



Appeal Decision

Site visit made on 13 February 2025

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 13 June 2025

Appeal Ref: APP/X1355/W/24/3354227

122 The Avenue, Seaham, Durham SR7 8PE

- 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 Salah Aldine Aljumaily and Mrs Habiba Yousfi Aljumaily of ZH Business Limited against the decision of Durham County Council.
 - The application Ref is DM/24/01666/FPA.
 - The development proposed is change of use of ground floor commercial unit to hot food takeaway, with collection and delivery; new shopfront; new extraction canopy/duct/flue/cowl system existing to rear elevation; and formation of staff toilet and rear bin store in existing rear extension and outbuildings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published in December 2024 and the main parties have been consulted on the implications of the revised Framework's publication on the appeal.

Main Issues

3. The main issues are the effect of the proposal on:
 - the health and lifestyle of young people; and
 - the living conditions of neighbouring residents with regards to noise and odour.

Reasons

Health

4. The appeal site is at the end of a small parade of shops within a largely residential area. The proposal is located on the ground floor and has previously had a commercial use as a sandwich shop.
5. Policy 30 of the County Durham Plan, 2020 (CDP) is concerned with minimising the impact of an over concentration of hot food takeaways. The supporting text to the policy explains that a key objective of the Council is to reduce levels of obesity and to encourage healthy eating. The Council has found that there is a correlation between the density of fast-food outlets and obesity levels amongst children.

6. The site is not in any of the designated centres listed in CDP Policy 30. However, the policy does state that proposals for A5 uses outside of defined centres, but within 400 metres of an entry point of an existing, or proposed, school or further education college, will not be permitted.
7. Paragraph 96 c) of the National Planning Policy Framework (the Framework) refers to planning decisions that should enable and support healthy lives through both promoting good health and preventing ill-health, especially where this would address identified local health and well-being needs and reduce health inequalities between the most and least deprived communities, for example through access to healthier food. Furthermore, it says at paragraph 97, that applications for hot food takeaways and fast-food outlets within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre, should be refused.
8. The appeal site is, according to the Council, and not disputed by the appellants, within 190 metres of the entrance to Seaview Primary School and Deneside Nursery. In fact, their playing fields are located to the rear of the houses on the opposite side of The Avenue to the appeal site. Therefore, the proposed change of use would conflict with CDP Policy 30.
9. I acknowledge that the school is for primary and nursery age children, therefore, most children would not be accessing a takeaway premises on their own. However, as it is a primary school, children up to the age of eleven would be attending who may be walking to and from school on their own. Additionally, I have no evidence that the school does not have after school clubs and childcare provision, which means that children would be leaving the school after traditional school leaving times.
10. Whilst unhealthy food can be purchased from supermarkets and other outlets, having a takeaway so close to the school premises would undermine the policy to minimise the detrimental impacts of hot food takeaways. A condition to restrict opening hours so that it would not conflict with arrival and leaving times at the school, has been suggested. However, CDP Policy 30, as well as what is set out in paragraph 97 of the Framework, points to the proposal being within a location that should be refused. Therefore, a suitably worded condition with relevant opening hours, would not mitigate the harm.
11. I have had regard to paragraph 85 of the Framework whereby planning decisions should create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Although the appeal site is a vacant shop, other options for the use of the premises, which would not conflict with Policy 30, have not been provided. Therefore, whilst there would be some economic and employment benefits from the retail premises being re-opened, this would not outweigh the conflict with development plan policy and the harm to the health of young people.
12. I therefore conclude that the proposal would harm the health and lifestyle of young people. It would conflict with Policy 30 of the CDP as set out above, as well as chapter 8 of the Framework.

Noise and Odour

13. The site is within a residential area, with residential use on the 1st floors of the shops within the parade, including the appeal site. Additionally, on the vacant site next to No 122 Seaham Avenue, there is planning permission for six dwellings, although there are no details of this development in the evidence. Policy 30 of the CDP states that where a hot food takeaway is considered acceptable, consideration will need to be given to the impact that the development would have in terms of amenity, particularly in relation to noise and odours. Policy 31 of the CDP requires that, amongst other things, development would not lead to inappropriate odours, noise or other sources of pollution.
14. The proposed plan shows the intended equipment and the external duct and duct termination. Although these are not technical drawings, they do show the position and form of odour attenuation that is proposed, and product details of what is intended to be installed has been provided. Hot food was previously sold from the premises, although I did not see, from views outside the site, any existing ducting.
15. Therefore, based on the size of the premises and the proposed scale of operation, a suitably worded condition, to provide further details of the extraction system, including a schematic drawing, would ensure that the proposal would not harm the residents of neighbouring properties. Moreover, the site has previously operated as a commercial premises within an existing parade of shops and there is nothing before me to suggest that it would result in any noise issues.
16. I therefore conclude that the proposal would not harm the living conditions of residents of neighbouring properties with regards to noise and odour. It would not conflict with Policies 30 and 31 of the CDP as set out above.

Other Matters

17. As the proposal is not located within any town, district or local centre or primary retail frontage, Policy 9 of the County Durham Plan (CDP) is not relevant, and a sequential test is not required. Furthermore, the effect of the proposal on the character and appearance of the area and parking are not in dispute.
18. The appellants contend that there is a fallback position, as the premises has an existing Class E use¹, and an ancillary amount of hot food could be sold, as was previously done at the site. However, this would likely be less harmful to the health of young people than if a hot food takeaway was operating from the site. Furthermore, whether the Council would take any enforcement action against such a use is not for me to consider. Consequently, this is of limited weight in my determination of the appeal.
19. The appellants have referred to planning applications where the Council allowed hot food takeaways within 400m of schools. That at 17A Seaside Lane, Easington Colliery² was in a local shopping centre with 21 out of 41 units vacant. The proposal at 74 High Street South, Langley Moor³ was considered acceptable as it was close to a local shopping centre and closed between 15.00-17.30 Monday to Friday during school term time. Although there should be consistency in planning decisions, each case must be assessed on its own merits. Based on the limited

¹ The Town and Country Planning (Use Classes) Order 1987

² DM/23/03627/FPA

³ DM/23/02104/FPA

evidence that I have, I cannot be sure that these cases are directly comparable to the appeal.

20. The appellants have provided two appeal decisions within the South Tyneside Council area that have been allowed. The decision⁴ for Tino's café is an existing café and restaurant which already serves fast-food, and the premises are not close to either a primary or secondary school. That at 79-81 Fowler Street⁵ is within a defined shopping centre, and it did not conflict with any identified development plan policy. Therefore, from the information that I have available, I do not consider that these two cases are comparable to the appeal before me.

Conclusion

21. The proposed development conflicts with the development plan when considered as a whole. Whilst the proposal would not harm the living conditions of neighbouring residents, this does not outweigh the identified harm and associated development plan conflict.
22. For the reasons given above, I conclude that the appeal is dismissed.

M J Francis

INSPECTOR

⁴ APP/A4520/W/24/3347878

⁵ APP/A4520/W/24/3349010