



Appeal Decision

Site visit made on 13 June 2008

by **John L Gray** DipArch MSc Registered
Architect

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
7 July 2008

Appeal Ref. APP/H0738/A/08/2069584 68 Yarm Lane, Stockton-on-Tees, TS18 1EW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by David Kitchen Associates Ltd against the decision of Stockton-on-Tees Borough Council.
- The application, ref. 07/3077/COU, dated 30 October 2007, was refused by notice dated 14 February 2008.
- The development proposed is the change of use of a shop to a restaurant and associated takeaway.

Decision: I dismiss the appeal.

Reasons

1. The Council considers that the proposed change of use would harm the vitality and viability of the local shopping area because of the cumulative effect of changes away from retail use and says that the appellant has failed to show that reasonable efforts have been made to market the premises for retail use.
2. On the north side of Yarm Lane, between Lawson Street and West Row, marginally less than half of the ground floor units, including the two public houses, remain in retail use. The others are in A3, A4 or A5 uses. The proposal would add to the non-retail uses. If the area is to remain a viable and vital neighbourhood centre, then the proportion of non-retail uses is probably already too high. The fact that so many properties are already in non-retail use is not, however, any justification for allowing another.
3. In the delegated report, dated February 2008, it is said that the property had been marketed since July 2007. The grounds of appeal say it has been marketed since February 2007, thus meeting the policy requirement (though there is no documentary evidence of this). In fact, Policy S10 says only that "reasonable efforts must have been made to market the premises for retail uses"; it must be the supporting text, which has not been submitted, which sets out the more specific requirement. Also, from what has been submitted, it appears that Policy S10 has not been saved.
4. The Council's Environmental Health Unit appears first to have recommended refusal of the application, then to have accepted the principle of development (subject to conditions), then to have had second thoughts about whether what would be required by condition could reasonably be provided. I tend to agree with the misgivings expressed. Two things cause me concern. It seems that the proposed layout would have to be amended but I cannot know whether, from the applicant's point of view, that could be done satisfactorily and viably.

Perhaps more importantly in terms of planning legislation, the provision of a ventilation and fume extraction system which avoided nuisance to residents of the first floor flats at nos. 64-70, in terms of noise as well as odours, could prove either problematic or expensive, or both. It would be wrong to grant planning permission subject to conditions which I was unsure could be properly satisfied.

5. To sum up, there is uncertainty all round. Policy S10 may not have been saved but the principle of maintaining vitality and viability remains central to the guidance in Planning Policy Statement 6: Planning for Town Centres. Also, if a use militating against vitality and viability is to be entertained, then I would expect to see justification for a change away from retail, whether or not Policy S10 and the requirement for marketing have been saved. The environmental criteria are to be found in Policy S14; however, that it, too, appears not to have been saved cannot justify development that might have a harmful impact on residential amenity.
6. In short, while the representations from both sides make it impossible to be categoric, all the indications are that the appeal proposal is an inappropriate one in terms of the vitality and viability of the neighbourhood centre and also, without further detail, the living conditions of the residents of the neighbouring flats. That can only lead to me dismissing the appeal.

John L Gray

inspector