



Appeal Decision

Site visit made on 21 December 2010

by Ruth V MacKenzie BA(Hons) MRTPI

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

Decision date: 14 February 2011

Appeal Ref: APP/H0738/A/10/2135531

21 Station Road, Billingham, Cleveland TS23 1AF

- 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 Al-Baghdadi Thana against the decision of Stockton-on-Tees Borough Council.
 - The application (Ref No 10/0961/COU, dated 15 April 2010) was refused by notice dated 14 June 2010.
 - The development proposed is the change of use to a hot food takeaway.
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Application for costs

1. An application for costs was made by Mrs Al-Baghdadi Thana against Stockton-on-Tees Borough Council. This application is the subject of a separate Decision.

Decision

2. I dismiss the appeal.

Main Issues

3. I consider that the main issues in this appeal are, firstly, the effect of the proposed takeaway on the vitality and viability of the Billingham Green Local Centre; and, secondly, its impact on the living and working conditions for nearby occupiers.

Inspector's Reasons

4. No 21 Station Road is a former bakery and sandwich shop in the Billingham Green Local Centre, a linear commercial centre of some 45 units of which about a quarter is in some form of food and drink use. The appellant wants to change the use of the premises to a hot food takeaway which would be open daily between 10.30hrs and 23.30hrs.

The first issue – the vitality and viability of the local centre

5. I have considered the first issue in the light of policy S10 of *Alteration Number 1* of the *Stockton on Tees Local Plan* (LP) which states that the change of use from retailing will be resisted in local centres unless it can be demonstrated that the character, retail vitality and viability of the centre will not be adversely affected.
6. No 21 is towards the southern end of the local centre. Adjoining No 21 to its north are 2 takeaways and a butchers shop; adjoining to its south are a bridal-

wear shop and 2 more takeaways. Thus, if the proposed takeaway were to open, there would be 5 takeaways in a row of 7 units. I do not share the appellant's view that a cluster of takeaways is generally beneficial. In my experience, it can deter shoppers, and this could be detrimental to the profitability and long-term survival of the centre as a whole. It can also deter other retailers from moving into vacant units when they become available.

7. I saw that there were a few vacant units, but not enough to suggest that the number of shops is surplus to the requirements of those who live within the centre's catchment area. Indeed, to my mind, if the shops are to meet people's day-to-day needs and compete successfully against a nearby Tesco Express and the planned regeneration of the town centre, it is important that the number of takeaways is controlled. The appellant's proposal would introduce yet another takeaway, and the centre's retail character would be further diluted.
8. I have therefore reached the view that the proposed hot food takeaway would have a detrimental effect on the vitality and viability of the Billingham Green Local Centre, contrary to LP policy S10.

The second issue – living and working conditions for nearby occupiers

9. I have considered the second issue in the light of LP policy S14 which incorporates criteria for proposed hot food takeaways, including one that relates to smell, and another that relates to fume extraction and filtration equipment.
10. The appellant proposes to make and sell Turkish breads and cakes, together with other items such as pizzas, kebabs and chips. Adjoining the south side of No 21 is Posh Frocks. Bridal wear is sold on the ground floor and there is a sewing workshop upstairs. The owner of Posh Frocks is concerned that cooking smells from No 21 would contaminate the fabrics and dresses in her shop and, as a result, her business would suffer. It appears that odours from nearby takeaways are already a problem and, in her view, the problem would worsen if No 21 became another takeaway.
11. A new flue would be mounted on an outside wall of No 21, as far away as possible from Posh Frocks. According to the appellant, the ventilation, filtration and extraction equipment would be to modern standards. The Council's Environmental Health Officer did not object in principle to the proposed takeaway, subject to the imposition of conditions, but he later expressed concerns about the amount of money that the appellant would have to spend in order to comply with the conditions, and the difficulties of enforcement action. However, there is nothing to suggest that the conditions would be breached or, indeed, that the Council would not deal effectively with any breaches if they were to occur.
12. The nearest houses are on the corner of Bedale Avenue, on the opposite side of Station Road. There may also be flats above some of the units in Station Road itself, although this was hard to discern at my site visit. Station Road is a busy thoroughfare and I consider it reasonable to suppose that living conditions in its vicinity are already affected by noise from traffic and from the activities associated with the nearby shops, takeaways, social clubs and pub. In my view, the proposed change of use at No 21 would be unlikely to increase noise levels to an unacceptable extent.

13. On the second issue I have therefore decided that the proposed takeaway would not have a materially adverse impact on the living and working conditions for nearby occupiers.

Conclusion

14. My findings on the 2 issues pull in opposite directions. After careful consideration, and taking into account all other matters raised, I have decided that my serious concerns about the effect of the proposed takeaway on the vitality and viability of the local centre outweigh my favourable findings about the takeaway's impact on living and working conditions. The appeal is therefore dismissed.

Ruth V MacKenzie

INSPECTOR



Costs Decision

Site visit made on 21 December 2010

by **Ruth V MacKenzie BA(Hons) MRTPI**

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

Decision date: 14 February 2011

Costs application in relation to Appeal Ref: APP/H0738/A/10/2135531 21 Station Road, Billingham, Cleveland TS23 1AF

- The 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 by Mrs Al-Baghdadi Thana for an award of costs against Stockton-on-Tees Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for the change of use to a hot food takeaway.
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Decision

1. I allow the application in the terms set out below.

Reasons

2. 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.
3. The cumulative impact of smell, litter and noise on neighbours' amenities was the subject of the Council's second reason for refusal. However, as a result of an administrative error, the Council failed to include in the Questionnaire documents an email from its Environmental Health Officer dated 15 October 2010. This was an unfortunate oversight because the original consultation response from the Environmental Health Officer dated 30 April 2010 had raised no objection in principle, whereas the email of 15 October 2010 concluded that "Environmental Health are not opposed to the application being refused". The Council eventually sent a copy of the email to the Planning Inspectorate on 20 December 2010, and the appellant saw it for the first time on 23 December 2010, two days after my accompanied site visit.
4. Paragraph B4 of Circular 03/2009 gives examples of unreasonable behaviour which may result in an award of costs. One of these is the late submission of statements. The 15 October 2010 email did not amount to a statement, but it was nevertheless a material consideration, and the appellant should have been made aware of its contents several weeks earlier. I therefore consider that the Council behaved unreasonably in failing to submit the email by the right date.
5. In view of the Environmental Health Officer's apparent change of mind, the appellant felt it necessary to spend time considering the situation and responding to it. In my view, this was a reasonable course of action, notwithstanding the fact that it caused further and unnecessary expense to be

incurred.

6. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated. In view of the fact that the unnecessary expense was solely in relation to the second reason for refusal, I consider that a partial award of costs is justified in this particular case.

Costs Order

7. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Stockton-on-Tees Borough Council shall pay to Mrs Al-Baghdadi Thanah the costs of the proceedings so far as they related to the second reason for refusal, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
8. The applicant is now invited to submit to Stockton-on-Tees Borough Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Ruth V MacKenzie

INSPECTOR