



Appeal Decision

Site visit made on 23 July 2020

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2020

Appeal Ref: APP/H4505/W/20/3250222

58 Front Street, Winlaton NE21 6AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Atefeh Ahmadibonakdar against the decision of Gateshead Council.
 - The application Ref DC/20/00057/FUL, dated 24 January 2020, was refused by notice dated 31 March 2020.
 - The application sought planning permission for continued use of premises as hot food takeaway without complying with a condition attached to planning permission Ref DC/09/01583/FUL, dated 4 January 2010.
 - The condition in dispute is No 2 which states that: the premises shall be open for business between 09.00am and 11.30pm Monday to Thursday and 09.00am and 12.00 midnight Friday to Sunday. The premises shall not operate at any time outside these hours.
 - The reason given for the condition is: to ensure that no disturbance is caused to neighbouring properties as a result of unreasonable trading hours at the premises having regard to policy H2 of the adopted Unitary Development Plan and policy DC2 of the Replacement Unitary Development Plan for Gateshead.
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Decision

1. The appeal dismissed.

Main Issues

2. The main issue is the effect of the proposed longer opening hours on the health of the local community in respect of the availability of unhealthy food.

Reasons

3. The result of the proposed alteration to the relevant condition would be to extend the opening hours of the premise by half an hour each day.
4. Policy CS14 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle Upon Tyne 2010-2030 (2015) (the Local Plan) is a broad policy which seeks to promote wellbeing and health through, amongst other things, controlling the location of, and access to, unhealthy eating outlets.
5. The Hot Food Takeaway Supplementary Planning Document 2015 (SPD) is a material consideration and provides relevant detailed guidance in support of the above policy, specifically identifying 12 considerations to be applied in the determination of planning applications for hot food takeaways (Use Class A5).

6. The Council has referred to consideration 2 which states that "planning permission will not be granted for A5 use in wards where there is more than 10% of the year 6 pupils classified as obese". Based on the information within the SPD, the level of obesity in the Winlaton and High Spen ward clearly exceeds this threshold. While consent is not sought for a new hot food takeaway the effect of allowing additional opening hours is nonetheless the same, increasing access to unhealthy eating outlet.
7. The Appellant states that customers accessing the hot food takeaway late at night are not children, but I note that the SPD details that the use of figures relating to the level of obesity among year 6 school pupils is as a proxy to the health of the wider community. On this basis, I find that the appeal is contrary to consideration 2 of the SPD.
8. In support of the appeal the Appellant states that, amongst other matters, the varied condition would lead to the creation of additional employment and that other businesses in the area are open until 1am. I have been provided with no substantive evidence in this regard, in particular with regards the opening hours of other businesses in the area. As such, I afford these matters little weight and they do not outweigh the harm I have identified previously.
9. For the reasons detailed above I find that the proposed variation of the relevant condition contrary to Policy CS14 of the Local Plan and the SPD.

Conclusion

10. For the reasons given above the appeal is dismissed.

Mark Brooker

INSPECTOR