



Appeal Decision

Site Visit made on 24 August 2021

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2021

Appeal Ref: APP/W0734/W/21/3274595
63 Beaumont Road, Middlesbrough TS3 6NW

- 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 H Singh against the decision of Middlesbrough Council.
 - The application Ref 20/0655/COU, dated 30 October 2020, was refused by notice dated 5 January 2021.
 - The development proposed is the change of use from cafe to hot food takeaway.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the planning appeal, the Government published the revised National Planning Policy Framework (the Framework), which came into force on 20 July 2021. The Framework sets out the Government's planning policies for England and how they should be applied. With regards those paragraphs referred to by the main parties' paragraphs 85, 86 and 90 are now numbered 86, 87 and 91 but otherwise unaltered.

Main Issues

2. The main issues are the effect of the proposed development on:
 - i. whether or not there are sequentially preferable sites on which the proposal, as a main town centre use, could be accommodated with regards the sequential test set out in the National Planning Policy Framework.
 - ii. the character and appearance of the area;
 - iii. the living conditions of the occupiers of nearby residential occupiers with regards late evening activity; and,

Reasons

Sequential Test

3. The appellant notes and I saw at the site visit that the local area includes a number of hot food takeaways, shops, and other non-residential uses. Furthermore, the appeal site was previously used as a Café. Nonetheless, that the appeal site is not located within a centre listed in Policy CS13 of the Core Strategy is not at dispute between the parties and it is not at dispute between the parties that the proposed hot food takeaway is a main town centre use. As

such, in accordance with the guidance set out in the National Planning Policy Framework (the Framework) the sequential test is applied.

4. The appellant has not submitted a sequential assessment and as such it has not been demonstrated that there are no sequentially preferable sites to accommodate the appeal scheme.
5. While the appellant makes an emotive case to support the appeal it is clear that the appeal scheme is contrary to Policy DC1 of the Middlesbrough Regeneration DPD (the DPD) that, amongst other matters required that there is sufficient information supplied to enable the Council to determine the application and paragraph 87 of the Framework and the Council's Interim Hot Food Takeaway Policy, that amongst other matters seeks to ensure that such uses are located appropriately.

Character and Appearance

6. The Council's decision refers to the appeal scheme being "detrimental to the street scene character of the area and the amenity of nearby residential occupiers in view of the nature of the use and associated impacts into the late evening".
7. The local area while predominantly residential, Beaumont Road does include hot food takeaways, shops, and other non-residential uses. To this extent, Beaumont Road is distinct from the neighbouring streets that are entirely residential in character and appearance.
8. The appeal scheme will provide no external alterations to the front of the premises with a flue proposed and small infill extension on the rear elevation. The Officer's report concludes that "on balance it is considered that the external alterations of the property will not have an undue impact on the character of the area" and I have no substantive evidence before me that would lead me to conclude otherwise.
9. I saw at the site visit that a number of the non-residential uses on Beaumont Road were likely to generate activity in the evening in common with the appeal scheme. the commercial activity expected to result from the appeal scheme, the opening hours of which could be controlled by condition, is not therefore at odds with this existing character.
10. Therefore, on the basis of the evidence before me and my observations at the site visit, I find that the appeal scheme would not harm the character and appearance of the area and as such is not contrary to Local Plan Policies DC1 of the DPD and CS5 of the Middlesbrough Core Strategy (the CS) and the guidance of the Framework that, amongst other matters, seek that new development takes account of the surrounding environment.

Living conditions

11. The Officer's report refers to the potential for higher level evening activity, such as increased noise, affecting neighbours to the appeal site.
12. The consultation response from the Environmental Health Officer (EHO) does not raise similar concerns but suggests conditions relating to a noise assessment; opening hours; deliveries; waste collection; and an odour assessment should the proposals be approved.

13. I note that the Officer's report acknowledges that the existing Café use has no restrictions on opening hours, this is a material consideration.
14. Planning Practice Guidance notes that the appropriate use of conditions can "enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects¹."
15. On the basis of the evidence before me it is my planning judgement that subject to appropriate conditions such as those identified by the EHO, the appeal scheme would not harm the living conditions of the occupiers of neighbouring properties. As such the appeal scheme is not contrary to Policies DC1 of the DPD and CS5 of the CS that, amongst other matters, require that all development proposal take account of the effect on the living conditions of the occupiers of nearby properties.

Other Matters

16. The appellant details that there is demand for the appeal scheme to provide a service focused on local residents who do not cook at home as often. Be that as it may it does not outweigh the conflict with the Development Plan detailed previously.
17. The appeal scheme would bring back into use a vacant building to the benefit of the local economy and local residents. However, I have no substantive evidence to demonstrate the duration of the current vacancy, or the efforts made to market the property. I therefore afford this material consideration some weight and it does not outweigh the harm I have identified previously.

Conclusion

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

Mr M Brooker

INSPECTOR

¹ Paragraph: 001 Reference ID: 21a-001-20140306 Revision date: 06 03 2014

