



Appeal Decision

Site visit made on 11 February 2025

by **F Harrison BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 March 2025

Appeal Ref: APP/A4520/W/24/3356308

18 Bede Burn Road, Jarrow, South Tyneside NE32 5RX

- 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 Ms Sima Ahmad of The Ahmed Family against the decision of South Tyneside Council.
 - The application Ref is ST/0568/24/FUL.
 - The development proposed is the change of use from now vacant dental laboratory to commercial catering unit under a mixed use selling both hot and cold food and hot and cold drinks with an extraction flue/duct/cowl erected to rear.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development has been taken from the application form, removing wording that does not relate to acts of development.

Main Issues

3. The main issues are the effect of the proposal on:
 - the health and well-being of residents, with particular regard to the health of young people; and
 - highway safety, with regard to car parking, and deliveries and servicing.

Reasons

Health and well-being

4. The proposal seeks the change of use of the appeal property to maximise flexibility and allow the sale of hot and cold food and drinks. The appellant suggests that the boundaries are blurred between the use classes in the Town and Country Planning (Use Classes) Order 1987 (the UCO) in relation to commercial catering operations. However, as the proposal seeks a mixed use incorporating an undefined element of hot food takeaway (HFT) the guidance contained within the Supplementary Planning Document 22: Hot Food Takeaways and Health (2017) (SPD) is of relevance. While not part of the development plan, the SPD is a response to identified local health and well-being needs, has been adopted in accordance with the regulations¹ and is a material consideration in decision-making.

¹ Regulations 11 to 16 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

5. HFT1 of the SPD advises that planning permission will not be granted for HFTs in areas where the level of obesity in Year 6 pupils is over 10%, based on an assessment of the most up to date annual National Child Measurement Programme data. It is not disputed that the appeal site is located within the Monkton Ward where 35.1% of Year 6 pupils are obese. Even though this represents an increase in the proportion of obese pupils since the introduction of the SPD, the proposal would be contrary to HFT1. Accordingly, the proposal would not accord with the aims of the SPD to limit access to unhealthy food choices and manage the location of HFTs.
6. The appellant may well not agree with the Council's approach of using its planning powers to try to address problems of childhood obesity and obesogenic environments. Nevertheless, the SPD aligns with Paragraph 97 of the National Planning Policy Framework (the Framework) which sets out that applications for HFTs should be refused in locations where there is evidence that a concentration of such uses is having an adverse impact on local health. It also says that unless the location is within a designated town centre, HFTs should be refused that are within walking distance of schools. The appeal site is not within a town centre, and while not within the 400-metre exclusion zone for the purposes of HFT2 of the SPD, Jarrow School is within walking distance of the appeal site.
7. The links between obesity and unhealthy food choices are well understood, and that food from takeaways is more likely to have a largely unfavourable nutritional content. Located on a main thoroughfare linking Jarrow School to the surrounding residential areas it seems to me a strong likelihood that the appeal scheme would be a destination for young people. Even taking account of the changes in the availability of food and drink since the Coronavirus Pandemic, given the general absence of other HFTs in the immediate area, the proposal would increase young people's access to purchase unhealthy foods. The appeal scheme would not promote healthy eating and I note that Public Health have objected to the proposal and concerns have been raised by a local councillor on behalf of residents on this matter.
8. It is suggested that the premises could lawfully have an element of takeaway/collection/delivery sales under Use Class E (b) of the UCO, which permits the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises. This is a fallback position. 'Mostly' is not defined, however even if I was to agree with the appellant's interpretations, the proposed elevations and plan does not show any seated areas and by the appellant's own admission, the appeal unit is too small to accommodate tables and chairs. As such, the consumption of food and drink is unlikely to be mostly undertaken on the premises, in accordance with the UCO. The suggested fallback position therefore attracts limited weight in the determination of this appeal.
9. While my attention has been drawn to an apparently similar scheme that was approved by the Council, it is in a different part of South Tyneside and the description of development refers to a restaurant element where food would be consumed on the premises, and so is unlikely to be directly comparable to the appeal scheme. It does not, therefore, lead me away from my above findings.
10. For the reasons given above, I conclude that the proposal would be harmful to the health and well-being of residents, with particular regard to the health of young

people. It would fail to reflect guidance in HFT1 of the SPD and the provisions of the Framework which promote healthy communities.

Highway safety

11. The appeal site is located at a point on Bede Burn Road where the two-lane carriage way is one way, and in proximity to a bend in the road and the junction with Surrey Street. There are parking restrictions with double yellow lines on both sides of Bede Burn Road, Surrey Street and Kent Street which form part of a gyratory system. Beyond this system there is unrestricted on-street parking on the surrounding streets.
12. The proposal does not include any parking provision, nor is there any information about servicing, or what arrangements would be in place for any element of a delivery service for customers. Residents have indicated that indiscriminate parking and associated highway safety issues are a problem, and the Highway Authority has confirmed that there are frequent complaints made on this basis. Furthermore, there have been two collisions in the vicinity of the appeal site in the past five years. The existing highway controls in the area and restrictions on surrounding streets suggest that highway safety is a concern, and I have no reason to doubt the Council's evidence or residents' comments on these matters.
13. Despite the small scale of the proposed operations, the short-term nature of visits associated with the proposed use could generate a high turnover, and therefore a large volume of customers. The appeal site is within walking distance of various dwellings and so there is a strong likelihood that some customers would walk to the premises. Nevertheless, it is also the case that some customers would drive, which given the short-term nature of visits, has the potential to give rise to indiscriminate parking directly outside the premises. It has not been shown where delivery vehicles would park while orders are being collected, however taking account of the restricted parking in the vicinity of the appeal site, delivery drivers would also be likely to park in this way.
14. This indiscriminate parking would take place in an area with a high probability of pedestrian and vehicle conflict with customers accessing the premises on foot, pedestrians making use of the footway and cars approaching the junction at a time when they will be concentrating on which lane they require. Furthermore, at times, there would also be vehicles, potentially including vans, at the premises for servicing purposes. The nature and scale of vehicle trips, parking and servicing arrangements associated with any existing open commercial use at the site have not been set out in evidence and is not something I can comment on further.
15. Overall, the proposal would increase the potential for indiscriminate parking directly in front of the premises. Given the highway controls in the area, this is likely to compromise the free flow of traffic and cause an unacceptable conflict between vehicles and pedestrians. As such, the proposal would be contrary to the provisions of the Framework regarding sustainable transport.
16. To conclude, the proposal would be harmful to highway safety, with regard to car parking and servicing, in conflict with Policy DM1 of the South Tyneside Local Development Framework Development Management Policies (2011) (DMP). Amongst other things this policy requires the impact of development to be acceptable in relation to highway safety or include proposals to mitigate any adverse impact.

Other Matters

17. There is no substantive evidence to suggest that the presumption in favour of sustainable development set out in Framework Paragraph 11(d) should be applied in this particular case. The decision should be made in accordance with the development plan unless material considerations indicate otherwise. While there is support for the proposal from a neighbouring resident, this is not, in itself, a reason to allow inappropriate development.

Planning Balance and Conclusion

18. I have found that the proposal would be harmful to highway safety, in conflict with DMP Policy DM1 to which I attach significant weight. It would also be harmful to health and well-being of residents, contrary to guidance within the SPD and the Framework.
19. The proposal would support a local business and bring a vacant unit back into use which would be of economic benefit, in accordance with Framework Section 6 which seeks a strong competitive economy. In the context of the scale of the proposal, the positive contribution the scheme would make to the economy attracts limited weight. The options for a permanent viable use for the premises are said to be very slim however there is no robust evidence in this regard and so this matter attracts limited positive weight.
20. The proposal would result in some benefits, but it would also cause harm. Weighing the two up is a matter of planning judgement. In this case, the adverse impacts of granting planning permission would outweigh the benefits.
21. My above findings bring the proposal into conflict with the development plan, read as a whole. There are no material considerations that indicate a decision should be made other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

F Harrison

INSPECTOR