



Appeal Decision

Site visit made on 30 August 2024

by D Hartley BA (Hons), MTP, MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th SEPTEMBER 2024

Appeal Ref: APP/H4505/C/24/3341100

Unit C1, 592 Durham Road, Gateshead, NE9 6HX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr David Milburn (Davey's Breakfast and Sandwiches) against an enforcement notice issued by Gateshead Metropolitan Borough Council.
 - The notice was issued on 15 February 2024.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land from a café (use class E) to hot food takeaway (sui generis).
 - The requirements of the notice are to cease the use of the Land known as Unit C1, 592 Durham Road, Gateshead, NE9 6HX as a hot food takeaway.
 - The period for compliance with the requirement is 16 weeks.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. The Government consulted on reforms to the National Planning Policy Framework 2023 (the Framework) on 30 July 2024 (Consultation Draft Framework). The consultation closes on 24 September 2024. I afford the Consultation Draft Framework limited weight in decision making terms as a material planning consideration. Considering the deemed planning application main issues below, there are no proposed reforms in the Consultation Draft Framework which have a material bearing on how this appeal should be considered. In this regard, it has not been necessary for me to seek comments from the main parties in respect of the Consultation Draft Framework.
3. The evidence is that the deemed planning application fee was paid by Mr David Milburn in respect of the above appeal made under ground (a) of section 174(2) of the Act. An appeal was also lodged by Mr Robert West in respect of the same enforcement notice. However, as a ground (a) fee has not been paid by Mr Robert West, and no other grounds of appeal are pleaded by him, linked appeal APP/H4505/C/24/3341099 has lapsed.

4. A retrospective planning application was considered by the Council in 2023 for the same development which is the subject of this appeal.¹ I have been provided with a copy of the officer report for the refused planning application and have taken it into when determining this appeal.

Main Issues

5. An appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reasons for issuing the notice and the main issues are the effect of the development on (i) the health of young people in the area, and, (ii), whether it is likely to lead to indiscriminate and unlawful on-street car parking to the detriment of the highway safety of road users.

Health of young people

6. The Council's adopted Hot Food Takeaway Supplementary Planning Document 2015 (SPD) supplements policy CP14 of the adopted Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne Local Plan 2015 (LP). The SPD includes specific criteria for controlling the number and location of hot food takeaways.
7. The hot food takeaway which is the subject of this appeal was considered against the SPD as part of the assessment of the above retrospective planning application. I do not doubt that a new extraction system has been installed in the property. While I have not been provided with technical details of the extraction system, I nonetheless I find that the acceptability of the extraction system would be capable of being addressed by a planning condition. In this regard, consideration No. 7 of the SPD would be capable of being met.
8. Notwithstanding the above, the evidence is that the appeal development does not accord with the other requirements of the SPD. Firstly, the evidence is that the site is located within 400 metres of Kells Lane Park which is classified as a location where children and young people would congregate. The SPD does not permit hot food take-aways within a 400-metre radius of entry points to secondary schools, youth centres, leisure centres and parks.
9. Secondly, the site is within a ward where the evidence is that there are more than 10% of the year six pupils being classified as obese. The most up to date information before me is that for the period 2015/16 to 2017/18 the percentage for Low Fell ward was 19.1%, an increase from 15.0% when the SPD was adopted. I have no evidence to indicate that obesity levels have decreased since 2017/18 or that they are now at an acceptable level.
10. Finally, the evidence before me, which has not been disputed by the appellant, is that in the Low Fell ward there are 1.51 hot food takeaways per 1000 people. The SPD does not permit further hot food takeaways within a ward where the UK national average of 0.86 hot food takeaways per 1000 people would be exceeded.
11. For the reasons outlined above, I conclude that the development does not accord with the requirements of the SPD. If allowed, the evidence is that it would lead to an over proliferation of hot food takeaways in the ward and, given its location, would have the effect of likely attracting young children and

¹ Planning application reference DC/23/00888/COU

hence exacerbating high levels of obesity in the ward relative to the UK national average. Consequently, the development does not accord with the health objectives of policy CS14 of the LP, the SPD, and paragraph 96 of the Framework.

12. In reaching the above conclusion, I have considered the appellant's comment that he uses fresh ingredients and quality meats and that as the prices are '*not exactly cheap*' it means that the breach of planning control does not exacerbate the level of child obesity in the area.
13. I do not doubt that the business offers fresh and tasty food and with the use of good quality ingredients. However, I have been provided with a copy of the breakfast menu and a photograph of the wall menus displayed inside the premises. The evidence is that the hot food takeaway includes the sale of items such as 'loaded wraps', 'ice cream shakes', 'double hash and cheese', 'loaded hash browns', 'loaded bagels' and 'cereal infused milkshakes'. Some of these items are sold between £5.00 and £5.50. I am not persuaded that these are the sort of prices that would discourage all young people from purchasing such items in conjunction with say a visit to or from Kells Lane Park. Consequently, the matters raised by the appellant do not alter or outweigh my conclusion on this main issue.

Highway safety

14. The SPD states that planning permission for hot food takeaways will only be granted where there would not be an adverse impact on highway safety and that regard will be given to existing traffic conditions including the availability of parking spaces and safe loading areas.
15. There are car parking restrictions on Durham Road. This includes the area immediately outside the appeal premises. Where nearby on-street car parking exists, it is in the form of a limited number of car parking bays. Some of these are near several other commercial properties such as a public house, takeaways and shops. The evidence is that a delivery takeaway service is also operated from the premises and that Uber Eats is used.
16. I visited the site on a Friday evening. While I acknowledge that this was only a snapshot in time, it was nonetheless evident that the car parking bays on Durham Road were almost fully utilised. During the site visit, I did not witness any Uber Eats delivery service movements to or from the property. However, in the absence of any car parking surveys relating to Durham Road, I find that the site visit evidence supports the Council's concern that a lack of likely available on-street car parking would, on occasion, result in indiscriminate car parking on nearby pavements, or within restricted highway areas, to the detriment of either the safe and convenient movement of pedestrians, or the free flow of traffic on Durham Road.
17. It remains possible that there could be a significant number of hot food takeaway deliveries taking place from the appeal property and using Uber Eats drivers. Given the time pressures associated with a delivery service, I find that it is possible that some indiscriminate and unlawful car parking would take place within the immediate vicinity of the appeal site.
18. In reaching the above conclusion, I have also considered the appellant's comment that some unauthorised car parking has previously taken place at the

private garage which is very near the appeal site. This casts doubt about the appellant's claim that on-street car parking spaces are always available on Durham Road. Moreover, I have also considered the Council's Transport and Planning Service comment that *'officers have liaised with the Council's Network Management team It has been advised that parking in the area has been identified as a concern, resulting in requests for the police having to be involved'*.

19. I acknowledge that the last lawful use of the property appears to be a café/restaurant. However, in my judgement there is a difference in car parking terms from those wishing to have a sit-down meal and the operation of a hot food takeaway with a delivery service. I find that those wishing to have a sit-down meal are more likely to find a car parking space further afield (if necessary) and including away from restricted areas. In contrast, I find that the time pressures associated with an Uber Eats hot food takeaway delivery service is likely to be such that the convenience associated with indiscriminate car parking, including within restricted areas, is more likely to occur.
20. The appellant states that there is only a *'small amount'* of Uber Eats deliveries. I am not certain from the evidence what is meant by a small amount, but it remains possible that this could in fact be considerable. In any event, there is nothing to indicate that the business would turn Uber Eats custom away. Moreover, this is not a matter that could be reasonably controlled from a planning condition point of view: it would not be enforceable.
21. It is important that I also emphasise that the evidence is that the hot food takeaway also offers the opportunity for some customers to have a sit-down meal or drink. Therefore, the car parking requirements associated with the delivery side of the business also need to factor in that some would likely arrive at the premises by car to consume food and drink inside the building. It is likely that if car parking spaces were available on Durham Road, it would be used by customers for this purpose. In other words, the appeal development needs to be considered from a cumulative car parking requirement point of view. As the evidence indicates that there are likely to be on-street car parking demand pressures in the immediate area, it is possible that even a *'small amount'* of Uber Eats deliveries would lead to harmful impacts in this regard.
22. For the above reasons, I am unable to find that the development would not lead to indiscriminate and unsafe car parking in the area to the detriment of road users. Consequently, I cannot conclude that the development accords with the highway safety requirements of policies CS13 and MSGP15 of the LP, the SPD, and paragraph 115 of the Framework.

Other Considerations

23. I acknowledge the economic benefits associated with the breach of planning control from the point of view of facilitating the provision of direct and indirect jobs. Moreover, I note that the appeal building is in use and that it offers some food choice for the local community and passers-by. However, these positive material planning considerations must be weighed against my conclusions on the main issues. I afford such conclusions very significant adverse weight in decision making terms. They are overriding in the planning balance and hence the other considerations are not sufficient to justify the grant of planning permission.

Ground (a) Appeal Conclusion

24. For the reasons given above, I find that the development does not accord with the development plan for the area taken as a whole. In this case, there are no identified material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails.

Overall Conclusion

25. I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

D Hartley

INSPECTOR