



Appeal Decision

Site visit made on 7 November 2023

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2023

Appeal Ref: APP/X1355/W/23/3327823

44 Canterbury Road, Newton Hall, Durham, County Durham DH1 5PY

- 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 Colthome Ltd against the decision of Durham County Council.
- The application Ref DM/23/01588/FPA, dated 1 June 2023, was refused by notice dated 28 July 2023.
- The development proposed is the change of use from retail shop to hot food takeaway.

Decision

1. The appeal is dismissed.

Main Issue

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

Reasons

3. The appeal site, No. 44 Canterbury Road is an existing commercial unit within a short parade of local shops and facilities. At the time of site visit, the appeal site was occupied by a retail use. The surrounding area is predominantly residential, with Finchdale Primary School located approximately 250 metres away and accessed from Canterbury Road
4. Policy 9 of the County Durham Plan (2020) (CDP) provides a retail hierarchy and lists locations which fall into that hierarchy including 'Local Centres'. Although, I acknowledge that there is a mix of uses clustered together on this part of Canterbury Road including, a convenience store, doggie diner, beauty salon, salon, barber's shop and a public house on the corner of Canterbury Road and Rothbury Road, nevertheless, the appeal site is not within a 'a defined centre, or primary shopping area' as identified under Policy 9 of the CDP. This is not disputed by the parties, and the Council has confirmed that the cluster of commercial properties was assessed but not deemed to be a local centre for the purposes of this policy.
5. 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. For locations that are outside of defined centres, Policy 30 of the CDP states that proposals for hot food takeaways 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.

6. It is not disputed that the appeal site is within 250 metres of the entrance to Finchdale Primary School. Therefore, the proposed change of use to a hot food takeaway would be in conflict with Policy 30 of the CDP.
7. The appellant has put forward suggested mitigation in the form of restricting the opening hours of the premises to avoid school hours. However, whilst I have had regard to whether suitable opening hours could be secured by condition, Policy 30 is clear that 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.
8. I have had regard to Paragraph 81 of the Framework which states that planning policies and decisions should help create the conditions in which businesses can invest, expand, and adapt, with significant weight being placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. I have also had regard to the economic, social, and environmental benefits the proposed development put forward by the appellant, including, job creation, providing a hot food takeaway where currently there is none in the immediate area and in an accessible location. However, in this particular case, these benefits do not outweigh the conflict with Policy 30 of the CDP in relation to the proximity of the appeal site to a local primary school.
9. A recent appeal decision¹ for 74 High Street South, Langley Moor has been brought to my attention by both parties. This decision relates to a similar proposal for the change of use of an existing commercial premises to a hot food takeaway. However, whilst I acknowledge that this appeal is similar in so far as it considers the proximity of the appeal premises to a local school, it is not directly comparable. The appeal schemes also differ in terms the specific fish and chip shop use being sought, its location and proposed opening hours. Therefore, whilst I have had regard to the findings of this decision in so far as it is material to this appeal, each proposal is considered on its own individual merits.
10. I therefore conclude that the appeal site would not be an appropriate location for the proposed development having regard to the local development strategy. The proposed development would be in 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, where the site is not within a defined centre. It would also be contrary to Part 8 of the Framework which seeks to support healthy lifestyles, including access to healthier food.

Other Matters

11. I have had regard to the Framework, as a material consideration. 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 without delay. The CDP was adopted in 2020 and therefore is up to date.
12. The Council has not raised concerns relating to the effect of the proposed development on the vitality and viability of the shopping parade, the living conditions of nearby residents or the local highway network. Based on the

¹ Appeal Ref: APP/X1355/W/22/3313120

evidence before me, and from my own observations, I have no reason to disagree with the Council's assessment of these matters. I have also had regard to the absence of objections from the Parish Council and City of Durham Trust. However, the absence of harm is a neutral factor which neither ways for or against the proposed development.

Conclusion

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

K Lancaster

INSPECTOR