



Appeal Decision

Site Visit made on 24 May 2021

by J Hunter BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th June 2021

Appeal Ref: APP/W4515/W/21/3269213

3 Darras Drive, North Shields NE29 8RW

- 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 Randeep Singh Sahajpal against the decision of North Tyneside Council.
 - The application Ref 20/01206/FUL, dated 1 September 2020, was refused by notice dated 12 November 2020.
 - The development proposed is Change of use from hair salon (use Class E) to fish and chip shop (Sui Generis).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are i) the effect of the development on the health of the local community in terms of the availability of unhealthy food and ii) the effect of the proposal on the living conditions of neighbouring residents.

Reasons

Health

3. The appeal property occupies part of the ground floor of a two storey detached building at the edge of a residential housing estate in the Collingwood Ward of North Tyneside. There is a convenience store adjacent and residential accommodation above which is accessed via a central doorway between the store and the appeal site.
4. The proposal would see the conversion of the existing hairdressers to a fish and chip shop. Access would be via the existing shop frontage and the internal area would be fitted out to accommodate the new use. The submitted plans indicate that an extraction flue would be installed on the rear elevation, positioned between the rear door and ground floor window and extending upward between the two upper floor windows and terminating around 1 metre above eaves level.
5. Policy DM3.7 of the North Tyneside Local Plan 2017 (LP) aims to promote healthier communities through the control of Hot Food Takeaways in areas where there is a high rate of childhood obesity. This aim reflects that set out in Section 8 of the National Planning Policy Framework (the Framework) which seeks to support and encourage people to take opportunities to improve their health and lifestyle.

6. The evidence submitted by the Council provides combined data for 3 yearly periods from 2013–2020. The most recent figures from the 2017-2020 period show rates of 30.1% excess weight and 13.7% obesity in reception aged children and 43.4% excess weight and 26.6% obesity in year 6 children. Policy DM3.7 seeks to amongst other things, prevent the development of hot food takeaways in areas where there are more than 10% of reception age pupils or 15% of year 6 pupils classified as very overweight (obese).
7. The appellant does not offer any evidence to support their assertion that there is no correlation between obesity and Hot Food Takeaways and I note that at the time of publication Policy DM3.7 relied on data published by Public Health England in 2010. However, the most recent information collected between 2013-2020 indicates an increasing problem with obesity rates in the Collingwood Ward and wider North Tyneside Borough. To my mind this is strong justification for the Council objectives as set out in Policy DM3.7 of the LP and echoed in the Framework.
8. I accept the appellant's comment that there is an element of consumer choice in relation to the purchase of unhealthy foods and that there is the potential for unhealthy foods to be purchased at other outlets or indeed at the appeal site if it were to be repurposed as a café/restaurant. Nonetheless, I have no evidence before me to suggest that change to a permitted use is anything other than a theoretical prospect. Furthermore, this prospect or the availability of other types of unhealthy foods in the vicinity does not justify the potential harm caused by further increasing accessibility to unhealthy foods.
9. Therefore, whilst I acknowledge that the proposal would be compliant with other aspects of Policy DM3.7 in terms of proximity to schools and the clustering of takeaways, it would fail to meet all of the relevant criteria. Thus, overall, the proposal would conflict with Policy DM3.7 of the LP and the Framework.

Living Conditions

10. Hot food takeaways have the potential to adversely affect the living conditions of nearby residents by virtue of odour caused by cooking inside the premises and being emitted into the surrounds via openings and extraction systems. The proximity and density of residential properties close to the appeal site creates a sensitive relationship and would mean that if unmitigated, occupiers would likely to experience material harm to their living conditions.
11. Odour generated from the proposed use is likely to be experienced by occupiers of the flat above the property and those living closest to the site. I note that the appellant states that an odour report was not requested as part of the planning submission and whilst I acknowledge the submitted information in relation to potential mechanical mitigation systems, this is general information and not specific to the site or situation.
12. Consequently, I cannot be certain that the odours would be adequately attenuated. Given the sensitive relationship between the closest properties, particularly the residential accommodation above the proposed takeaway it would not be reasonable to leave the acceptability of any such measures to be approved by way of a planning condition.

13. Accordingly, I find that the proposal would cause harm to the living conditions of neighbouring occupiers by virtue of disturbance caused by odour. It would therefore fail to accord with Policy DM5.9 of the LP which aims to protect people, the environment and biodiversity from the unacceptable impacts of pollution.

Conclusion

14. For the reasons set out above and taking into account all other matters raised, I conclude the appeal should be dismissed.

J Hunter

INSPECTOR