



Appeal Decision

Site visit made on 31 July 2024

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 29 August 2024

Appeal Ref: APP/H0724/W/24/3343622

91 Elwick Road, Hartlepool TS26 9AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Manminder Singh Dhatt against the decision of Hartlepool Borough Council.
 - The application Ref is H/2023/0314.
 - The development proposed is change of use from beauty salon to hot food takeaway.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading above has been taken from the application form, although the decision notice refers to it as 'change of use from a vacant beauty salon (E use class) to hot food takeaway (sui generis use class). As there is no evidence to confirm agreement for the revision to the description, I have used the description from the original application.

Main Issues

3. The main issues are:
 - Whether the proposed use of the building would affect the vitality and viability of local centres;
 - The effect of the proposal on the health of local residents;
 - The effect of the proposal on the character and appearance of the host building and the area; and
 - The effect of the proposal on the living conditions of neighbouring residents with regards to outlook, odour, noise and disturbance.

Reasons

Vitality and viability

4. The appeal site was previously used as a beauty salon and is currently vacant. It is located on Elwick Road which has a number of shops and commercial premises along it, although the road and streets surrounding the site are mainly residential.
5. Policy RC21 of the Hartlepool Local Plan, 2018 (LP) does not permit commercial uses in residential areas outside defined retail and commercial centres unless it

would have no significant detrimental effects on the amenities of occupiers of adjacent premises; the design, scale and impact is compatible with the character and amenity of the site and surrounding area; and appropriate servicing and parking provision is available. The policy does not, however, permit hot food takeaways.

6. The site is not in a defined retail and commercial centre. Furthermore, LP Policy RC18 does not permit hot food takeaways outside such a designated area. The Policy states that this is to protect the vitality and viability of the network of retail and commercial centres within the borough and seek to protect the residential amenity of nearby residents.
7. Whilst the proposal would re-use an existing commercial premises that is no longer occupied, there is little substantiated evidence as to whether this is the only viable use for the building. The appellant is experienced in running fish and chip shops, with a stated gap in the market for traditional food outlets in the area. However, whilst the proposal would provide some employment and contribute to the local economy, the development plan policies do not support hot food takeaways in this locality.
8. Therefore, I conclude that the proposed development in this predominately residential location would harm the vitality and viability of existing local centres. It would not accord with LP Policies RC21 and RC18 as set out above which seek to protect the vitality and viability of the network of retail and commercial centres within the borough, as well as not permitting hot food takeaways outside of them.

Health effects

9. Paragraph 96 c) of the National Planning Policy Framework refers to planning decisions that should aim to enable and support healthy lifestyles, especially where this would address identified local health and well-being needs, such as access to healthier foods. LP Policy RC18 places strict controls on proposals for hot food takeaways in order that residents have an opportunity for a healthy lifestyle.
10. Whilst the appellant is seeking to provide healthier options such as grilled fish and fish without batter, as well as a salad bar, a suitably worded condition that limits the types of food that is served from the premises would neither be reasonable or enforceable. The appellant refers to the traditional nature of fish and chips, which is expensive compared with other takeaway foods, and that they would serve food at traditional mealtimes. Notwithstanding this, the development proposal is for the premises to be used as a hot food takeaway.
11. The Council's Public Health Officer has referred to the Council's commitment to reducing high levels of obesity within the borough. This includes some of the highest figures in England for children being overweight. Furthermore, the Council refer to Hartlepool having 160.5 hot food takeaways per 100,000 population, as opposed to a national average of 96.1. The supporting text to LP Policy RC18 explains that obesity can lead to a number of illnesses. Whilst there are several factors that can cause these, there is a definite link to an unhealthy diet contributing to many of these illnesses. For these reasons the Council has sought to limit the number of takeaways to support residents having a healthy lifestyle.

12. Therefore, I conclude that the proposal could harm the health and well-being of local residents. It would conflict with LP Policy RC18 as set out above, as well as the advice in paragraph 96 of the Framework to support healthy lifestyles to address the health and well-being of the local community.

Character and appearance

13. The appeal site is a brick, end-terraced property on the corner of Elwick Road with Grasmere Street. It has a traditional bay window on the 1st floor with the ground floor having roller shutters across the front elevation. On the side elevation along Grasmere Street, there are roller shutters over two windows and a doorway.
14. The only external alterations resulting from the development proposal, would be the construction of a flue on the rear of the property. No 91 is taller than those properties adjoining it and it has a high parapet wall along the side elevation on Grasmere Street. Whilst much of the flue would be hidden, it would extend upwards, higher than the eaves level of the building.
15. Although the flue would not be seen from the front of the property, it would be visible from views along Grasmere Street, as well as from the rear of some properties along Keswick Street. Whilst the flue would not be excessively large, there are no other similar features in the area. Therefore, it would appear somewhat incongruous within a residential area. Moreover, as the building is located on the corner, at right angles to the properties along the western side of Grasmere Street, and is higher than those buildings adjacent to it, the flue would be prominent. Consequently, it would be unsympathetic to the residential characteristics of the area.
16. I therefore conclude that the construction of the flue would harm the character and appearance of the host building and the area. It would conflict with LP Policies RC21 and QP4 which together and amongst other things requires that the design, scale and impact of commercial uses in residential areas is compatible with and contributes to the character and amenity of the site and the surrounding area.

Living conditions of neighbouring residents

17. Whilst the flue would be visible from a number of vantage points at the rear, No 93 Elwick Road and No 4 Grasmere Street have common boundaries with the appeal site. However, the position of the flue in relation to the location of the outdoor yard areas of these properties, means that the flue would not harm the outlook of occupiers of these, or other properties in the area.
18. The premises would be open between 11.30-13.30 and 16.15-20.15 hours, in order that it would not disturb neighbouring residents. Moreover, suitably worded conditions could restrict the opening hours and delivery times. The proposed development is on a main road and whilst the Council has no highway concerns, third parties have raised objections regarding parking for the proposal. Whilst it would generate some traffic, this is unlikely to lead to local parking issues. Moreover, the restricted hours would also prevent disturbance from cars later in the evening.
19. Conditions requiring details of the flue and extraction system to ensure that noise and odours would not result from the development, as well as the provision of sound protection between No 91 and the adjoining property would

prevent harm to neighbouring residents. There is no dispute between the main parties regarding such conditions, which I have no reason to disagree with.

20. I therefore conclude that the proposed development would not harm the living conditions of the occupiers of neighbouring properties with regards to outlook, noise, disturbance, and odour. It would not conflict with LP Policies RC18 and RC21 which together seek to protect the residential amenity of nearby residents.

Other Matters

21. The appellant states that CCTV would be installed, the development would be to Secured by Design standards, and that bringing the building back into use would help to reduce crime in the area. However, no evidence has been submitted that suggests that the empty building is leading to criminal activity. Therefore, I give only limited weight to this.
22. Whilst the appellant contends that another retailer could sell unhealthy food from the premises and operate with longer hours, this is not what has been applied for. Therefore, I have determined the appeal on its own merits, based on the evidence before me.

Conclusion

23. The proposed development conflicts with the development plan when considered as a whole. Whilst the proposal would not harm the living conditions of neighbouring residents, this does not outweigh the identified harm and associated development plan conflict.
24. For the reasons given above, I conclude that the appeal is dismissed.

M J Francis

INSPECTOR