



## Appeal Decision

Site visit made on 2 November 2009

**by Harold Stephens BA MPhil DipTP  
MRTPI FRSA**

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

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**Decision date:  
16 November 2009**

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### **Appeal Ref: APP/H0738/A/09/2106164 33-35 Dovecot Street, Stockton-on-Tees, TS18 1LH**

- 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 Mrs Cheryl Barber against the decision of Stockton-on-Tees Borough Council.
- The application Ref 09/0521/COU, dated 19 March 2009, was refused by notice dated 3 June 2009.
- The development proposed is the change of use from A1 retail use to A5 hot food takeaway.

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#### **Decision**

1. I allow the appeal, and grant planning permission for the change of use from A1 retail use to A5 hot food takeaway at 33-35 Dovecot Street, Stockton-on-Tees, TS18 1LH in accordance with the terms of the application, Ref 09/0521/COU, dated 19 March 2009 and the plans submitted with it, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) Before the use hereby permitted commences, details of a scheme for ventilation, filtration and fume extraction, including the methods of treatment of the emissions and the external ducting, shall be submitted to and approved in writing by the Local Planning Authority. Before the use hereby commences, the measures approved under the scheme shall be installed and brought into use. Thereafter the approved measures shall be retained, operated and maintained in accordance with the manufacturer's specifications.
  - 3) Before any ventilation, fume extraction or refrigeration system is used on the premises it shall be enclosed with sound-insulating material and mounted in a way which will minimise transmission of structure borne sound in accordance with a scheme to be approved in writing by the Local Planning Authority.
  - 4) Before the use hereby permitted commences, the building shall be provided with sound insulation to protect the living conditions of the occupants of residential accommodation above in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority.
  - 5) The use hereby permitted shall not be open to customers outside the following times: 0900 to 2330 hours, daily, including Bank Holidays.

- 6) The change of use hereby permitted shall not take place until details of refuse storage facilities to be provided, including those for food waste, have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be provided prior to the commencement of the use hereby permitted and thereafter retained as approved.

**Main issue**

2. The main issue in this case is the effect of the proposal upon the vitality and viability of the locality.

**Reasons**

3. The appeal site comprises a vacant retail unit on the ground floor, which was formerly occupied by Roberts wet fish shop. The site lies within the Stockton Town Centre Conservation Area. It is also situated within the Stockton Town Centre boundary, which is shown on the Proposals Map to Alteration Number 1 to the Stockton-on-Tees Local Plan, and within a Secondary Shopping Frontage.
4. The development plan for the area includes the adopted Stockton-on-Tees Local Plan (STLP) (1997) and the Alteration Number 1 to the Adopted Local Plan (2006). The 'saved' policies of the STLP remain the adopted development plan policies at the local level. Policy GP1 and Policy S5 are relevant in this case.
5. Policy GP1 sets out a number of general criteria which will be used to assess proposals for new development to improve the quality of life of the residents of the Borough. Policy S5 of Alteration Number 1 aims to maintain the vitality and viability of the Town Centre by protecting its retail function. It indicates that within the Secondary Shopping Frontage of Stockton Town Centre, proposals for development or change of use at ground floor level will be permitted subject to 4 criteria.
6. In my view the proposal would comply with criterion (i) of Policy 5 as it is a food and drink use (Class A5) and it would not conflict with criterion (iv) as the additional use would not result in a continuous group of more than 4 non retail uses in the Centre. Criterion (iii) is concerned to ensure that any proposed change of use would not lead to an adverse impact on the amenity of neighbouring properties. I have taken account of the concern about existing problems relating to waste disposal and the potential for vermin but consider that these matters could be resolved by imposing an appropriate planning condition.
7. I note there are some concerns from the Environmental Health Unit about noise, fumes and smells. These concerns could be controlled by planning conditions relating to noise insulation, an adequate extraction/filtration system being fitted to the property and control over the hours of operation. These conditions would safeguard the living conditions of nearby residents. I am satisfied that the proposal would not give rise to highway safety concerns. Therefore subject to the imposition of appropriate conditions I consider the proposal would not have an adverse impact on the amenity of the surrounding area and would not conflict with criterion (iii) of Policy S5.

8. Criterion (ii) of Alteration Number 1 requires that 60% of the secondary retail frontage should remain in A1 use to protect the retail function of the Centre. The Council indicates from its Secondary Shopping Frontage Survey in April 2009 that the secondary frontage was only 55.11% A1 use. On the basis of this evidence the required percentage is not being maintained. It is argued that the further loss of A1 use would exacerbate the situation and therefore the proposal would not satisfy criterion (ii) of Policy S5. A nearby objector supports the view that there are too many takeaway shops in the Centre.
9. I appreciate that it is important to protect the retail function within the Town Centre and for this policy to succeed a restrictive approach is necessary in relation to non retail uses. However, I also recognise that a diversity of uses has its place within the Centre, complementing the functions of the retail sector and this can make the Town Centre more attractive to residents, shoppers and tourists. Although the Secondary Shopping Frontage is about 55% rather than 60% in A1 use, I note that this proportion is regarded as a guide for the consideration of future proposals for non-retailing uses rather than a rigid division between acceptable and unacceptable uses. In addition, I note that the Appellant has stated that the site has been marketed for about a year and has only received enquiries for hot food takeaway uses.
10. At my site visit I saw that the appeal site is located at a prominent site at the junction of Dovecot Street and Prince Regent Street. The appeal property is at present both vacant and shuttered 24 hours a day which I consider to be detrimental to visual amenity. The appeal proposal would bring back into use a vacant property and thus improve the appearance of the Town Centre. A new shop front application is likely if the appeal is allowed. There are other takeaways on Dovecot Street, but given the length of Dovecot Street and the presence of many other commercial premises, I consider that the appeal proposal would be unlikely to significantly detract from the vitality and viability of the locality. Notwithstanding the marginal conflict with criterion (ii), I conclude that overall the proposal would not be contrary to Policy 5 of Alteration Number 1 or to Policy GP1 of the STLP and is therefore in accordance with the development plan.

#### **Other matters**

11. I have taken into account all other matters raised including the fact that the site is located within the Stockton Town Centre Conservation Area. The Council has not raised any material issues in relation to the Conservation Area. Given the reasons set out above I consider that the proposal is likely to increase pedestrian flows, thereby improving the vitality of the Centre and the Conservation Area. In terms of the statutory duty I consider the appeal proposal would enhance the character and the appearance of the Conservation Area. I conclude that the appeal should be allowed.

#### **Conditions**

12. The Council has suggested 6 conditions in the event that I was minded to allow the appeal. I have considered these in the light of the advice contained within Circular 11/95 and have adapted them accordingly. In addition to the standard time limit condition, I consider that a condition is necessary to protect the amenities of occupants of nearby premises from smells and fumes. It is unclear

to me what planning purpose a condition requiring a grease trap would serve and this matter is more appropriately controlled by other legislation. A condition is necessary to ensure that any ventilation, fume extraction or refrigeration system is adequately soundproofed in the interests of the amenities of the occupants of nearby premises. In my view it is also necessary to protect the living conditions of the occupants of residential accommodation above the premises from excessive noise. I intend to deal with this by requiring the building to be provided with sound insulation and through control of the opening hours. I consider it is necessary for adequate provision to be made to control the disposal of waste.

*Harold Stephens*

INSPECTOR

