



Appeal Decision

Site visit made on 8 May 2025

by **G Roberts BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 May 2025

Appeal Ref: APP/N1160/W/25/3359520

65 Mutley Plain, Plymouth, PL4 6JH

- 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 Logini Thayakaran against the decision of Plymouth City Council.
 - The application Ref is 24/00971/FUL.
 - The development proposed is change of use from betting shop to hot-food (eat in and takeaway) (Sui Generis) and installation of extractor flue pipe.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On the 12 December 2024, following the refusal of planning permission, a revised National Planning Policy Framework (NPPF) came into force. Even so, the appeal was not lodged until 24 January 2025 and the policies that are of relevance to this appeal have not changed, albeit some of the paragraph numbering is different. For these reasons, I have not sought the parties' comments on the revised NPPF.

Main Issue

3. The main issue is the effect of the proposed development on local and national policies seeking to promote healthy lifestyles and access to healthier foods.

Reasons

4. The appeal site comprises a mid-terrace ground floor unit within the Primary Shopping Area of Mutley Plain District Centre (MPDC). As I observed on my site visit, it forms part of a busy town centre with a mixture of shops, service uses, pubs, restaurants and hot food takeaways. The appeal proposal involves a change of use from a betting shop to hot food (eat in and takeaway) (Sui Generis). It also seeks permission for an extractor flue pipe on the rear elevation. The Council have not raised any objection to the proposed flue pipe, a finding that I concur with. The Council do contend, however, that the proposed hot food takeaway service would conflict with local and national policies seeking to support healthier lifestyles through access to healthier foods.
5. The Council have referred to policy DEV6 of the Plymouth & South West Devon Joint Local Plan 2014 – 2034 (JLP). This seeks to resist hot food takeaways within a 400 metre radius of providers of secondary education, so as to protect the

school's food environment. The Council contend that the appeal site is within a 400m radius of Plymouth High School for Girls (School) and Plymouth College (College), and would thus be contrary to this policy. The supporting text at paragraphs 6.19 - 20 state that tackling obesity is a priority and that the policy forms part of a number of measures to protect the food environment within a particular locality and specifically around secondary schools. The text continues by stating that limiting the availability of hot food takeaways would result in increased opportunities for health benefits to be realised to young people and complement other measures to reduce obesity.

6. Guidance on the implementation of the policy is provided in the Plymouth & South West Devon 2014 – 2034 Supplementary Planning Document (SPD). Paragraphs 3.121 – 124 (inclusive) state that the policy emanates from the concerns over the impact on the diet and health of young people (given the high levels of obesity recorded amongst that group) as a result of the proximity of fast food premises to educational premises. The text also states that the 400m radius (equivalent to a 10 minute walk) is based on nationally accepted distances that a school child would be willing to walk during a 1 hour lunch break.
7. Paragraph 4.2 of the Council's Statement of Case (CSOC) draws reference to the Inspectors Report into the JLP, where it was found that policy DEV6 would assist positively in managing the food environment around the City's secondary schools and that the policy was justified as it was based on local and national evidence. Reference is also made to the Council's Public Protection Services objection to the appeal proposal and Public Health England's general support for restricting access to fast food takeaways as limiting their availability can contribute towards tackling rising levels of obesity.
8. As I observed on site, the appeal site is within easy walking distance of the School and College, with safe controlled crossings where required. There are no physical or other obstructions on any of those routes.
9. Paragraph 4.9 of the Appellant's Statement of Case (ASOC) contends that the School is some 483 metres from the appeal site. I agree with the Council that there is no indication as to how this distance has been calculated. Paragraph 4.10 of the ASOC refers "*to the appellant's calculation of separating distance*" suggesting that they may have measured the route as it exists physically on the ground rather than using a 400m radius as set out in the policy. The map provided in Image 1 of the CSOC shows the 400m radius as including both the School and College. The Appellants did not submit any Final Comments to explain their own calculations or to the challenge the Council's submissions or Image 1.
10. The evidence before me points, therefore, to both the School and College falling within a 400m radius of the appeal site and that the proposed change of use would be contrary to policy DEV6 of the JLP. There are no other considerations or factors before me that would mitigate for or outweigh the conflict with this policy.
11. The appeal proposal would also conflict, in this respect, with paragraph 96 c) of the NPPF (and not paragraph 92 c) as referred to in the reason for refusal). Also, with paragraph 4 of the Planning Practice Guidance chapter on Healthy & Safe Communities (PPG) (2022 update), which states that planning can assist in improving health and reducing obesity. It continues by stating that policies can, where justified, seek to limit the proliferation and concentration of particular uses

where the evidence demonstrates that this is appropriate having regard to obesity levels.

12. The Council's evidence indicates that it assessed whether any amendments to the appeal proposal would make it acceptable and found that there were none. Even so, paragraph 4.10 of the ASOC puts forward the option of reducing the opening hours of the appeal use to between 1700 hours and 2300 hours Monday to Friday, which it states would be outside the opening hours of the School. There may be instances where even these revised hours would conflict with early evening activities at the School or College and I note that they are very different to the hours sought in the application of 1000 hours to 2300 hours Monday to Friday.
13. The 'Procedural Guide: Planning Appeals – England' (September 2024) states that it is important that what is considered by the Inspector is essentially the same as that considered by the Local Planning Authority at the application stage. Whilst the Council's Public Protection Service have not been consulted on this option, the CSOC does address this at paragraph 4.4, where they conclude that the revised opening hours would result in an inactive frontage throughout the day within a busy designated town centre contrary to policy DEV18 of the JLP.
14. Policy DEV18 seeks to protect local shops and services both within and outside designated centres by, amongst other provisions, promoting development that secures a mix of uses to maintain the vitality and viability of those centres, create attractive street frontages, do not cause the fragmentation or isolation of retail premises and do not lead to inactive frontages. I agree with the Council that the revised opening times would result in an inactive frontage throughout the day that would be harmful to the vitality and viability of MPDC and thus contrary to policy DEV18. Again, the Appellants did not submit any Final Comments to challenge the Council's findings in relation to policy DEV18.
15. Even if there was no conflict with policy DEV18 I am not convinced that the reduced opening hours, on their own, would make the use policy complaint or acceptable. It is very clear from the application form that the Appellant was seeking much longer opening (business) hours. As such, even if permission were granted for the reduced hours there is a strong likelihood, in my view, that the business would seek to expand those hours to the daytime and in a scenario where the takeaway food use was established and trading it may prove more difficult for the Council to resist such a variation.
16. Accordingly, I find that the appeal proposal would conflict with policy DEV6 of the JLP, the SPD, paragraph 96 c) of the NPPF and the corresponding guidance in the PPG. The Appellants revised opening hours would also conflict with policy DEV18 of the JLP.

Conclusions

17. For the reasons given above and having taken all other matters raised into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR