



Appeal Decision

Site visit made on 6 December 2022

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th March 2023

Appeal Ref: APP/W4515/W/22/3307690

11-13 Station Road North, North Tyneside, Forest Hall NE12 7AR

- 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 Papa John's (GB) Ltd against the decision of North Tyneside Council.
 - The application Ref 22/00884/FUL, dated 20 May 2022, was refused by notice dated 19 July 2022.
 - The development proposed is following subdivision, change of use from Class E to a Hot Food Takeaway unit (Sui Generis) including associated external alterations.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on the health of residents in the area.

Reasons

3. The appeal site is a vacant commercial unit in a local shopping centre described by the Council as the Forest Hall District Centre. The site lies in the Council's Benton ward. The centre is home to a variety of retail and related commercial uses. It is surrounded predominantly by residential areas.
4. Policy DM3.7 of the North Tyneside Local Plan (Adopted July 2017) (the 'NTLP'), sets out 5 criteria ('a' to 'e') against which proposals for hot food takeaways will be assessed. Criterion 'd' states that in order to promote healthier communities, the Council will prevent the development of A5¹ use in wards where there is more than 15% of the year 6 pupils or 10% of reception pupils classified as very overweight.
5. The Council's evidence includes a consultation response from the Council's Director of Public Health, which contains a link to the Council's most recent data relating to the National Child Measurement Programme (NCMP). This provides data per ward for the prevalence of obesity among reception and year 6 children across 5 time periods: the earliest being 2013/14 to 2015/16, and the latest being 2017/18 to 2019/20. The data demonstrates for the most up-to-date period that in Benton ward, there is a reception obesity rate of 8.9% and a year 6 obesity rate of 21.2%. For clarification in terms of the policy criteria, the data makes clear that the terms 'obese' and 'very overweight' are

¹ The Use Classes Order has been updated since the adoption of the NTLP. Hot food take-aways were previously categorised as Class A5 and are now categorised as Sui Generis.

used interchangeably. Whilst there would be no conflict with regard to reception aged children, the proposed development would therefore conflict with criterion 'd' of Policy DM3.7 with regard to year 6 pupils.

6. I am satisfied, on the basis of the evidence provided, that there would be no conflict with criteria 'a', 'b' or 'c' of Policy DM3.7. Criterion 'e' seeks to assess the impact of hot food take-aways on the well-being of residents on an individual basis. Whilst this criterion appears somewhat wide-ranging in scope, I have identified no specific conflicts against this objective. As such, I am satisfied that the only conflict with Policy DM3.7 would arise in relation to criterion 'd', and that this conflict would only be against one of the two stated measures. However, the policy is worded such that hot food take-away proposals will not be supported unless they comply with all 5 criteria. Although it is asserted that conflict with one strand of the policy does not necessarily result in conflict with the policy when read as a whole, criterion 'd' is an important component of the policy's aim to promote healthier communities, and failure to meet its requirements should not be understated.
7. It has been put to me that Papa John's includes healthy menu options, show calorific values and do not fry products in contrast to other takeaways. It is also stated that Papa John's target customers are not school children. Coupled with the policy compliant position in relation to criterion 'c' of Policy DM3.7 regarding this site being more than 400 metres from a middle or secondary school, the appellant considers that allowing the appeal would not encourage unhealthy eating habits or exacerbate obesity among children. In the event of the appeal being allowed, the appellant has also suggested a condition could be imposed to limit occupancy of the unit to Papa John's only.
8. However, I have been provided with limited substantive evidence that Papa John's would provide an inherently healthier alternative than other hot food take-aways or shops selling food. I also give limited weight to the target market. Just because the development is located more than 400 metres from a middle or secondary school does not mean that children will not be exposed to its products, and it seems to me that the location within a ward with such high rates of childhood obesity means particular care should be taken in this regard, even if other services and available products, including snacks, may also be a driver of childhood obesity. Furthermore, whilst Policy DM3.7 refers to children and schools among its assessment criteria, it seeks to promote healthier communities as a whole and is not explicitly concerned with only the health of children. As such, I do not find imposing such a condition would address the requirements of the development plan policy or meet the tests outlined at Paragraph 56 of the National Planning Policy Framework (the 'Framework') concerning the imposition of conditions. Allowing the proposed hot food takeaway on the site would therefore not promote healthier communities.
9. The appellant states that Policy DM3.7 'd' effectively places a blanket ban on hot food takeaways within North Tyneside, as every ward except for one (Monkseaton North) exceeds at least one of the policy thresholds. The appellant asserts that this is not in the spirit of the Planning Practice Guidance (the 'PPG'), which states that policies should only seek to limit certain uses for health reasons. The appellant notes NTL Policy S1.2 refers to 'controlling' unhealthy eating outlets rather than limiting them. Notwithstanding that this planning appeal is not the correct forum to question the wording of adopted development plan policy, I do not find the wording of Policy DM3.7 'd' to be

overly restrictive as it allows development to proceed under certain circumstances. The purpose of the policy is clear in that it is directly linked to the health of residents, particularly school aged children, and is underpinned by data. Even if the current data does place stricter controls on development in this ward, this is not necessarily the case for all wards and may not be the case in future. As such, whilst the policy does place certain limits on the development of hot food take-aways within the Council area, I do not find the application of Policy DM3.7 'd' to be overly restrictive and it would accord with the PPG.

10. I refer to the appeal decision at 33 Station Road North² forming part of the evidence, which refers to an effective blanket ban on hot food take-aways in the Council area and a consequent conflict with the principles of the Framework. However, the context of the current appeal is notably different to that of 33 Station Road, which was determined prior to the adoption of the NTLP and also subject to a different set of data for assessing the policy. As such, I have given very limited weight to this previous decision.
11. I have been provided with limited details of the relevant development plan policies relating to the Cheshire West and Chester appeal decision³ provided as part of the appellant's evidence, which granted planning permission for a hot food take-away subject to conditions. Accordingly, I have given this decision very limited weight in my assessment.
12. For the above reasons, I conclude that the proposal would harm the health of residents in the area. As set out above, it would fail to comply with criterion 'd' of Policy DM3.7 of the NTLP. This objective seeks to tackle childhood obesity, which forms a key component of the policy's overall aims to promote healthier communities. Accordingly, I conclude that this criterion carries sufficient importance to result in failure to comply with Policy DM3.7 as a whole.

Planning Balance and Conclusion

13. Paragraph 12 of the Framework states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. Decisions that depart from an up-to-date development plan should only be taken if material considerations in a particular case indicate that the plan should not be followed.
14. In this instance, the key harm arising through the development would be the introduction of an additional use that is identified through development plan policy as intrinsically linked to adverse effects on the health of residents. Whilst I have taken on board the appellant's comments regarding the specific nature of the operation and the operator, I find no reason to treat this development as an exception to the policy tests, and there are no controls or limitations that could be reasonably imposed through conditions to control adverse effects on the health of residents.
15. Despite the submitted evidence indicating compliance with other relevant NTLP policies, the conflict I have identified with Policy DM3.7 is sufficient in this instance to bring the appeal proposal into conflict with the development plan

² APP/W4515/W/16/3154960

³ APP/A0665/W/22/3296922

when read as a whole. This conflict, and the resulting adverse effects on the health of residents that would occur if the appeal were allowed, carry significant weight in the planning balance.

16. I acknowledge that the proposed development would deliver certain benefits in terms of occupying a vacant unit, providing additional choice for consumers, providing jobs and supporting the supply chain. However, at the time of my visit the centre appeared to be busy and vibrant, with a high footfall. There are also several existing hot food take-aways in very close proximity to the appeal site. Whilst I note the appellant's statement that the property has been vacant for two years, I have also been provided with no details of any marketing. Based on the current low vacancy rate in the centre, it appears unlikely the property could not be readily occupied for an alternative use if effectively marketed.
17. Although it has been put to me that the site lies in a preferable location for a hot food takeaway in comparison to other areas because it is among the wards where only one of the two thresholds in criterion 'd' of Policy DM3.7 are met, this does not indicate that the appeal proposal is acceptable. As such, I do not identify any specific benefits or other material considerations that would outweigh the harm previously identified or the conflict with the development plan.
18. For the above reasons, taking account of the development plan when read as a whole, the PPG, the Framework and all other matters raised, I conclude that the appeal should be dismissed.

P Storey

INSPECTOR