



Appeal Decision

Site visit made on 2 May 2025

by **J Symmons BSc (Hons) CEng MICE**

an Inspector appointed by the Secretary of State

Decision date: 5 June 2025

Appeal Ref: APP/H0738/W/25/3360204

Unit 19, 10 St Peters House, Pavilion Shopping Centre, Thornaby TS17 9FF

- 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 Proudreed Real Estate Limited against the decision of Stockton-on-Tees Borough Council.
 - The application Ref is 24/1944/FUL.
 - The development proposed is the change of use from retail (Class E (a)) to a hot food takeaway with associated seating area for consumption of food on the premises (sui generis) and the installation of extraction on rear elevation.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from retail (Class E (a)) to a hot food takeaway with associated seating area for consumption of food on the premises (sui generis) and the installation of extraction on rear elevation at Unit 19, 10 St Peters House, Pavilion Shopping Centre, Thornaby TS17 9FF in accordance with the terms of the application, reference 24/1944/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appellant's documentation indicates that the proposed development would be predominately a hot food takeaway with some associated seating on the premises for the consumption of food. In the interests of accuracy and consistency, I have amended the development description to reflect this takeaway use. The parties were consulted about the proposed description change and no concerns were raised.
3. For accuracy I have amended the development address to include the retail unit number.

Main Issues

4. The main issue in determination of the appeal is the effect the proposal's non-retail food and drink and other evening economy use would have on the Thornaby Pavilion Shopping Centre and the Thornaby District Shopping Centre.

Reasons

5. The appeal site consists of Unit 19 of the Thornaby Pavilion Shopping Centre (Shopping Centre), and it is part of the Thornaby District Shopping Centre (District Centre). It is currently being used as a post office. It sits to the end of a prominent row of seven units which front the Shopping Centre's car park.

6. The proposal would change Unit 19 into a predominately hot food takeaway with associated seating on the premises for the consumption of food. This use would operate from 11:00 to 23:00 Monday to Sunday.
7. Policy EG 2 of the Stockton-on-Tees Borough Council Local Plan 2019 (Local Plan) seeks to maintain and enhance the vitality and viability of all centres in the Town Centre Hierarchy. It sets out a series of criteria where a change of use, or redevelopment of premises away from retail, including proposals for food and drink and other evening economy uses, would be supported. In relation to proposed food and drink and other evening economy uses, the policy supports proposals which would, amongst other matters, not result in a harmful over-concentration of non-retail use within a cluster of the centre. The policy does not offer a quantifiable threshold for over-concentration.
8. There are currently six units: Greggs; Coopland Bakers; Subway; KFC; Melt Desserts and Big Shawarmz, identified within the Shopping Centre that sell food for consumption. Of these, three were detailed as fast-food outlets. Even with the proposal, the number of units selling food for consumption would still represent a small proportion of the estimated 38 units that exist. The proposal's approximate 139 square metres (m²) of floorspace would also represent a very small proportion of the estimated 29,275 m² retail and leisure floorspace covering the Shopping Centre.
9. Notwithstanding this, the proposal would be grouped with the existing KFC and Big Shawarmz outlets and this group would represent an estimated 43% of the row of units that front the car park. However, from my visit, the grouping of the proposal with these units and the combined floor space, in comparison to the mix of unit sizes across the Shopping Centre, would be quite modest. It would not create a disproportionately large group of fast-food outlet units. It would also, other than some cosmetic changes to the front, maintain the separate unit facades which would limit the units appearing as a prominent group in the row. Combining these aspects with the mix of heights and unit sizes along the row, the proposal's change of use would not cause the units to appear overly dominating nor would it create a significantly high concentration of non-retail or fast-food outlets in the Shopping Centre.
10. In addition to the fast-food outlets in the Shopping Centre, there is also, a McDonalds, Donatello's and Thornaby Fish and Chip shop identified within the District Centre. Despite these units being near to the Shopping Centre units, there is still clear separation to them. From my observations, the proximity and number of fast-food outlets in both the Shopping and District Centres did not appear overly excessive. The proposal would be a very modest change to this, and it would have a correspondingly modest effect. It would not cause an over concentration of non-retail or evening economy uses in the District Centre.
11. There is no substantive evidence presented to show the proposal would, either on its own or in combination with the other non-retail or fast-food units, adversely affect the retail function or purpose of either the Shopping Centre or District Centre, it would not positively contribute to these centres' vitality and viability and it would result in the unjustified loss of a key retail unit.
12. Furthermore, no evidence has been provided to support the view that the proposal would have a harmful effect on the character of the area, the community's ability to

meet its day-to-day needs, crime and anti-social behaviour and highway safety. Nor has any evidence been presented to show concerns raised regarding noise, waste and odour could not be mitigated using planning conditions. These views are supported by the Council and the consultation it carried out with the Highway Authority, the Environmental Health Unit and Cleveland Police.

13. Notwithstanding this, interested parties have raised a number of additional concerns regarding the proposal's effects on littering, devaluing of property, drainage and the health and well-being of local residents and school children.
14. With respect to littering, on my visit I saw little evidence of litter and saw numerous litter bins around the Shopping Centre. There is little to suggest the proposal would unacceptably affect littering and no convincing evidence to the contrary has been presented. In terms of the claims on the proposal's effect on drains, no evidence to support this has been provided. In all likelihood the proposal would be appropriately designed to ensure adequate foul and surface water drainage and that existing drainage systems would not be harmed. Regarding comments concerning the devaluing of property, the courts have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property could not be a material consideration.
15. In relation to the concerns raised regarding health and well-being and associated Government's guidance, Paragraph 97 of the Framework sets out that applications for hot food takeaways and fast food outlets should be refused a) within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre; or b) in locations where there is evidence that a concentration of such uses is having an adverse impact on local health, pollution or anti-social behaviour. The Framework's glossary details that reference to a town centre applies to city centres, town centres, district centres and local centres. The proposal would be in the Thornaby District Shopping Centre and as such criterion a) would not apply. Furthermore, no compelling evidence has been presented to show the proposal would unacceptably impact local health, pollution or anti-social behaviour as required by criterion b).
16. While I fully appreciate the importance of promoting health and well-being nationally and locally, especially near schools, there is nothing to suggest the proposal would unacceptably harm these aspects. I also note the Council did not raise this as a concern when considering the application.
17. Taking all the above into account, the proposal would not result in an over-concentration of non-retail or evening economy uses to the detriment of the vitality and viability of the Thornaby Pavilion Shopping Centre and the Thornaby District Shopping Centre. It would also not cause activities in the area that would result in a harmful over-concentration of food and drink and other evening economy uses either as a proportion of the Thornaby Pavilion Shopping Centre and the Thornaby District Shopping Centre overall or as a cluster within them. It would therefore not be contrary to Policy EG 2 of the Local Plan.

Conditions

18. The Council has suggested a number of planning conditions, and the appellant did not dispute these. I have considered these against the advice in the Planning Practice Guidance and have amended some in the interests of precision. I

consulted the main parties regarding these amendments and no concerns were raised.

19. In the interests of certainty, a time limit condition for completing the development and a condition to ensure it is completed in accordance with the approved plans are required.
20. To protect neighbouring residents from noise and disturbance, a condition to limit noise levels and time limit conditions for the premises opening and delivery hours are necessary. Conditions are also required to protect residents and businesses from odour and a pre-commencement condition is necessary to ensure appropriate odour mitigation is considered and completed. Additionally, a condition is necessary to ensure any associated flue is positioned away from any windows.
21. A condition is also necessary to ensure that acceptable storage for refuse and recycling is provided to protect the environment.

Conclusion

22. For the reasons given above and having regard to the matters that have been raised, I conclude that the appeal should be allowed.

J Symmons

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin no later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 3820-4_L(20)_001 – ‘Location Plan’ dated October 2024;
 - 3820-4_L(20)_020 – ‘GA and Elevations as Existing’ dated October 2024;
 - 3820-4_L(20)_021_A – ‘GA and Elevations as Proposed’ dated October 2024;
 - 3820-4_L(20)_022_A – ‘RCP and Floor Finishes as Proposed’ dated October 2024;
 - 3820-4_L(20)_023 – ‘Electrical Drainage and Travel Distances as Proposed’ dated October 2024;
 - 3820-4_L(20)_024 – ‘Section AA as Proposed’ dated October 2024;
 - 3820-4_L(20)_031 – ‘Internal Elevation 01’ dated September 2024;
 - 3820-4_L(20)_032 – ‘Internal Elevation 02’ dated September 2024;
 - EN_TCB-B-TCBT(1) – ‘Extraction Detail’ undated; and
 - Image 018 – ‘Extraction Details’ undated.
- 3) Prior to commencement of the development, a detailed report in accordance with ‘IAQM: Guidance on the Assessment of Odour for Planning’ of the ventilation and fume extraction system shall be submitted and approved in writing by the local planning authority. The report shall include a full technical specification of the position of the flue outlet points and the type of filtration or other odour treatment

such as grease traps, pre-filters, Electrostatic Precipitator, Carbon filters and odour neutralizer. The report shall also cover air flow velocity, a maintenance programme for items such as replacement filters and cleaning schedules, the impact of odour upon nearby sensitive receptors and appropriate mitigation measures shall be recommended. The approved ventilation and fume extraction system shall thereafter be retained and maintained in working order for the duration of the development's use.

- 4) The flue shall be positioned no less than 1 metre above the eaves of the original building and positioned at least 2 metres away from any openable window.
- 5) Prior to the first occupation of the development hereby permitted details of the method of storage (including locations) and arrangements for collection of waste and refuse from the premise shall be submitted and approved in writing by the local planning authority. All waste facilities shall be provided in accordance with the approved details and shall be managed in accordance with those agreed details thereafter.
- 6) The rating level of sound emitted from any fixed plant and/or machinery associated with the development shall not exceed background sound levels by more than 5dB between the hours of 0700 - 2300 (taken as a 1-hour LA90 at the nearest sound sensitive premises) and shall not exceed the background sound level between 2300-0700 (taken as a 15 minute LA90 at the nearest sound sensitive premises). All measurements shall be made in accordance with the methodology of BS4142: 2014 (Methods for rating and assessing industrial and commercial sound) and/or its subsequent amendments. Where access to the nearest sound sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the nearest sound sensitive property. Any deviations from the LA90 time interval stipulated above shall be submitted and approved in writing with the local planning authority.
- 7) The development hereby permitted shall not be open to customers outside the hours of 11:00 and 23:00 Monday to Sunday.
- 8) No deliveries shall be taken at or be dispatched from the development hereby permitted outside the hours of 07:00 and 22:00.