



Appeal Decision

Site visit made on 11 April 2023

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 June 2023

Appeal Ref: APP/X1355/W/22/3313120

74 High Street South, Langley Moor, Durham DH7 8EX

- 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 Anthony Lang against the decision of Durham County Council.
- The application Ref DM/22/01610/FPA, dated 30 May 2022, was refused by notice dated 30 September 2022.
- The development proposed is described as “change of use of ground floor commercial unit from now-vacant laundrette to hot food takeaway (fish & chip shop), with new glazed shopfront at ground floor level, internal roller shutters and other external alterations, with rear single-storey extension into existing yard, formation of bin storage areas and erection of external flue to rear above new extension flat roof to terminate through high velocity cowl above eaves level”.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue of the appeal is whether the appeal site is an appropriate location for the proposed development with regard to the local development strategy.

Reasons

3. Policy 30 of the CDP is concerned with minimising the effects of an over concentration of hot food takeaways. The supporting text states that the aim of the policy is to promote healthy lifestyles, particularly of young people. The site is not located within a defined centre, or primary shopping area, as defined in the County Durham Plan (2020) (CDP). For locations that are outside of defined centres, Policy 30 also states that proposals for hot food takeaways outside of defined centres but within 400 metres of an entry point of an existing or proposed school or further education college will not be permitted. Part 8 of the National Planning Policy Framework (the Framework) also seeks to promote healthy and safe communities.
4. The appeal site is located within walking distance to Langley Moor Nursery and Primary School and St Patrick’s Roman Catholic School. There is a dispute between the parties as to the precise distances that these schools are from the appeal site. St Patrick’s Roman Catholic School is within 400 metres and Langley Moor Nursery and Primary School is within or closely related to the 400m measurement, depending on the route taken. As such, the location of the proposed hot food takeaway would be in conflict with Policy 30 of the CDP.

5. The Council makes reference to evidence contained within a 'Fast Food and its Impact on Health Assessment' (June 2018) which looked at the density of fast food outlets and the correlation to childhood obesity. I have not been provided with a copy of this document; however, the aim of Policy 30 is clear in that it seeks to promote healthy lifestyles particularly in young people, by restricting the proximity of such uses to schools where they would be located outside of a defined centre.
6. During my site visit, I observed a small number of existing hot food takeaway premises, together with two supermarkets and a convenience store, some which are located in closer proximity to one of the identified schools. Policy 30 is concerned with the concentration of hot food takeaways. As such, any additional provision would contribute to increasing the concentration of these premises within 400m of a school, contrary to Policy 30.
7. In support of the proposal, my attention has been drawn to a recent appeal decision¹ which considered the likely alternative uses for a premises falling into Use Class E in assessing the change of use to a hot food takeaway (Sui Generis). The appeal site benefits from a Class E use. Whilst it has been put to me that it would be possible that the appeal premises could sell food deemed as unhealthy as that of a hot food takeaway, I have not been provided with sufficient evidence to demonstrate that this has a greater than theoretical possibility of being implemented or if any such interest has been shown in the premises, nor do I have any evidence before me that this would result in a similar level of harm to the proposal. Therefore, I have attributed this limited weight.
8. Accordingly, I conclude that this would not be an appropriate location for the proposed development with regard to the local development strategy. This would conflict with Policy 30 of the CDP which seeks to prevent new hot-food takeaway premises within 400m of the entrance of an existing school. There would also be conflict with Paragraph 92(c) of the Framework, which seeks to provide access to healthier food.

Other Matters

9. The development also includes external alterations to the building including improvements to the shopfront, installation of an external flue, and a rear single storey extension. These alterations are considered acceptable to the Council, and I find no reason to disagree with this assessment.
10. I have been made aware that the premises has been the subject of vandalism and anti-social behaviour whilst it has been vacant. My attention has also been drawn to the benefits of the scheme, in that the proposal would utilise a vacant premises and provide some economic benefits and jobs to the local community. I have also had regard the letter of support submitted by the Local Councillor. However, I have not been presented with any substantive evidence that these benefits could not be achieved through an alternative commercial use. As such, the conflict with Policy 30 is not outweighed by these limited benefits.
11. I have had regard to the Framework, as a material. The Framework contains a presumption in favour of sustainable development. Paragraph 11 states that proposals that accord with an up-to-date development plan should be approved

¹ Appeal Reference: APP/U5930/W/22/3299945

without delay. My attention has been drawn to Paragraph 11d (ii) which only applies where the development plan is out-of-date or silent. The CDP was adopted in 2020 and therefore is up-to-date, accordingly Paragraph 11d (ii) is not applicable to the appeal proposal.

Conclusion

12. For the reasons given, the proposal would not accord with the development plan when taken as a whole. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. The appeal is therefore dismissed.

K Lancaster

INSPECTOR