



Appeal Decision

Site visit made on 27 September 2010

by **D R Cullingford** BA MPhil MRTPI

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

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Decision date:
29 October 2010

Appeal Ref: APP/H0738/A/10/2132734
5 Hugo Court, Teesway, North Tees Industrial Estate, Stockton-on-Tees,
TS18 2RS

- 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 James Harley against the decision of the Stockton-on-Tees Borough Council.
- The application (ref: 09/2833/COU and dated 16 November 2009) was refused by notice dated 21 January 2010.
- The development is described as a 'change of use from B1 business unit to A3 café'.

Application for costs

1. An application is made for an award of costs in connection with this appeal. This is the subject of a separate letter.

Decision

2. For the reasons given below, and in exercise of the powers transferred to me, I dismiss the appeal.

Reasons

The site and the proposal

3. The appeal premises is one of 5 small new light industrial units at a corner of a 'loop' road on a relatively modern part of this extensive industrial estate. One of the units appears to be occupied (by D and C Fixings Limited), but the rest are currently vacant; the whole block is enclosed behind stout steel fencing. The proposal is simply to change the use of this unit to a café and a drawing illustrates how seating for 30 customers could be provided together with a kitchen and service counter.

Planning policy and the main issues

4. The Council consider that the proposal would constitute unwarranted 'out-of-centre' development that could jeopardise the vitality and viability of local centres, contrary to 'saved' policies GP1, S2 and S14. And, they are concerned that the scheme would not only reduce the availability of viable and attractive industrial units, but also undermine the protection of such premises afforded by 'saved' policy IN10. Those are the issues on which this appeal turns.

'Centres'

5. On the first issue, the Council explain that the policies prevailing at the time of the decision (principally 'saved' policy S14) insist that food and drink uses

(such as cafés) should be directed towards defined 'centres' (including local and neighbourhood centres) unless 'exceptional circumstances' justify an alternative location. No cogent evidence is adduced to demonstrate compliance with that policy. There is a petition with 39 signatures from local employees. But I rather doubt that that demonstrates a compelling local need, especially as several food outlets are identified within a reasonable distance of the appeal site and mobile catering vans operate in the area. And, although I think that it would not necessarily be appropriate to direct a café such as this to one of the identified named centres in the retail hierarchy, no evidence is adduced to show why any of the vacant properties in 3 of the nearest 5 neighbourhood centres would be unsuitable. I agree that this proposal would be unlikely to have much discernable effect on the businesses in those centres. But the vitality and viability of local centres is not just a matter of limiting the diversion of trade from such places. It can also be fostered (as policy S14 implies) by steering suitable uses to locate there, particularly if that might entail the re-use of vacant premises.

6. I realise that the Core Strategy has since been adopted and that policy CS5 (in my version of the Core Strategy rather than CS4) indicates that proposals for main town centre uses outside identified centres are to be determined in accordance with PPS4. But, the advice set out in PPS4 as policy EC14.3 does not exempt 'out-of-centre' proposals involving less than 200m² from the 'sequential test' required under paragraph EC15; the exemption applies only to 'extensions' at retail or leisure uses already in 'out-of-centre' locations. Hence, that exemption does not apply to the appeal proposal.
7. The advice set out in PPS4 as policy EC14.2 indicates that the 'town centre policies' do not apply to any use *ancillary* to other forms of economic development; the implication being that, if this café were ancillary to the prevailing industrial uses on this industrial estate there would be no policy preference for it to be located in a 'centre'. As there is no further definition or detailed explanation in PPS4, I think that paragraph 14.2 must be interpreted naturally and with regard to the way in which the concept of *ancillary uses* has been developed by the Courts. I accept that the café would be small (just 60m² of net floor space), inconspicuous and that 'core customers' would be likely to come from businesses nearby. But those are not sufficient requirements to establish the existence of the 'ministering', auxiliary' or 'sub-serving' functional relationship characteristic, in planning terms, of an ancillary use. For example, the café would not obviously operate as a canteen. In fact the café would not necessarily depend on any particular business (or even collection of businesses) nearby, but have the potential to operate practically and viably on its own, responding to the vagaries of various manifest demands. It follows that this proposal would not necessarily be exempt from the 'town centre policies' set out in PPS4.
8. Moreover, I think that the requirements of policy S14 would still apply. This is a 'saved' policy. And, although policy CS5 is the more recent (by some 3 years or so), it is also more general, being directed at all 'centres' and 'town centre uses' within the Borough. In contrast, policy S14 relates only to development involving 'food and drink'. As indicated above, the evidence adduced fails to demonstrate that this proposal would comply with that policy.

9. Nevertheless, in certain circumstances, a small, local and inconspicuous café immersed in the midst of an extensive trading estate might be regarded as ministering largely to the needs of those working in the surrounding businesses. Indeed, the modest retail unit recently allowed at appeal across Portrack Lane was 'regarded as ancillary to the main commercial trading uses' nearby (APP/H0738/A/09/2103551). And the Council have clearly treated 2 food retail units subsequently permitted on the Portrack Trading Estate as being 'ancillary in nature to the surrounding commercial properties'. On the other hand, cafeterias have been prevented in such locations (as in APP/H0738/A/08/2061202). Clearly the merits of different cases differ. In this case, although I think that, in itself, this café would have little discernable impact on local centres, I consider that the evidence presented fails to demonstrate appropriate compliance with policy S14.

Industrial units

10. Turning to the second issue, the protection afforded by 'saved' policy IN10 for B1 units like this one would prevent a change to some other use unless the short and long term availability of suitable sites and buildings is demonstrated to satisfy requirements in the locality and elsewhere. (The other elements of that policy do not apply to a modern vacant B1 unit.) I agree that the loss of a small site such as this (or even one encompassing the land on which all 5 units are built) would not be especially significant in the context of a supply of industrial land amounting to some 340ha. But this unit is part of a recently completed and equipped building described (by the Council's Business Development section) as 'well presented' and of a 'good size' to accommodate both 'start-up businesses and second stage growth'. It seems to me that the availability of industrial land is not directly relevant to the provision of such premises. Much must be done to develop modern B1 units. Moreover, similar considerations would apply once a 'replacement' building on land elsewhere became available. After all, there would be little point in permitting the construction of small B1 units on other land if, almost immediately, the mere availability of industrial land would be enough to warrant their occupation by some 'town centre' use.
11. In relation to the availability of premises, it is claimed that there is no evidence to substantiate a shortage of small B1 units in the Portrack area. But, although permission for a major development involving B1, B2 and B8 uses at Portrack Interchange is extant, no building has yet materialised. And, although the information taken from the Focus database identifies over 70 small (500-1500m²) vacant light industrial units in Stockton and Middlesbrough, only 22 entries relate to the former and only 14 appear to be associated with schemes reasonably similar in scale to the development at Hugo Court. Even then, not all those 14 units appear to be in modern developments in the Portrack area. I think, therefore, that the opinion expressed by the Business Development section that there is little alternative provision to this type of accommodation in this location is not without some justification.
12. Moreover, 5 Hugo Court has only been vacant for a period described as 'over 6 months'. That seems insufficient to me to establish the absence of any firm interest in the unit from 'B1 enterprises', especially during a period of recession. In any case, one of the units at Hugo Court appears to be occupied and I note that none of the units are listed as available on the submitted Focus

database. In my view, an important element in fostering a strong and diverse local economy is the availability of suitable accommodation for enterprises seeking to respond to any eventual uplift in the present economic climate. Of course, if the reasonable prospect of such an eventuality were to be unlikely or if comparable alternative provision were plentiful different considerations might apply. But, in my view, such circumstances have not been demonstrated. Hence, I consider that this scheme would reduce the current availability of viable and attractive industrial units and, in the absence of cogent reasons, undermine the protection afforded by 'saved' policy IN10. The consequences of repeating such development in similar circumstances could be very damaging.

Conclusion

13. I have considered all the other matters raised. I appreciate that this café would employ a minimum of 3 full-time staff and seek to cater for people working locally. But, I find neither that nor any other matter raised sufficiently compelling to alter my conclusion that this appeal should be dismissed.



INSPECTOR



Costs Decision

Site visit made on 27 September 2010

by **D R Cullingford BA MPhil MRTPI**

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29 October 2010

Costs application in relation to Appeal Ref: **APP/H0738/A/10/2132734** **5 Hugo Court, Teesway, North Tees Industrial Estate, Stockton-on-Tees,** **TS18 2RS**

- This application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made on behalf Mr James Harley for an award of costs against the decision of the Stockton-on-Tees Borough Council.
- The site visit was in connection with an appeal against the decision of the Council to refuse to grant planning permission for development described as a 'change of use from B1 business unit to A3 café'.

Reasons

1. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
2. The claim is that the Council have behaved unreasonably by failing to produce evidence to show clearly why this change of use would be unacceptable and failing to substantiate each reason for refusal with reference to the Development Plan or other material considerations. Indeed, it is suggested that the reasons advanced amount to vague, generalised and inaccurate assertions about the impact of the project unsupported by any objective analysis.
3. In relation to the first reason for refusal, it is suggested that the failure of the Council to undertake a survey (or any other assessment) of the nearest centres means that no relevant objective analysis exists to support the alleged harmful impact of the proposal on the vitality and viability of the centres nearby. I fear that such a claim misunderstands the nature of the policies cited. As the Council point out, 'saved' policy S14 insists that food and drink uses (such as cafés) should be directed towards defined 'centres' (including local and neighbourhood centres) unless 'exceptional circumstances' justify an alternative location. It is for the appellant to demonstrate compliance with that policy. I indicate in my decision letter why the evidence adduced fails in that respect. It follows that the first reason for refusal properly relates to the Development Plan.
4. I add here that the 'small' size of this café is not exceptional. Nor do I find the assessments of the local centres provided for the appellant either robust or compelling. They amount to very little more than highly generalised descriptions with no specific information on the number, size and disposition of the units, on parking arrangements or the bustle and activity there. Moreover,

as all those centres are put forward as places that shoppers might pass on their way to Portack Lane, and all contain an outlet offering some form of food and drink, the evidence adduced (such as it is) actually implies that the appeal proposal might have some impact (albeit small) upon existing businesses in those centres. The fact that vacant premises are identified in 3 of those centres simply reinforces the importance of complying with policy S14. I explain in my decision letter why that remains important in the context of the Core Strategy (in my version policy CS5 rather than CS4) and why the references made to PPS4 on behalf of the appellant misconstrue the advice therein.

5. It is claimed that the second reason for refusal amounts to a vague, generalised and inaccurate assertion about the impact of the proposal unsupported by any objective analysis. Again, I think that this claim flounders on a misunderstanding of the policies cited. The protection afforded by 'saved' policy IN10 prevents a change of use of B1 units unless the short and long term availability of suitable sites and buildings is demonstrated to satisfy requirements in the locality and elsewhere. That is a task for the appellant to address. I do not find any document submitted with the application that might do so. Not unreasonably the Council consulted their Business Development section who, on the basis of their data and experience, advised that the premises were 'well presented' and of a 'good size' to accommodate both 'start-up businesses and second stage growth' and that there was little alternative provision to this type of accommodation in this location. I indicate in my decision letter why the search of the Focus database, now submitted in the context of this appeal, actually supports that advice and why the availability of industrial land is not strictly relevant. It follows that the second reason for refusal is properly grounded in the 'saved' policies that still apply and supported by the evidence available.
6. Since I consider that the reasons for refusal properly reflect the requirements of the planning policies that apply here, I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated.

Formal Decision

7. In exercise of the powers transferred to me, I refuse this application for an award of costs



INSPECTOR