties that the appeal site would be considerably further than 400 metres from the nearest secondary school, youth centre, leisure park or park. Thus, there is a limited likelihood that the proposed restaurant / HFT would be a destination for school pupils.
 11. Data showing the postal code addresses of those shopping in the TVRP was collected by CACI on behalf of the appellant over 7 days in April 2016. There were 873 responses of which 96% gave valid addresses. I am satisfied that the survey was conducted in a robust manner and, although the data is almost 4 years old, I consider that it is nevertheless still valid given the relative stability in the function of the centre.
 12. The aforementioned survey shows that 85% of the customers lived within the primary and secondary catchment areas of the TVRP. These areas appear to be almost entirely contained within the Council's jurisdiction. In 2015 all 22 of Gateshead's wards had year 6 obesity levels above the Council's target of 10%. 13 of these wards had levels of 20% or above and 2 had levels above 30%. On this basis I consider that it is reasonable to conclude that the majority of those visiting the TVRP live in wards where a large number of year 6 pupils are classified as obese.

13. It is asserted by the appellant that since every ward in the Council area has a level of year 6 obesity greater than 10%, the policy in the SPD amounts to a de facto borough-wide prohibition on the development of HFTs. Indeed, it is likely that were such a target to be applied across England most wards would be in a similar position since only 2 local authorities have year 6 obesity levels below the policy threshold. On this basis it is asserted that the policy represents an unrealistic target and one that conflicts with the need to have regard to the economic dimension of sustainable development. Finally, it is argued that trying to prohibit HFTs is inconsistent with the National Planning Policy Framework (the Framework) which, instead, seeks to promote healthy food outlets.
14. The possible link between the availability of 'unhealthy' food, whether from an HFT or some other form of eating establishment such as a restaurant or a café, and obesity is one that has been subject to considerable academic investigation in recent years. Both main parties directed me to a number of academic publications in peer reviewed journals reporting the findings of various studies.
15. Based upon a survey of those chains of restaurants with more than 50 outlets Robinson et al (2018)¹ found that the average calorific value of a main meal was around 977 kcals, compared to an advisory consumption target provided by Public Health England for an adult of 600 around kcals. Robinson et al stated that the average level for a main meal consumed from an HFT was in the region of 710 kcals.
16. The study does not negate the proposition that food from HFTs has a high level of calories. Further, it does not consider the level of frequency with which food from HFTs is consumed relative to food from restaurants. Given the price differential I consider that it is reasonable to assume that the number of servings from a typical HFT considerably exceeds those from an average restaurant.
17. Thus, the Robinson et al paper is helpful in providing a contextual framework within which to gauge the effects of HFTs. Nevertheless, it does not undermine the Council's position, based upon its 2013 survey of 187 independent takeaways in Gateshead that a large proportion of hot food from such establishments contains levels of fat, saturated fat and salt which would be prejudicial to good health if consumed too often.
18. A review of the literature considering the link between decisions made through the land use planning system and human health made by Barton (2009)² concluded that the relationship is multifaceted and that any link between the two, especially in urban areas, is highly complex. Obesity is a 'wicked' problem where one policy intervention is likely to have positive and negative consequences.
19. This recognition of the complexity of the problem is borne out by the review paper by Williams et al (2014)³ who, examining 30 previous studies, concluded that there was no strong evidence to justify policies seeking to regulate the

¹ Robinson, E, Jones, A, Whitelock, V, Mead, B and Haynes, A (2018) '(Over)eating at major UK restaurant chains: observational study of energy content of main meals', *BMJ* 2018:1-8.

² Barton, H (2009) 'Land Use Planning and Health and Well-being', *Land Use Policy* 265:115-123.

³ Williams, J, Scarborough, P, Matthews, A, Cowburn, G, Foster, C, Roberts, N and Rayner, M (2014) 'A systematic review of the influence of the retail food environment around schools on obesity-related outcomes', *Obesity Reviews* 15:359-374.

- food environment around schools. Programmes designed to encourage parents, especially in deprived areas, to adopt good eating habits amongst their children at pre-school age have produced encouraging results, suggesting that the problems of obesity need to be first addressed at home (Willis et al, 2016)⁴.
20. I do not necessarily dispute the findings in the papers presented to me. They tend to confirm the widely acknowledged view that there is a significant problem of obesity amongst children in the UK and more generally across the western world. On the whole, however, they had less to say about the adult population. According to the Council 32.4% of all food outlets in Lamesley are HFTs compared to a figure of 22.7% for England as a whole. Some 20% of residents in Gateshead responding to a survey in 2016 consumed an HFT meal once or more a week. However, the penetration rates amongst those of working age is considerably higher, being 24% of those under 35 years old and 22% of 35-64 year olds.
 21. I agree with Barton's analysis that the relationship between the health of citizens and the urban environment is one fraught with complexity and difficulty. Nevertheless, I consider that it is undisputable that there is an obesity problem amongst children in Lamesley, and that in too many cases this will continue into adulthood. I also find that it is undisputable that food from HFTs is generally very high in salt and fat, and that such establishments are found in high numbers in Lamesley and are used frequently.
 22. Following on from this I believe that it is incumbent upon the Council to use those powers it has to try and address this problem. Its SPD builds upon wider Council policy to promote healthy living and represents a well thought through policy response to the proliferation of Use Class A5 HFTs in Lamesley and elsewhere across the borough. In seeking to control HFTs it is attempting to redirect people to healthier eating options which is consistent with the Framework.
 23. I note that the appellant argues that the intended operator is also seeking to move its customers towards a healthier diet by reducing further the levels of salt and fat in its meals. KFC was a pioneer in making healthier choices available on its menu in 2003 and again in 2015. It engages in full transparency, providing information about the kcal content of its meals on the menus. It uses fresh products free from artificial colours, flavour additives and trans fats. The sugar content of its soft drinks has been substantially reduced. Its stated intention is to make further changes to its menu to encourage the trend towards healthier eating.
 24. It is possible that the intended operator's menu might well be healthier than that of other HFTs and that in years to come this gap could become even more apparent. However, whilst recognising that not all HFTs have the same offering and that KFC has made significant progress in this direction, the proposal before me is not for a personal planning permission. Depending upon the lease terms the unit could be sub-let by the intended operator to another HFT provider whose mode of operation and menu offering might be very different to that of KFC. Furthermore, and in any event, it has not been demonstrated that all food sold by KFC is entirely healthy.

⁴ Willis, T, Roberts, K and Berry, T (2016) 'The impact of HENRY on parenting and family lifestyle: A national service evaluation of a pre-school obesity prevention programme', *Public Health* 136:101-108.

25. For the above reasons I find that the proposal would increase the access of citizens of Lamesley and the rest of Gateshead to unhealthy food. Thus, it would fail to comply with Policy CS14 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle Upon Tyne 2010-2030 2015 which seeks to promote well being and health through, amongst other things, controlling the location and access to unhealthy eating outlets. It would also fail to accord with Consideration 2 of the SPD which seeks to prevent the development of HFTs in wards where the level of year 6 obesity is greater than 10%. Since the SPD seeks to give effect to Policy CS14 in the adopted development plan I accord it considerable weight. Finally, the proposal conflicts with the advice set out at paragraphs 7, 8 and 91 in the Framework that development should, respectively, not prejudice the ability of future generations to meet their own needs, support communities' health and well-being, and provide access to healthier food.

Assessment of the Health Effects

26. The Planning Statement at appendix 7 contains what the appellant contends is a Health Impact Assessment (HIA) in support of the application. Submission of such an assessment for a proposed Use Class A5 is advised under Consideration 12 within the Council's SPD. The information provided within the submission was based upon that sought in a template set out by the Council in an appendix to the SPD.
27. In section 3 of the template ('Impact on lifestyles') the appellant stated that the proposal would have a neutral impact upon the diet of consumers. This response was founded on the basis that the food sold for takeaway consumption would be the same as that sold for eating within the restaurant for which planning permission had already been obtained.
28. Since the purpose of the development proposal is to increase the total volume of sales from the unit over and above that which might be achieved under the existing planning permission, rather than simply provide an alternative location for its consumption, I believe that the information provided was less than complete. The appellant should have included evidence relating to the dietary effects of eating the type of food that it intended to sell from the unit for takeaway purposes even though it would be the same as available to eat-in customers. In stating this, however, I am mindful that there is no statutory requirement for an applicant to complete and submit an HIA in connection with a proposed HFT.
29. Further, and in any event, the absence of that information has now been remedied through the submission of documents to this appeal. These have included academic studies evidencing the salt and fat contents of main meals from chain restaurants, the relationship between the proximity of schools to fast food establishments and children's obesity, the link between land use planning and health, and the importance of nutritional advice to parents of pre-school children.
30. For the reasons set out above I conclude that the appellant has now provided the necessary information to allow this appeal to be properly determined. Consequently, I find that the proposal does now accord with Consideration 12 of the SPD which advises that applicants for HFTs submit an HIA to allow the Council, amongst other things, to properly assess its effects on the local

community.

Other Matters

31. As part of this appeal the appellant has made reference to Condition 4 of planning permission DC/17/01193/FUL which restricts the HFT sales to no more than 20% of the 5 units including the appeal property. The appellant raises questions about the wording and the enforceability of such a condition. However, these are not matters that are relevant to the consideration of this appeal. Indeed, the appellant can apply to vary or delete such a condition if they feel it does not meet the tests laid down in paragraph 55 of the Framework. This section 78 appeal is not the mechanism for considering such matters.
32. The use of the unit for a restaurant with ancillary HFT would result in a significant level of capital investment and the creation of several jobs in an area with a high level of unemployment. The appellant contends that an A5 HFT use would generate staff salaries of around £0.5m a year and around 30 FTE jobs compared to £0.3m a year and 14 FTE jobs for an A3 restaurant use. An A5 HFT use would also generate business rates of around £77,000 per year whilst those for an A3 use would be lower. The construction of the unit would cost around £0.8m and the fit out spend would be around £0.7m. However, since the unit has already been built the construction benefit should now be discounted.
33. I agree that the project would be beneficial to the local economy. Whilst I accept that many of these jobs would be low skilled that does not mean that they would not be very valuable. Finding gainful and rewarding employment is important for people's physical and mental wellbeing, in particular those who have been out of work for an extended period of time. Further, I also note that the intended operator offers the opportunity for employees to gain higher qualifications in catering and related areas which should help in increasing skills and promotion opportunities.
34. I also acknowledge that the operation of the unit would help address concerns expressed by shoppers visiting the TVRP regarding the need for an improved catering offer and that such improvements would have benefits for other operators by encouraging visitors to stay longer and spend more. Nevertheless, I believe that this need would be addressed through implementation of the current planning permission allowing the development of the site for an A3 restaurant use with ancillary takeaway use.
35. Thus, I accept that an HFT is likely to generate more jobs, more income and more business rates than a restaurant. Nevertheless, I do not accept that were planning permission for the use of the unit as an A5 HFT to be refused all, or indeed any, of the A3 restaurant / ancillary A5 economic benefits would be at risk. During my site visit I noted that there is a fish and chip restaurant trading in one of the other units subject to the same 20% takeaway turnover restriction as the appeal property. I am not aware as to how profitable the unit is, but it was nevertheless open for business and appeared to be busy.
36. I also note that the proposal would comply with the other considerations set out in the SPD including those expressing the need to avoid and eliminate litter, manage cooking smells, avoid clustering and avoid anti-social behaviour. I also agree that the proposed development is on a brownfield site and that it

would be accessible by bus including the services No 90, 91 and 939.

37. Thus, whilst the proposal would deliver some benefits, as outlined above, the identified harm that would be caused to the health of the local community would be significant and this is a matter of overriding concern.

Conclusion

38. For the reasons set out above the appeal should be dismissed.

William Walton

INSPECTOR

