
Appeal Decision

Site visit made on 9 June 2020

by S Hunt BA (Hons) MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 23 June 2020

Appeal Ref: APP/A4520/W/19/3238653

The Boldon Lad, Hedworth Lane, Jarrow NE32 4LQ

- 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 Punch Partnerships (PML) Ltd against the decision of South Tyneside Metropolitan Borough Council.
 - The application Ref ST/0192/19/FUL, dated 15 July 2019, was refused by notice dated 27 August 2019.
 - The development proposed is Change of use of a Public House (A4) to a Retail Store (A1), reconfiguration of external car park layout and erection of 2.1 metre high close boarded acoustic fencing along the western, northern and eastern site boundaries tapering down to 600mm high adjacent to the highway.
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Decision

1. The appeal is allowed and planning permission is granted for Change of use of a Public House (A4) to a Retail Store (A1), reconfiguration of external car park layout and erection of 2.1 metre high close boarded acoustic fencing along the western, northern and eastern site boundaries tapering down to 600mm high adjacent to the highway at The Boldon Lad, Hedworth Lane, Jarrow NE32 4LQ in accordance with the terms of the application Ref ST/0192/19/FUL, dated 15 July 2019, subject to the conditions set out in the Schedule to this decision.

Application for Costs

2. An application for costs has been made by Punch Partnerships (PML) Ltd against South Tyneside Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal was scheduled as a hearing to take place on 12 May 2020, however this was postponed as a result of the restrictions of the Covid-19 pandemic. On a review of the case and taking into account the views of both parties, I decided that the appeal could appropriately proceed by the written representations procedure.

Main Issue

4. The main issue is whether the sequential test has been demonstrated in the light of local and national planning policy which seeks to direct retail uses to existing centres.

Reasons

5. The proposals seek to convert an existing public house (A4) to a convenience store (A1) with around 372m² gross floorspace. It is situated on Hedworth Lane, within a primarily residential area. A sequential assessment has been submitted which considers whether any alternative sites in existing centres are suitable and available for the type of development proposed in terms of size, type and range of goods, incorporating the requirement for flexibility as recommended by paragraph 87 of the National Planning Policy Framework (the Framework). The parties disagree on the size of the search area for the test which includes centres within 2km of the site. The Council suggested a more extensive radius which would include the town centres of Jarrow and Hebburn, some 2.5 and 3km away respectively (as the crow flies).
6. Having considered the Sequential Assessment Justification Statement, a 2km search area is appropriate given the scale and nature of the proposals. The retail unit is proposed to be occupied as a convenience store serving day to day needs and 'top up' shopping of a localised catchment of the residential area in which it is situated. Whilst this is not explicit in the description, the supporting documentation and plans clarify the proposed convenience use. A condition could be imposed to prevent future occupation by a comparison goods retailer that may command a larger catchment area. It is improbable that people residing in the towns of Jarrow and Hebburn would make a specific trip to use this facility, when their convenience needs are served in their own locality. A wider search area is therefore unnecessary.
7. A number of appeal decisions have been submitted by the appellant. Whilst these represent different circumstances and locations, they support the premise that convenience stores tend to serve small catchment areas, generally less than 1.5km.
8. The sequential assessment incorporates a range of centres, the majority being local neighbourhood shopping centres as identified on the South Tyneside Local Development Framework (LDF) Site Specific Allocations (SSA) proposals map 2012. It does not follow that this type of centre should be excluded from the search simply because they are not 'towns'. The centres are identified on the adopted proposals map and in this respect they meet the definition of a town centre in Annex 2 of the Framework. Sufficient evidence has been put to me in demonstrating that the eleven identified vacant units are unavailable or unsuitable and I am satisfied that flexibility on format and scale has been demonstrated.
9. I turn to the dispute about whether the appeal site should be classified as 'edge of centre'. Fellgate Avenue is located less than 200 metres from the appeal site. It incorporates a range of shops and services including two convenience stores (one with post office), hairdressers, pharmacy, takeaways, restaurant and betting shop. Due to the restrictions related to the Covid-19 pandemic at the time of my visit the majority of these units were closed, however none of the units displayed obvious signs of being vacant or for sale/let.
10. The retail policies of the emerging South Tyneside Local Plan have been put to me in respect of the status of Fellgate Avenue. Policy R1 promotes a somewhat different retail hierarchy to that in the adopted LDF and I note that this follows

the recommendations of a retail needs study¹. Fellgate Avenue is not proposed in the emerging plan as a town centre but as a 'Local Neighbourhood Hub' by Policy R9 as a small parade of purely local significance. Such parades are excluded from the definition of a town centre in Annex 2 of the Framework, but I give this limited weight given that the emerging plan is at an early stage of preparation.

11. Fellgate Avenue is clearly identified on the adopted SSA proposals map as a local neighbourhood shopping centre. In my view the scale and nature of this centre is consistent with the Framework definition of a town centre. It has characteristics which demonstrate it as more than a small parade of shops of purely neighbourhood significance, with around 12 units and a dedicated car park.
12. Regarding paragraph 87 of the Framework, the site is in an accessible location on a main road within a sizeable housing area. There are bus stops adjacent to the site, and it is in close proximity to a railway station. The site is well connected to Fellgate Avenue neighbourhood shopping centre by two signalised pedestrian crossings providing suitable safe access. In view of its close proximity to Fellgate Avenue it is probable that linked trips already take place between the public house and the centre, and will continue to do so as a retail unit.
13. The site is 'edge of centre' to Fellgate Avenue, being less than 300 metres away. The sequential assessment has adequately demonstrated that there are no suitable and available units here or in other centres within the search area of 2km, which reflects the limited catchment area for a convenience store of this scale.
14. The proposals are in compliance with Policy SC1 of the South Tyneside Local Development Framework (LDF) Core Strategy 2007 (CS) which seeks for development proposals to be focused and promoted within the built-up areas, and (C) to maintain and improve the provision of accessible basic local services and community facilities, whilst focusing high trip-generating uses within town centres.
15. The proposal does not accord with Policy SC2 of the CS in respect of focussing retail development within the three town centres of South Shields, Jarrow and Hebburn. The supporting text setting out the shopping centre hierarchy of town centres and district shopping centres does not include Fellgate Avenue. Both Policies precede the 2012 Framework and are not fully consistent with it particularly in terms of their lack of flexibility and reference to a former Regional Spatial Strategy. Consequently, I give them moderate weight.
16. The more recent SSA (2012) Policy SA5 includes reference to local neighbourhood centres, and Fellgate Avenue is identified on the proposals map as one such centre. The proposal is broadly in accordance with this Policy which states that proposals for retailing provision will only be permitted where they would not adversely impact on the vitality and viability of existing and allocated sites within the designated centres. In this case the size of the proposed store does not meet the default threshold in paragraph 89 of the Framework in requiring an impact assessment (there is no locally set threshold). No assessment of impact on vitality and viability is therefore required.

¹ South Tyneside Town and District Use Needs Study by Peter Brett Associates (October 2018)

Other Matters

17. The highway authority have no objection to the plans subject to conditions requiring details of road markings and signage, and as such no adverse effects relating to traffic generation, parking and access have been demonstrated.
18. Potential noise, disturbance and fumes can be minimised by the imposition of conditions as recommended by the Council's environmental health team. There is no evidence before me that litter, anti-social behaviour and crime would be any worse than that which might arise from the existing unrestricted use as public house. The proposed change of use gives the opportunity to impose conditions on opening and delivery hours as well as installation of suitable acoustic mitigation which would represent an improvement on the existing situation.
19. The acoustic fence is of suitable design and sufficiently distanced from neighbouring residential properties, and as such there would be no harmful effects in terms of outlook. Other issues raised by local residents including loss of property value are not matters which would justify withholding planning permission.
20. A viability study has established that the public house is commercially unviable and it has not been designated as an Asset of Community Value.

Conditions

21. I have undertaken some minor editing of the Council's conditions for precision and clarity. I have attached conditions specifying a time limit and the relevant plans to provide certainty.
22. I have included a condition in relation to signage and marking out of parking spaces and delivery areas and signage in the interests of highway safety. A condition is required to ensure cycle parking is installed as approved in the interests of promoting sustainable modes of travel for staff and customers.
23. In the interests of the living conditions of nearby residential occupiers a condition is required to ensure the approved acoustic fencing is installed prior to the retail store being brought into use. It is necessary to limit opening and delivery hours given the residential location of the site. I have considered the appellant's request for earlier delivery hours on a Sunday, however I have also had regard to the consultation response from the environmental health team and a restriction to 10am is considered to be appropriate in the interests of living conditions of nearby occupants.
24. A condition requiring details of any plant, ventilation and extraction equipment and an associated noise assessment is necessary to minimise potential effects on living conditions of nearby occupants. I have amalgamated the two conditions relating to these matters for clarity. Details of any external lighting is also required to ensure that living conditions of neighbours are not unduly compromised. Bin storage details are required so that the Council can ensure it is located in a suitable location in the interests of area character, living conditions and highway safety.
25. Finally, to ensure that the scheme as implemented is materially the same as that for the sequential assessment and to justify its limited catchment area I

have imposed a condition limiting the store to the sale of convenience goods only.

Conclusion

26. Whilst I have found that the proposal is not fully in accordance with the development plan, the relevant retail policies in the CS are not entirely consistent with section 7 of the Framework. The proposals would provide social and economic benefits including employment opportunities and would represent an appropriate use of previously developed land in an accessible location. The proposal is in accordance with the Framework as a whole and there are no material considerations which lead me to conclude otherwise.
27. On the basis on of the evidence before me I do not consider that there are any sequentially preferable sites on which the development could be accommodated, and as such the sequential test has been demonstrated.
28. For the reasons given above I conclude that the appeal should be allowed.

S Hunt

Inspector

Schedule of Conditions

- 1) The development to which this permission relates must be commenced not later than 3 years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
Proposed Site Layout 19.3129.100 Rev P5
Context Elevation Plan 19.3129.103 Rev P3
Proposed Elevations 19.3129.102 Rev P2
Proposed Floor Plans
- 3) The parking spaces and delivery areas shown on Proposed Site Layout 19.3129.100 Rev P5 shall be completed/marked out in full on site as per the approved plan prior to development being first brought into use and made available for use at all times. The car parking and delivery areas shall then be retained on site for their designated purpose, so long as the development hereby permitted remains in use.
- 4) Prior to the first occupation of the retail store hereby approved details of a scheme incorporating road markings within the site and signage for the proposed one way/in-out system shall be submitted to and approved by the local planning authority. The scheme shall be implemented in accordance with the approved details in full prior to development being first brought into use by customers and retained thereafter.
- 5) The cycle parking spaces shown on Proposed Site Layout 19.3129.100 Rev P5 shall be installed prior to the approved retail store being first brought

into use and made available for use at all times. The cycle parking spaces shall then be retained on site for their designated purpose thereafter.

- 6) The acoustic fence as shown on Proposed Site Layout 19.3129.100 Rev P5 and Context Elevation Plan 19.3129.103 Rev P3 shall be installed prior to the approved retail store being first brought into use and retained in place without modification thereafter.
- 7) The premises shall only be open for customers between the following hours:
0800 - 2000 Mondays - Saturdays
0800 - 1700 Sundays and Bank Holidays
- 8) Deliveries shall be taken at or despatched from the site only between the following hours:
0800 - 2000 Mondays - Saturdays
1000 - 1700 Sundays and Bank Holidays
- 9) Details of any plant, ventilation and extraction equipment and a noise assessment shall be submitted to and approved in writing by the local planning authority prior to their installation. The approved equipment shall be installed and any noise mitigation measures implemented prior to the first use of the retail store and retained thereafter.
- 10) Full details of any proposed external lighting shall be submitted to and approved in writing by the local planning authority prior to its installation. The external lighting shall be installed in full accordance with the approved details prior to the approved retail store being first brought into use and retained thereafter.
- 11) Full details of the bin storage area shall be submitted to and approved in writing by the local planning authority prior to its installation. The approved details shall be implemented in full prior to the approved retail store being first brought into use and retained thereafter.
- 12) The premises shall be used for the sale of convenience goods and for no other purpose (including any other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

End of Schedule.