



Appeal Decision

Site visit made on 19 November 2024

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2025

Appeal Ref: APP/A4520/W/24/3347878

Tino's Cafe, 154A Calf Close Lane, Hedworth, Fellgate, Jarrow, South Tyneside NE32 4DU

- 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 Mrs Mehakdeep Dulay Singh (Mr & Mrs Mehakdeep Megan and Peter Tino Dulay Singh) against the decision of South Tyneside Council.
 - The application Ref is ST/0729/23/FUL.
 - The development proposed is Change of use from existing lawful cafe/restaurant with ancillary takeaway use (Use Class E, approved as prior approval ST/0857/20/PNCU) to a mixed use of restaurant/cafe with hot-food takeaway (sui generis), creation of bin store area, retention of shop front, roller shutter and external alterations, retention of approved flue/duct/cowl system internally and externally as enclosed by chimney stack feature.
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Decision

1. The appeal is allowed, and planning permission is granted for the change of use from existing lawful cafe/restaurant with ancillary takeaway use (Use Class E, approved as prior approval ST/0857/20/PNCU) to a mixed use of restaurant/cafe with hot-food takeaway (sui generis), creation of bin store area, retention of shop front, roller shutter and external alterations, retention of approved flue/duct/cowl system internally and externally as enclosed by chimney stack feature at Tino's Café, 154A Calf Close Lane, Hedworth, Fellgate, Jarrow, South Tyneside, NE32 4DU in accordance with the terms of the application, reference ST/0729/23/FUL, and the plans submitted with it subject to the conditions in the attached schedule.

Preliminary Matters

2. The address of the appeal premises varies between the application form, the appeal form, and the Council's decision notice. The correct address was clarified with the appellant and consequently I have adopted the address given in the appeal form in the banner and in my formal decision above.
3. The Council's refusal reason does not refer to a development plan policy and instead relies on HFT1 of the South Tyneside Local Plan Supplementary Planning Document 22: Hot Food Takeaways and Health 2017 (SPD). Although the SPD is a material consideration in the determination of the appeal in accordance with Planning Practice Guidance¹ (PPG) it is for guidance and advice rather than actually providing additional policies upon which planning applications can be refused. As such HFT1 cannot be considered as an adopted development plan policy.

¹ Paragraph: 008 Reference ID: 61-008-20190315

4. The Government published a revised National Planning Policy Framework (the Framework) on 12 December 2024. The main parties were given the opportunity to comment, and I have considered the revised Framework in my decision.

Main Issue

5. The main issue is the effect of the proposal on the health and well-being of the local community.

Reasons

6. The appeal premises is located on Calf Close Lane and is currently in use as a restaurant/café². The unit is a single storey building attached to the end of small row of commercial units, made up of two convenience stores and a tanning salon in a predominantly residential area. A public house is situated a short distance away on Hedworth Lane. I have not been made aware of any other fast-food outlets close by.
7. The proposal seeks the change of use of the appeal premises to a mixed use where hot food takeaway sales would form a greater element of the business than at present. It is located within the Fellgate and Hedworth Ward where the most recent data shows that 24.7% of children in school year 6 are considered to be very overweight³. No evidence has been submitted to dispute this figure.
8. HFT1 of the SPD advises that planning permission will not be granted for Hot Food Take Aways (HFTAs) in areas where the levels of obesity in Year 6 pupils is over 10%. It goes on to state that proposals should be assessed against the most up to date annual National Child Measurement Programme (NCMP) data. As the most up-to-date data indicates that the percentage of children in the ward who are very overweight exceeds this figure the proposal would be contrary to HFT1 of the SPD.
9. However, many factors are likely to have a bearing on obesity levels, and the link between this and the existing provision of hot food takeaways in the borough has not been convincingly demonstrated given the rise in obesity levels in the borough since the SPD was adopted. Based on the evidence presented to me, I am not convinced that the proposal to increase takeaway sales from an already existing fast-food premises would compound existing problems, encourage unhealthy eating or that it would be directly attributable to any material decline in the health of local residents, particularly children.
10. The appeal premises is not close to either a primary or secondary school. Children travelling to and from primary schools are likely to be under the supervision of an adult and it would be expected that parents or guardians would have a child's health in mind when selecting their food options. Children of a secondary school age are more likely to be unaccompanied at lunchtimes and after school. However, the considerable distance of the appeal premises from the nearest secondary school means that it is unlikely to be an attractive option for lunch and post-school visits compared to existing shops and services which are closer by and more accessible for students.

² LPA ref: ST/0857/20/PNCU – prior approval under Part 3 Class C of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO).

³ South Tyneside National Child Measurement Programme (NCMP) Ward data 2022/23

11. As such there would be no conflict with paragraph 97 of the Framework as it is not within walking distance of a school, and I have not been made aware that it is close to another place where young people congregate. It is also not within a concentration of similar premises which is contributing towards an adverse impact on local health.
12. I nevertheless acknowledge that the appeal site is within a residential area where young people are likely to live. However, I am also mindful that the premises already has permission to operate as a restaurant/café where an element of the sales are for takeaway consumption and the food served is the same whether eaten on the premises or purchased as a takeaway. The proposal would, however, allow an increased proportion of sales from the premises to be for takeaway consumption.
13. The refusal reason does not refer to any specific development plan policies. However, it refers to guidance in the SPD in policy terms which for the reasons set out above is not adopted development plan policy. I have also considered the guidance set out in Section 8 of the Framework which promotes healthy communities and specifically paragraph 97 which deals with the location of HFTAs and find that the proposal would not prejudice the health and well-being of the local community or their ability to live a healthy lifestyle.

Other Matters

14. Residents made representations at the planning application stage on a wider basis, including concerns surrounding the existing use of the premises and the cooking equipment installed, parking issues, consultation on the prior approval application, litter, anti-social behaviour, odour and light pollution. However, these matters did not form part of the Council's reasons for refusal.
15. Although the appeal site is located close to residential properties, there is no compelling evidence that the proposal before me would give rise to additional odour, noise, cause antisocial behaviour or lead to indiscriminate parking in the area to such an extent that would warrant dismissal of the appeal.
16. Furthermore, the Local Highways Authority and Environmental Health Officer did not raise any objection. Based on my observations on my site visit, and taking into account the nature of the proposal, I have no reason to conclude that the proposal would significantly harm the living conditions of the occupiers of nearby properties and the matters raised do not lead me to an alternative conclusion on the main issue.
17. My attention has been drawn to an appeal decision for a HFTA in another location within the borough⁴. I do not have all the details of the appeal before me. I therefore cannot be certain that the proposal in that appeal, which was for a new HFTA, is entirely comparable to the situation before me, which is for the change of use of an existing food establishment and was made in the context of a previous iteration of the Framework. My considerations are based solely on the scheme before me and my observations on site. I have determined the appeal based on the information before me and for the reasons set out above.

⁴ APP/A4520/W/19/3226421 1 Victoria Road East, Hebburn NE31 1XG

Conditions

18. I have considered the conditions suggested by the Council in the light of the Framework and the PPG. I have imposed the standard time limit as I have not been provided with any substantive evidence the use as applied for has commenced. A plans condition is considered necessary in the interests of precision and clarity. I have also imposed an hours of operation condition which is necessary and reasonable given the appeal premises location close to residential properties. Additionally, conditions requiring the retention of inside seating and the use of the fume extraction equipment are both reasonable given the nature of the proposal.

Conclusion

19. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise⁵. The PPG advises that a material consideration is one which is relevant to making the planning decision in question. In coming to my decision, I have had full regard to the conflict of the proposal with HFT1 of the SPD, and this carries some weight in the determination of the appeal. However, the absence of conflict with any identified development plan policy, the location and the existing use of the appeal premises as a restaurant/café leads me to conclude that the appeal should be allowed subject to the conditions set out in the attached schedule.

KL Robbie

INSPECTOR

⁵ Section 38 (6) of the Planning and Compulsory Purchase Act 2004

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with following approved plans: Location Plan; Existing and Proposed Site Plans Drawing. No. AD-23-04 Rev 0; Proposed Change of Use Drawing No. AD-23-04 Rev 0.
- 3) The premises shall only be open for customers between the following hours: 0900 – 2200 Mondays - Saturdays and 1100 - 2200 Sundays and on Bank or Public Holidays.
- 4) The seating area identified on the proposed floor plan ref. AD-23-04 shall be made available for use by patrons at all times when the use hereby permitted is open to the public.
- 5) The fume extract equipment shall be operated at all times when cooking is being carried out and shall be switched off when not required.

****End of Schedule****