



Appeal Decision

Site visit made on 10 March 2020

by M L Milliken BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2020

Appeal Ref: APP/J4525/W/19/3242126

**23 (Ground Floor Only) Queensway, Houghton-le-Spring, Tyne-Wear
DH5 8EL**

- 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 Makhan Kang against the decision of Sunderland City Council.
 - The application Ref 19/01283/FUL, dated 12 July 2019, was refused by notice dated 19 September 2019.
 - The development proposed is described as '*Existing: General Dealers (currently being relocated) Proposed: Hot Food Takeaway*'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Notwithstanding the policies cited on the decision notice, the Local Planning Authority (LPA) has confirmed that, since the appeal was lodged, the Core Strategy and Development Plan (CSDP) (2015-2033) was adopted, on 30 January 2020. As a result, the City of Sunderland Unitary Development Plan (UDP) (1998) policies cited on the decision notice have since been superseded and no longer form part of the development plan. The LPA has confirmed that the relevant CSDP policies for consideration in this appeal are the recently adopted policies BH1, HS1, HS2, ST3 and VC4. The appellant has been informed and provided with the opportunity to comment and I am therefore proceeding with the appeal on that basis.

Main Issues

3. The main issues are:
 - (i) The effect of the proposed change of use on the health and well-being of the local community, with particular regard to the welfare of local school children;
 - (ii) The effect of the proposed change of use on the living conditions of nearby residents, with particular regard to the potential for noise and disturbance; and
 - (iii) The effect of the proposed change of use on the character and appearance of the area, with particular regard to the street scene.

Reasons

Health and Well-being

4. The appeal site is located within a residential area, on a short row of existing commercial uses, including a fish and chip shop and a convenience store. Two primary schools are located within easy walking distance of the site.
5. The proposed takeaway would be open during the lunchtime period and late into the evening. The evidence before me suggests that the Ward in which the takeaway would be located is subject to existing health and well-being issues, particularly regarding the obesity levels of year six pupils and reception pupils. To this end, adopted Policy VC4(2) of the CSDP seeks to prevent the development of hot food takeaways within a 400m radius of entry points to all primary and secondary schools and in Wards where the prevalence of obesity is more than 21% for year six pupils or 10% for reception pupils. Notwithstanding the proximity of the proposed takeaway to local primary schools, it is clear from the evidence before me that the local Ward health and well-being data also fails to support the proposal. The proposal is therefore in conflict with the development plan and I have no reason to question that position.
6. The appellant argues that the UDP policy context was more favourable towards the proposed development, as the wording of the relevant key policy stated that planning permission for hot food takeaways would normally be granted in existing town and local centres and other appropriately located and accessible sites unless they had a detrimental effect on the environment, residential amenity and public or highway safety. Since the policy cited no longer forms part of the development plan, I do not give such a policy comparison weight in the consideration of this appeal.
7. Although the appellant asserts that primary age children would not avail of the takeaway during lunchtimes, I am not satisfied that the presence of the takeaway within the residential area would not exacerbate the health and well-being issues that already exist.
8. For the reasons given, specifically its proximity to two primary schools and with reference to the evidence provided with regards to existing local health and well-being issues, the appeal site would not be an appropriate location for a new takeaway and therefore the proposed change of use would be contrary to adopted Policy VC4(2) of the CSDP (2020), which seeks to promote healthier communities by preventing the development of hot food takeaways in such circumstances.

Living Conditions

9. The proposed hot food takeaway would be located directly beneath an existing residential use. The appellant asserts that the existing commercial uses along the parade, including a fish and chip shop adjacent to the appeal property, operate on an unrestricted basis and do not cause amenity issues. I do not consider however that there is sufficient evidence before me to determine whether an issue exists with regards to the living conditions of existing residents as a result of those existing commercial uses and their operations. In any event, however, I am considering the appeal before me on its merits and the determinative issue in relation to living conditions is whether or not the proposal would itself add harm to the local area. I therefore attach little weight

to the unrestricted status of other adjacent uses, but still have regard to their existing presence in the vicinity.

10. I acknowledge that the current retail unit is unrestricted in terms of its opening hours and that the proposed use would be restricted in this regard. However due to the nature of the development proposed it has the potential to have different effects to that of a retail unit and I note third party concerns regarding the potential for loitering and anti-social behaviour, in addition to the potential effect of litter on the nearby green space. The suggestion that a takeaway would have fewer patrons than the current retail unit is not substantiated and therefore attracts limited weight in the consideration of this appeal.
11. I note the evidence provided with regards to noise insulation, together with the suggestion of a planning condition to ensure that the effect of noise and odour is acceptable. However, as no noise formal assessment has been submitted, such as details of the existing noise climate and the potential specific effects that would arise if the proposed development were to occur, I am not satisfied that there is sufficient evidence before me to confirm that the outline noise mitigation proposed has been suitably informed and would therefore be adequate.
12. Whilst it is noted that the operator would monitor activity and disturbance, I consider that this would only provide limited comfort that the takeaway would operate without adverse effects arising with regards the living conditions of nearby residents and that a condition limiting hours of operation would also not suffice.
13. I have had due regard to other aspects of the appellant's evidence, including comments that the immediate locality experiences evening and night activity under other similar activities and is not saturated by this type of use, however this does not outweigh the harm I have found in relation to living conditions.
14. For the reasons provided, the proposed change of use would have an adverse effect on the living conditions of nearby residents, with particular regard to noise and disturbance, contrary to adopted Policies VC4 and BH1 of the CSDP, which seek to ensure that proposals for hot food takeaways would not have an adverse impact upon local amenity and that development should ensure a good standard of amenity for all existing occupiers of land and buildings. It would also be contrary to adopted Policies HS1 and HS2 of the CSDP, which seek to ensure that development would not result in unacceptable adverse impacts with regards to noise and that development which would result in noise impacts is accompanied by an appropriate noise assessment and an appropriate scheme of mitigation, where necessary.

Character and Appearance

15. The proposed takeaway would be located along a row of existing commercial properties and surrounded by residential development. Whilst no changes are proposed to the front façade of the building, the extraction system would necessitate a flue.
16. A plan has been provided as part of the appellant's evidence, which indicates the flue as being located to the rear of the property. By virtue of its size it would terminate above the eaves of the host property and would be clearly

visible from a number of nearby properties, including those located beyond the rear of Queensway. Whilst the potential for a condition requiring it to be powder coated is also noted, it is not considered that this detail would lessen its overall visual impact to an acceptable degree and in the absence of other specific details, I am therefore not satisfied that it would not have an adverse effect on the character and appearance of the area.

17. For the reasons given, the proposed change of use would be contrary to adopted Policy BH1 of the CSDP, which seeks to achieve high quality design and states that development should be of a scale, massing, layout, appearance and setting which respects and enhances the positive qualities of nearby properties and the locality.

Other Matters

18. The Council has provided me with a copy of adopted Policy ST3, which relates to development and transport. As the policy does not relate to the Council's reasons for refusal, I have not considered it further in the determination of this appeal.
19. Whilst I note references made by the appellant in relation to paragraph 11 of the National Planning Policy Framework (the Framework), an up to date development plan exists and the proposed development does not accord with the plan as whole, with specific regard to the policies as cited. I therefore consider that the presumption in favour does not apply in this case.
20. The desire to bring a vacant unit back into operation through investment is also noted, together with the changing economic climate and the need to diversify away from A1 retail, however for the reasons given it is not considered that the proposed takeaway is acceptable in the location proposed and it would therefore not be appropriate. Although I accept that the proposed takeaway would broadly accord with the Framework's commitment towards regeneration and result in a number of jobs and an additional choice for people wanting to buy hot food, I do not consider that these benefits would outweigh the harm that I have found in relation to the main issues. With reference to public safety, although I acknowledge the aspiration for the unit to become operational again, as there are currently a number of other commercial units along the parade I am not satisfied that the temporary closure would, in itself, have a material effect on the feeling of public safety.
21. The appellant asserts that sufficient parking is available within the local area and from what I saw during my site visit, I have no reason to doubt this assertion. Although the proposed takeaway would be located within a readily accessible location it would not be acceptable for the reasons provided. With references to the suggested sustainable character of the proposal, I find that the proposed development does not accord with the development plan for the reasons as stated.
22. The appellant has drawn my attention to other schemes granted elsewhere, including a number of appeal decisions. Whilst I have had regard to the information presented, I have little reason to conclude that they are directly comparable to the appeal site, in terms of its location or its immediate context. In any event, I have considered the proposal before me on its merits and I therefore attribute minimal weight to these schemes and appeal decisions in the consideration of this appeal.

23. Whilst I note references from both main parties in relation to odour concerns, this issue is not cited as a reason for refusal by the Council. Given my findings in relation to other issues, this is not a factor in my decision.
24. I have had regard to the reference to permitted development rights, however as this appeal relates to an application for planning permission, I am considering it on that basis and on its merits.

Conclusion

25. For the reasons given, I therefore find that the proposal would not comply with the development plan as a whole and that this conflict is not outweighed by other material considerations. Accordingly, the appeal should be dismissed.

M L Milliken

INSPECTOR