

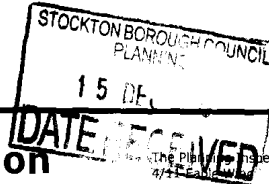


Appeal Decision

Site visit made on 9 December 2008

by **J S Deakin FRICS**

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



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Decision date:
12 December 2008

Appeal Ref: APP/H0738/A/08/2084684

**Flower Buds of Ingleby, Unit 2, 4 Beckfields Centre, Ingleby Barwick,
Stockton-on-Tees, TS17 0QB**

- 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 Mr Manjinder Jagpal against the decision of Stockton-on-Tees Borough Council.
- The application Ref 08/2133/COU, dated 26 June 2008, was refused by notice dated 21 August 2008.
- The development proposed is change of use from A1 (retail) to A5 (hot food takeaway).

Decision

- .. I dismiss the appeal.

Main issues

2. I consider that the main issues are: (i) whether the use as a hot food takeaway would cause unacceptable harm to the vitality and viability of the local shopping area; (ii) whether the appellant has demonstrated that reasonable efforts have been made to market the premises for retail use.

Reasons

Vitality and viability of the local shopping area

3. There are eight units in the Beckfields centre of which three are in A5 use. Two of these were allowed on appeal in 1993 and 1998. In addition to the A5 uses, there is a small supermarket, a hairdressing salon, the vacant appeal unit, a betting shop and an estate agency. At the time of the 1998 appeal it was said that the unit (No.1) had been empty since it was built about 8 years ago, except for a short period of a few months. The Inspector considered that, given the history of the site and the most recent shopping development in the locality, it appeared unlikely that a retail use could be achieved in the foreseeable future.
4. In the present appeal, there is no evidence that the florist's shop has been empty for long periods since it was built. Furthermore, the conversion of the medical centre to a betting shop and an estate agency has introduced two more units and has diversified the centre to some extent. Whilst not A1 retail, these are uses which are typically found in shopping centres and which do not necessarily detract from its vitality and viability. In my opinion, these two relatively new businesses indicate that there is demand for uses other than A5.

5. Allowing this appeal would mean that four of the five units in the main block facing the car park would be in A5 use. These businesses are not normally open during the day and such a large concentration would have a deadening impact on the appearance of the centre and its retail vitality and viability.

Marketing

6. Letters have been submitted from two firms of chartered surveyors giving information on marketing. Ney Commercial say that the unit has been marketed for about 14 months (at August 2008) and that they have had no serious interest from A1 users. The only serious and genuine interest is from potential A5 users. Browns say that they have marketed the unit on two occasions since September 2006; the last period being from 14 February 2008 to 4 July 2008.
7. The appellant contends that there is no planning law which says that a retail unit has to be vacant for 'x' number of months or years. However, this appeal must be decided in accordance with the development plan unless there are material considerations which indicate otherwise. The development plan includes Alteration No.1 to the Stockton-on-Tees Local Plan which was adopted in March 2006. Para 47 of the justification to Policy S10 sets out detailed requirements for determining whether a unit is no longer viable for retail use. It says that the commercial viability of a shop may be indicated, for example, by the fact that it has closed down and has not been trading for 12 months.
8. It is not clear from the evidence as to when the flower shop actually ceased trading but if it was being advertised as a going concern in 2008, the presumption must be that it was still trading. It may not therefore have been empty for 12 months. The appellant has not submitted detailed information about the advertising and marketing programme, property particulars, rent etc. In the absence of such evidence, I consider that he has failed to demonstrate that reasonable efforts have been made to market the premises for retail use in accordance with Policy S10.
9. I appreciate that large supermarkets in the area take a substantial amount of A1 trade from local centres such as Beckfields. This was referred to at the time of the 1998 appeal and the situation is unlikely to have changed significantly since then. It is also apparent that it has been difficult to let retail units ever since this shopping centre was built. Nevertheless, the absence of detailed evidence about marketing means that I am unable to properly determine the current level of demand.
10. Policy S10 is stricter than those which applied at the time when the previous appeals were allowed and represents a significant change in planning policy. Consequently, I cannot regard the earlier appeal decisions as being material considerations of significant weight in favour of allowing this appeal.
11. I conclude that the proposed change of use would adversely affect the retail vitality and viability of the centre and that there is no firm and clear-cut evidence that the unit is no longer viable for retail purposes. The proposal

would be contrary to Policy S10 of Alteration No.1 of the Local Plan.

J S Deakin

INSPECTOR