



Appeal Decision

Site visit made on 24 March 2023

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 June 2023

Appeal Ref: APP/N1160/W/22/3307117

26 Morshead Road, Plymouth PL6 5AH

- 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 N Abbott of Ivor Dewdney Pasties Ltd against the decision of Plymouth City Council.
 - The application Ref 22/00437/FUL, dated 15 March 2022, was refused by notice dated 12 July 2022.
 - The development proposed is described as "change of use from Use Class E to Sui Generis Use for consumption of hot food on and off the premises (retrospective)."
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the development on (i) the health of local residents, with particular regard to proximity to schools; (ii) the character and vibrancy of the Crownhill Shopping Centre (CSC); and (iii) highway safety.

Preliminary matters

3. I observed that the development described above has already been carried out. I have dealt with the appeal on that basis.

Reasons

Health

4. Policy DEV6 of the Plymouth & South West Devon Joint Local Plan 2016 (JLP) and the Council's Plymouth and South West Devon Supplementary Planning Document (SPD) recognise the importance of tackling food poverty to help reduce health inequalities in the area; seeking to resist new hot food takeaways within a 400m radius of secondary schools. The aims of this policy and the SPD are consistent with the National Planning Policy Framework (the Framework) which supports healthy lifestyles through access to healthier food within communities.
5. Both main parties agree that the proposal lies within a 400m radius of the nearest secondary school which I noted was approximately a short 3 ½ minute walk from the school entrance gate to the site. The site is on the side of the street with the fewest number of takeaway units, though healthier food choices for school children are limited, particularly as there are around 7 hot food takeaways within a relatively close grouping broadly within a 400m radius of the school. Additionally, the Council has provided evidence that there are

higher than average levels of obesity amongst primary school age children within this specific part of Plymouth. Although this data does not relate to secondary school age children, it nevertheless demonstrates that the development would further encourage unhealthy eating habits of children in the local food environment. For these reasons, the development does not address the Council's strategy or policy aim to promote healthy eating.

6. I therefore conclude on this main issue that the development causes unacceptable harm to the health of local residents, with particular regard to the proximity of schools. As such, it conflicts with Policy DEV6 of the JLP and the Council's SPD which together in this respect seek to improve the food environment, and diet and health of young people. There is also conflict with chapter 9 of the Framework where it says that decisions should support the delivery of local strategies to improve health for all sections of the community.

Effect on the CSC

7. Policy DEV18 of the JLP seeks to promote a broad range of uses that contribute to the vitality of the area and do not lead to inactive frontages, where the focus is on retail. The Council's SPD says that when considering proposals, account will be taken of the overall proportion of A1 uses within the centre as a whole. DEV18.5 of the SPD further adds that a concentration of A5 uses may have a negative impact on the environment and character of an area and seeks to limit these establishments to 20% of the overall offer. Although retail behaviour may have evolved over the years, no substantive evidence has been provided to suggest an alternative approach would be more appropriate within a post pandemic economy. Additionally, the Council's approach is consistent with the aims of chapter 7 of the Framework which says that policies should make clear the range of uses permitted in such locations.
8. The site is located outside the primary retail frontage within the CSC that serves a wide catchment area and is positioned between a number of retail units that I observed to be well used by the public. The CSC is primarily set on two frontages where hot food takeaways are prevalent. In this respect, there is no dispute between both main parties that the development increases the concentration of hot food takeaways to 26% of all units within the CSC.
9. The development includes the option for customers to eat in. However, I observed seating to be relatively limited given the small size of the unit, and if I were minded to allow the appeal, the site could equally be used for hot food takeaway in a location where there is already a particularly high and imbalanced number of such outlets. I therefore attribute very limited weight in favour of the development in respect of the mixed use. Drawing the above matters together, even if an ancillary element of the consumption of food and drink off the premises could currently continue, the development nevertheless further erodes opportunities for retail and other local services and facilities within the centre as a whole, which the Council's town centre strategy seeks to protect.
10. I therefore conclude on this main issue that the development harmfully affects the character and vibrancy of the CSC. As such, it conflicts with Policy DEV18 of the JLP and the Council's SPD which amongst other things seek to ensure that centres retain their primary function and character with the provision of a broad range of uses which contribute towards the vitality of the area.

Highways

11. The site fronts a wide pavement on a busy street with a steady flow of traffic using it due to its close proximity to the primary strategic route to and from the city centre. On street parking controls, time limited parking spaces, morning restricted loading bays, a safe zebra crossing, and a free public car park are characteristics of the immediate and surrounding area. The site is highly accessible by public transport services and consequently its customers and employees would not need to rely on parking private vehicles for access. Despite on street parking provision being at a premium in close proximity to the site, the existing use could generate similar numbers of employees, customers or deliveries when compared with the development, and no substantive evidence has been provided to demonstrate there are any additional harmful effects in this regard.
12. I acknowledge the objection from the Highway Authority and their concerns that short stay indiscriminate parking could interfere with the free flow of traffic; and that this may occur outside dedicated parking areas. I did not observe this to be the case at my lunchtime visit, and I note that illegal parking could be dealt with through the appropriate enforcement measures. Furthermore, given the option to eat in, the 'dwell-time' referred to by the Council would be likely to be longer than with those establishments that solely provide a hot food takeaway service. This, in turn, is more likely to encourage customers to make use of the available dedicated parking options found nearby rather than parking haphazardly. Although my observations above only represent a snapshot in time, recognising the demand for use of national delivery chains may be more acute in the evenings, I find that there are nevertheless sufficient parking options available.
13. The Council is concerned that the development causes damage to convenience and amenity, though my observations are that the wide pavement and surrounding retail units provide ample space for such a use to function without causing conflict with the amenity of nearby businesses. There is also little evidence provided by the Council that the development harms the amenity of the area.
14. I therefore conclude on this main issue that the development does not harmfully affect highway safety. As such, there is no conflict with policies DEV18(5) and DEV29 of the JLP, or the Council's SPD, which amongst other things seek to ensure developments provide safe traffic movements and acceptable parking and amenity. Furthermore, the proposal satisfies paragraphs 110 and 111 of the Framework, which seeks development to provide a safe and suitable access to the site, where development should only be refused on highways grounds if there would be an unacceptable impact on highway safety.

Other Matters

15. The appellant has brought to my attention a permission at 44 Morshead Road. Whilst there are similarities with the issues raised, that decision was taken at a time when there were a fewer number of hot food takeaways in the CSC. Additionally, the evidence submitted with this appeal relating to health in the community means that the two schemes are not directly comparable.

16. The Council refers to an appeal decision at Weston Park Road where the Inspector concluded that a lack of off-street parking would lead to further issues of indiscriminate parking. I am also provided with an extract of a summary of parking demand for a fast food restaurant in Richmond. However, neither site is in the same area and given these differences I cannot be sure of the site-specific circumstances. In any case, I have determined this appeal on its merits in light of the evidence before me.

Planning Balance and Conclusion

17. Bringing together my conclusions on the main issues I have found that the site to be highly accessible by public transport, with a range of parking options available in the area. There is also inadequate evidence to demonstrate that any under-provision for parking on site would be harmful to highway safety or to the amenity of the area. However, this does not outweigh the harm I have found to the significant conflict with the development plan's health and town centre strategies, that aim to improve the food environment and support a balance of uses respectively.
18. For the reasons above, and taking into account all other matters raised, I conclude that the proposed development fails to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed.

J Hills

INSPECTOR

