



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: 6 February 2025

Appeal Ref: APP/A4520/W/24/3349010

79-81 Fowler Street, South Shields, South Tyneside NE33 1NT

- 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 Anthony Lang against the decision of South Tyneside Council.
 - The application Ref is ST/0497/23/FUL.
 - The development proposed is the change of use of a vacant hydroponics shop unit to hot food takeaway (across all levels) and erection of high velocity duct/flue/cowl to rear, extracting above eaves but below ridge level.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use of a vacant hydroponics shop unit to hot food takeaway (across all levels) and erection of high velocity duct/flue/cowl to rear, extracting above eaves but below ridge level at 79-81 Fowler Street, South Shields, South Tyneside, NE33 1NT in accordance with the terms of the application, Reference ST/0497/23/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have taken the site address from the description of the site location on the application form as this appears to be an accurate reflection of the address of the appeal premises and is consistent with other documentation submitted with the appeal.
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 providing additional policies upon which planning applications can be refused. As such HFT1 cannot be considered as an adopted development plan policy.
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 proposed development on the health and wellbeing of the local community.

Reasons

6. The appeal premises are located on Fowler Street within the South Shields defined shopping centre. The property is currently unoccupied having been previously used as a shop at ground floor with offices above. The appeal scheme proposes a change of use to Hot Food Take Away (HFTA) across all floors. It is located within the Beacon and Bents Ward where the most recent data shows that 28.4 % of children in school year 6 are considered to be overweight.
7. 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.
8. Many factors are likely to have a bearing on obesity levels and the provision and location of HFTAs are only one aspect of this. In this instance, the location and prevalence of HFTAs within this particular ward which includes South Shields town centre has not been convincingly demonstrated to be a defining factor in obesity levels of children, especially considering the significant rise in the percentage of Year 6 pupils in the ward who are overweight since the introduction of the SPD.
9. Furthermore, to my mind the guidance in the SPD goes beyond providing detailed advice on adopted policies in the development plan. Additionally, the proposal would comply with Policy DM3 of the South Tyneside Development Management Policies DPD (DPD) which relates to HFTAs in established shopping centres. The SPD states that this policy remains the overarching criteria against which HFTA proposals will be assessed.
10. 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 an adopted development plan policy. In coming to my conclusion on this matter, 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

11. My attention has been drawn to an appeal decision for a HFTA in another location within the borough¹. I do not have all the details of the appeal before me, which is located within a district shopping centre where alternative criteria under DPD policy DM3 apply, and in the context of a previous iteration of the Framework. It is therefore not directly comparable to the situation before me. My considerations are based solely on the appeal scheme, and on the information before me for the reasons set out above.

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

12. A representation was made at the planning application stage concerning parking issues and anti-social behaviour relating to litter, noise and disturbance. These matters did not form part of the Council's reasons for refusal, and I have no substantive evidence before which would indicate that the proposal would give rise to additional anti-social behaviour or lead to indiscriminate parking to such an extent that would warrant dismissal of the appeal.
13. 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.

Conditions

14. I have considered the conditions suggested by the Council in the light of the Framework and the PPG. I have made some minor adjustments to the wording of the conditions in the interests of preciseness and enforceability. These amendments have not altered their meaning or intention and therefore should not come as a surprise to either party.
15. In additions to the standard time limit I have imposed a plans condition which is considered necessary in the interests of precision and clarity. I have also imposed an hours of operation condition which is necessary given the proximity of residential properties to the appeal site. Additionally, a condition requiring the use and installation of extraction equipment is reasonable given the nature of the proposal.

Conclusion

16. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise². 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 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 and the location of the appeal premises in a defined town centre location leads me to conclude that the appeal should be allowed subject to the conditions set out in the attached schedule.

KL Robbie

INSPECTOR

² 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 drawing nos: Location Plan (unreferenced); Existing Elevations & Floor Plans AD-23-01 Rev. 0; Proposed Elevations & Floor Plans AD-23-01 Rev. 0; Existing & Proposed Site Plans AD-23-01 Rev. 0.
- 3) The premises shall only be open for customers between the following hours:
 - (i) 0800 - Midnight Sunday - Thursday
 - (ii) 0800 - 0200 Friday – Saturday (ending at 0200 Sunday)
- 4) Prior to the development being brought into use, the extraction system as shown on drawing ref: Proposed Elevations & Floor Plans AD-23-01 Rev. 0 shall be brought into use. The extraction system shall be installed in accordance with the following documents and plans: Amerex Ltd Delivery Note; Roof Hood Specifications; Sitesafe Carbon Filters Specification; Stainless Steel Specification Sheet; Technical Data Sheet. All equipment installed as part of the above extraction system shall thereafter be operated and maintained in good working order in accordance with the approved plans for the lifetime of the development.

****end of schedule****