



Appeal Decision

Site visit made on 11 February 2020

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2020

Appeal Ref: APP/H0724/W/3234392

193 Raby Road, Hartlepool, County Durham TS24 8EH

- 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 Pathmathan Kandasamythurai against the decision of Hartlepool Borough Council.
 - The application Ref H/2019/0008, dated 31 December 2018, was refused by notice dated 4 July 2019.
 - The development proposed is described as the "conversion of existing shop premises into take away food sales".
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, the wording used by the Council has been entered. The Council described the development as the "Change of Use to A5 (hot food takeaway) and installation of replacement doors and windows to front and installation of a flue to the rear (retrospective application)". As neither party has provided written confirmation that a revised description of development has been agreed, I have used the one given on the original application.
3. The proposal seeks permission for the change of use of the ground floor to hot-food takeaway (A5) use, with associated changes to the building frontage, as well as the installation of a flue to the rear. From the application form and my site visit, it appears that the development has already commenced, and a flue has been installed to the rear of the site.

Main Issues

4. The main issues are i) whether or not the site is a suitable location for the development having regard to local policy, ii) whether or not the proposal could be detrimental to the health of local residents, and the effect of the flue on iii) the character and appearance of the area and, iv) the living conditions of occupiers of adjoining properties with regard to loss of light and any overbearing effect.

Reasons

Location

5. The appeal site is on the corner of Raby Road and Marton Street, next to an existing retail unit, in a residential area, close to, but outside the designated Raby Road local centre. Due to the road layout in the area, the side and rear of the appeal site is clearly visible from the public domain.
6. Policy RC16 of the Hartlepool Local Plan 2018 (the Local Plan) seeks to protect designated local centres through the concentration of certain uses, including hot-foot takeaways, within them. Policy RC18 of the Local Plan explicitly deals with hot-food takeaways and their control, seeking to strike the balance between economic development, vitality and viability and health. Irrespective of the locational threshold restrictions of Policy RC18, the site is in a residential area where the provisions of Policy RC21 prohibit hot food takeaways.
7. The appellant has provided no substantial, convincing evidence to suggest that the appeal proposal is the only viable use for the appeal site, or that it would not otherwise affect the vitality and viability of the nearby local centre. Although the appeal site lies close to a local centre, I do not consider that to be in its favour, as allowing such a use in this location would dilute the concentration of uses in the local centre itself. I do not consider that the history of the site in A1 use necessarily supports its future use for A5.
8. Being in a largely residential area and not in a designated retail centre, the appeal proposal does not therefore comply with the requirements of the development plan. There are no other material considerations of sufficient weight to indicate that a decision should be taken other than in accordance with the development plan. As a result, I consider that the appeal site is not a suitable location for the development having regard to local policy. The appeal proposal would conflict with Policies RC16, RC18 and RC21 of the Local Plan.

Health effects

9. Despite the claims of the appellant that there is no evidence linking hot-food takeaways to obesity and poor health, Policy RC18 does seek to control them in order to ensure that residents have the best possible opportunity to live a healthy lifestyle.
10. Similarly, the National Planning Policy Framework (the Framework) requires policies and decisions to achieve healthy places which themselves enable and support healthy lifestyles. The Framework particularly supports this where it would address identified local health and well-being needs.
11. Against that policy context, I note the substantial comments of the Council's Public Health team, which draw parallels between the levels of A5 uses in the town and the health metrics of residents of the town and the ward in particular.
12. In light of that, I consider that it is entirely consistent with national and local policy to seek to control the number of A5 uses in order to support healthy lifestyles. As such, I conclude that the proposal could be detrimental to the health of local residents. It is therefore contrary to Policy RC18 of the Local Plan, and guidance in the Framework.

Character and appearance

13. I note that there are retail and other uses adjacent to the appeal site. However, A1 uses have a different character to the proposed A5 use, not least as a result of generally being in more active use during the day, notwithstanding the ability of the proposed A5 use to be operated during the day. The difference in the character between these uses, and their subsequent acceptability in a predominantly residential area is underlined by the singling out of A5 uses in Policy RC21 of the Local Plan.
14. The flue is clearly visible from Marton Street to the side and rear, and in longer views along Raby Road. Its height exceeds that of the building on which it is installed, and it cuts across a number of upper-storey windows to the rear.
15. Whilst the size of the flue is dictated by its function, as the area around the appeal site is predominantly residential, with no similar flues, it does appear somewhat alien and out of keeping with the residential character of the surrounding area. This contrast is particularly marked to the rear of the appeal site, where the flue appears in the context of rear gardens, yards and extensions. The historic A1 use of the appeal site, and the neighbouring A1 use does not alter my view on this. I consider that the flue is therefore harmful to the established character and appearance of the area.
16. I consider therefore that in terms of its effect on the character and appearance of the area the proposal is unacceptable. It does therefore conflict with Policies RC21 and QP4 of the Local Plan, which, amongst other things, seek to control the location of hot food takeaways and ensure that development is of an appropriate form, respects its surroundings, is aesthetically pleasing and well designed.

Living conditions

17. With regard to living conditions, I am concerned at the relationship of the flue to windows to the rear of the appeal site. The flue blocks a large part of the rear-facing first and second floor windows at the appeal site. It is also close to other side-facing windows. As such, I consider that the flue would have an unacceptable effect on the outlook from these windows and would cause an unacceptable loss of light and overbearing effect.
18. I acknowledge that an A1 use of the site could require a flue. However, the acceptability of the flue in this case is not altered by the use-class it serves.
19. I consider therefore that in terms of its effect on the living conditions of occupiers of adjoining properties with regard to loss of light and any overbearing effect, the proposal is unacceptable. It therefore conflicts with Policy QP4 of the Local Plan, which, amongst other things, seeks to ensure that development is of an appropriate form and is well designed.

Conclusion

20. For the reasons given above I conclude that the appeal should be dismissed.

S Dean

INSPECTOR