



Appeal Decision

Hearing held on 19 December 2012

Site visits made on 18 and 19 December 2012

by **M Middleton BA(Econ) Dip TP Dip Mgmt MRTPI**

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

Decision date: 22 January 2013

Appeal Ref: APP/H0738/A/12/2180490/NWF

**Former Springs Leisure Club, Haydock Park Road, Teesside Retail Park,
Stockton-on Tees, TS17 7BT**

- 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 Athenaeum Developments (Stockton) Ltd and Mitchell and Butlers against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 11/2909/FUL, dated 16 November 2011, was refused by notice dated 9 February 2012.
 - The development proposed is the construction of a 66 bed Travelodge, Nandos Restaurant and Harvester Restaurant (Use Class A3) with associated car parking.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The Appellants submitted a signed Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 to the Hearing. In the Agreement they agree to procure, for a three year period from the date of the development's occupation, extensions to the existing X66/66 bus service that serves Teesside Retail Park by paying a sum of money to the Council. As a result, the service would continue to run until 21:00 Mondays to Saturdays and 09:00 to 17:00 on Sundays at no less than 30 minute intervals.
3. They subsequently submitted a signed Supplemental Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 and dated 21 December 2012. In this Agreement, the Appellants covenant with the Council to use reasonable endeavours to ensure that not less than seventy five percent, of the jobs at the proposal upon occupation, are made available to residents of a Target Area to be agreed with the Council. A method statement, to be agreed with the Council's Labour Market Coordinator, will demonstrate the reasonable steps that are to be taken for job vacancies and opportunities for the supply of materials and services to be made available to individuals and businesses within the Target Area.
4. I am satisfied that in principle these measures, as set out in the Agreements and which are discussed further in the body of this report, comply with the provisions of Circular 05/2005: *Planning Obligations* and meet the *Community Infrastructure Levy Regulations* (2010).

5. Prior to the Hearing the Council agreed that subject to the extension of bus services as discussed in paragraph 2, reason for refusal No.2 would be withdrawn.

Main Issues

6. From all that I have read, seen and heard I consider the main issues to be
 - a) Whether the benefits of the scheme are sufficient to outweigh any harm to the future vitality and viability of Stockton town centre and its regeneration strategy;
 - b) Whether the proposal minimises the need to travel and facilitates the use of sustainable modes of transport.

Policy

7. The Development Plan for the area includes the Stockton-on-Tees Core Strategy (CS) Development Plan Document, which was adopted in 2010. Given its age, it is up to date and in accordance with paragraph 214 of the National Planning Policy Framework (Framework) 2012, I should give full weight to its policies. CS Policy 5 discusses Town Centres and promotes additional leisure opportunities in Stockton Town Centre in accordance with the Framework. The policy also recognises the role played by Teesside Park as an out-of-town location and says that proposals for main town centre uses in such locations will be determined in accordance with prevailing national policy on town centre uses.
8. Despite the adoption of CS Policy 5, Saved Policy S 2 of the Stockton-on-Tees Local Plan (LP) 2006 has not been revoked. It has a presumption against key town centre uses in locations which lie beyond Town, District and Local Centre boundaries unless they meet six criteria. The first three refer to need, sequentially available sites and adverse impact upon the proposed strategy for a centre. As CS Policy 5 now defers the determination of such proposals to prevailing national guidance, these aspects of the policy now carry minimal weight.
9. Criteria v) and vi) of LP Policy S 2 refer to accessibility by a choice of means of transport and development assisting in reducing the need to travel. However, these have been superseded by CS Policy 2 Sustainable Transport and Travel. Criteria iv) of LP Policy S 2 refers to the proposal being appropriate in scale and function to the centre to which it relates and is still relevant.
10. LP Policy EN 17 was saved by direction in 2007 and was not replaced by policies in the Core Strategy. The Council clearly considered this policy to be still relevant in 2010 despite its age. In as much as it does not conflict with CS policies or national guidance, weight should be given to it. Criterion (f) says that land at Teesside Retail Park is allocated for tourism and recreation uses. The allocated land includes the appeal site.
11. Section 2 of the Framework replaces Planning Policy Statement (PPS) 4: Planning for Sustainable Economic Growth as the vehicle for expressing the Government's planning policies for town centres. Although much briefer, the thrust of the Government's intentions has not changed. Planning for Town Centres, Practice Guidance (PG) on need, impact and the sequential approach has not been withdrawn and although not policy it is still official guidance,

prepared to help the interpretation of town centre policies set out in the guidance. Consequently, unless in conflict with the Framework it still represents government guidance. Paragraph 1.22 says that as a guide to interpreting how policy should be applied the guidance may be material to individual planning decisions. I consider Part 6, which discusses sequential site assessments, to be relevant to paragraph 24 of the Framework and consequently that it should be given significant weight.

Reasons

Benefits

12. The appeal proposal would redevelop an unsightly building in a prominent location at the entrance to Teesside Retail Park that has now been vacant for over five years. It was formerly used as a health and fitness club. The development would create nearly 2,500 square metres of new leisure floorspace that would be occupied by a budget hotel and two family restaurants. The amount of floorspace would increase by about 600 square metres but the number of car parking spaces would be reduced from 212 to 130. The redevelopment of this site after such a long period has clear environmental benefits.
13. The site is located within one of the worst 10% of nationally ranked deprived wards with a current unemployment rate in excess of 9%. The addition of 64 full time equivalent jobs, many of which would be semi-skilled and with opportunities for temporary jobs at busy periods, could assist the economic regeneration of the local community in Mandale and Victoria Ward. The Appellants have formally agreed to arrange for at least 75% of the jobs to be initially made available to residents of a Target Area to be defined in agreement with the Council and for opportunities for the supply of materials and services to be made available to individuals and businesses within the Target Area. The Framework supports development that brings economic benefits.
14. However, the Target Area is defined as the whole of the Teesside area, including Hartlepool and Darlington, unless the Council wishes to restrict it to the Boroughs of Stockton and Middlesbrough. Either of these areas encompasses a significant population. Given the nature of the work, it would be very surprising if more than 75% of the employees at these businesses were not resident within the Target Areas as currently proposed, regardless of the Agreement. There is no guarantee that the jobs would be prioritised in favour of local unemployed residents or that when in competition with better qualified job applicants from elsewhere in Teesside they would be successful at obtaining work. Consequently this aspect of the agreement attracts minimal weight.
15. By agreeing to facilitate an extension of the bus service to Teesside Park, the proposal would enable more people without private transport to access the facilities both at this site and the rest of Teesside Park, particularly for leisure and shopping purposes. However, as the service would not run beyond 9pm (5pm on Sunday) its value to potential employees working evening shifts and persons wishing to experience the leisure facilities in the evening, using public transport, would be limited. Additionally, the agreement would run for three years rather than the five years initially proposed by the Council and more

fundamentally, there is no hard evidence to confirm that the bus operator would continue to operate the services once the three year period had expired.

16. Teesside Park is a major retail and leisure destination in this part of the country, being second to Middlesbrough in retail turnover within Teesside. The proposal would represent less than 4% of the floorspace at Teesside Park and would involve an overall increase of less than 1%. It is therefore appropriate in scale and function to this centre and conforms to this aspect of Saved LP Policy S 2.

Sequential test

17. At paragraph 24, the Framework says that applications for main town centre uses should preferably be located in town centres and then in edge of centre locations. The appeal proposal involves main town centre uses. The PG points out that town centre sites are likely to be the most readily accessible locations by alternative means of transport and by being centrally located within the catchment are best placed to achieve the policy objective underlying the sequential approach that seeks to reduce the need to travel. It also refers to a second objective that seeks to accommodate main town centre uses in locations where customers are able to undertake linked trips, enabling the new development to reinforce the vitality and viability of the existing centre.
18. Stockton Town Centre is the traditional commercial hub of this part of Teesside. Although having nearly twice as much floorspace as Teesside retail Park, it has a substantially lower amount of retail turnover. This helps to confirm the Council's view that the Town Centre is struggling to compete with this and other out of centre retail and leisure destinations in the area. The Council is leading a number of regeneration initiatives that seek to improve the Town Centre's vitality and viability. It is the contribution to the improvement of the centre's vitality and viability and the lack of it if the proposal is located at the Springs Leisure Club site that concerns the Council, rather than any impact on current vitality and viability. Although not particularly good, the Council accepts that Stockton Town Centre's current vitality and viability would not be harmed by the proposal.
19. The Council referred to thirteen sites that it considers are sequentially preferable to the appeal site. Although six of these are within the town centre and incapable of accommodating the development in the format proposed, two could accommodate the proposal, as could a further three that are in edge of centre locations. Although the credentials of the site at St Marks Court, with its poor accessibility and questionable link to the Town Centre, as an edge of centre site may not be sound, sites at Boathouse Lane, the Eastern Gateway, the North Shore (western part) and the Southern Gateway are capable of accommodating the development without unreasonable compromises on format and scale. There is no evidence to suggest these, mainly unused areas of land, are not available. The plethora of such sites is perhaps a further indication of the demise that currently affects Stockton Town Centre.
20. However, the Framework refers to the need for sites to be suitable and in paragraph 6.42 the practice guide says that in judging the suitability of a site it is necessary to have a proper understanding of what aspects of the need are intended to be met by the site and in paragraph 6.44 that a balanced judgement based on the specific circumstances of the case in question is required.

21. The Supreme Court judgement in the case of Tesco Stores v Dundee City Council¹ confirms that the meaning of suitable in the context of the Sequential Test is to be considered in the context of the development proposed and not some other development that could be substituted for it. That context should include an assessment of the market the proposal is intended to serve.
22. Much of the custom at family restaurants is not normally from single destination trips and they depend on an element of linked trips with leisure and retail facilities to be commercially viable. At Teesside Park they would be likely to obtain a significant proportion of their custom from persons already visiting the leisure and retail facilities. Much of their turnover would be competed away from the existing facilities.
23. The Appellants' comparison of eateries at Teesside Park, in proportion to the retail floorspace, with the situation at similar parks in other parts of the country, suggests that the provision of restaurants has not reached saturation. Additionally Teesside Park seems to have a larger leisure element than some of the comparisons, with consequent higher levels of potential demand for ancillary eating facilities.
24. In the recent past the Council has allowed the expansion of restaurants in the vicinity of the appeal site. There is no evidence to suggest that the market for eating facilities at Teesside Park has reached saturation. The above supports the contention that there is under capacity in the appeal location and a specific market for additional eating establishments.
25. Whilst an element of the trade would be from new trips, these are unlikely to be diverted from Stockton Town Centre and their existence at Teesside Park would not preclude the establishment of similar facilities within or adjacent to the Town Centre. In such circumstances the refusal of the family restaurants at Teesside Park is not justified.
26. The Appellants say that the hotel element of the proposal is intended to serve Stockton rather than a wider market that would include Middlesboro. There is already a Travelodge within Middlesboro Town Centre. They also estimate that about 35% of the hotel's custom would be derived from leisure visits. There is no concrete evidence to suggest that the Retail Park draws notable amounts of custom from outside of the region so it is unlikely that it or the indoor leisure facilities would be major drivers of demand for a hotel. The White Water Rafting Course at the Tees Barrage is likely to require hotel accommodation for some of its participants as are other outdoor leisure facilities in the area but this need is not quantified.
27. It is more likely, however, that the majority of the leisure demand is represented by the family and friends market. Such persons would have destinations all over Stockton, as would customers from the corporate market, which is the largest element of demand that has been identified. Consequently, other than being in a convenient location, close to the junction of the A19 and A66, for car born customers, Teesside Park has no particular advantage over other prominent roadside locations within or adjacent to Stockton Town Centre. Indeed there are sites close to the A66 that are more prominent. The availability of other facilities at Teesside Park for guests is mirrored within Stockton Town Centre where there are eating establishments, shops and bars

¹ Tesco Stores v Dundee city Council (Respondents) (Scotland), Supreme Court, 21 March 2012 UKSC 13.

available for the use of hotel guests. Additionally, Teesside Park is peripheral to Stockton, whereas the Town Centre is not.

28. The edge of centre sites at Boathouse Lane and Southern Gateway are adjacent to the A1045, a dual carriageway that links the A66 with Stockton Town Centre. These are visible locations and easily accessible, both from the strategic highway network and for destinations such as the Tees Barrage. A hotel development on either of these sites would help to strengthen the vitality and viability of Stockton Town Centre, whereas development at the appeal site would not. I therefore find that the hotel aspect of the proposal does not meet the sequential test.

Town centre regeneration

29. A major programme of improvements that will eventually result in £38 million being spent is now underway in Stockton Town Centre. This is a part of a wider initiative to regenerate the Town Centre and to attract new development for a variety of uses on the extensive areas of underused or vacant land and buildings immediately outside. The Council see a new hotel as one element of this development. Indeed, outline planning permission is already in place for a hotel with associated leisure uses at the Northshore regeneration area.
30. The Tees Valley Hotel Futures report identified a need for a budget hotel within the Teesside Urban Core, which includes Stockton Town Centre, in the period up to 2016 with the possible potential for at least two more in the period up to 2026. The study was published in 2009 and it is unclear as to what extent the recession has diluted the potential market. The Council are rightly concerned that the development of a budget hotel at Teesside Park could reduce the demand for a further hotel in the short term, thereby weakening the potential to attract a hotel to the Town Centre or its edge and undermining an aspect of its regeneration strategy.
31. Four years have passed since the Hotel Futures report was published and there has been no interest in developing a budget hotel in Stockton Town Centre to date. At the same time the Swallows Hotel within the Town centre has closed. Its location is not as visible or accessible as the sites discussed above but its closure and the failure to attract another operator suggests that the drivers of demand for such a facility in Stockton Town Centre are not good and that a greater critical mass of complementary uses may be required before there was market interest.
32. Nevertheless, the proposal would undermine the potential for hotel development in the Town Centre and to this extent it would undermine the strategy that seeks to reinforce the vitality and viability of the existing centre. Consequently the proposal is not in accordance with paragraph 24 of the Framework and therefore CS Policy 5. Whilst the proposal is supported by Saved LP Policy EN 17 and does not conflict with criterion iv) of Saved LP Policy S 2, CS Policy 5 is much more up to date than these policies and should be accorded greater weight. I therefore conclude that the proposal is not in accordance with the Development Plan.

Travel

33. In refusing the application, the Council considered the site to be in an unsustainable location that placed a high reliance on the private motor car. The introduction of a half hourly bus service in the early evening on weekdays

and Saturdays and in the daytime on Sundays does not make an unsustainable location sustainable. In comparison with the level of bus and train services that enable passengers to access Stockton, Middlesbrough or other Town Centres by public transport, the performance of Teesside Park is poor.

34. However, the majority of the restaurants' custom would be from linked trips and most of the hotel's potential customers would drive from other parts of the country in any event. The development's contribution to an addition in the carbon footprint as a result of people travelling more miles by car would therefore be limited. Furthermore, the proposal would reduce the number of car parking spaces and remove the existing leisure and fitness use from the site. This has the potential to attract individual vehicular trips from the Teesside urban area in its own right and to a far greater extent than the appeal proposal would. However, the building has been vacant for some years now and there is no evidence to suggest that there are potential health and fitness tenants for the building.
35. Nevertheless, overall the proposal could result in a reduction in potential vehicular trips to Teesside Park. As the proposal would be unlikely to generate significant additional movement it is not in conflict with Section 4 of the Framework. Although only to a limited extent, the proposal would widen transport choice and improve accessibility. Footpaths and cycle ways already link the site into such networks and the proposal would extend the availability of public transport to and from Teesside Park. To this extent the proposal conforms to Part 1 of Policy CS2.

Conclusion

36. I conclude that the proposal minimises the need to travel and facilitates the increased use of sustainable modes of transport to a limited extent. However, I also conclude that there are sequentially preferable sites which are suitable for the development and that the benefits of this proposal when considered together are not significant. Consequently, I find that the benefits of the scheme are insufficient to outweigh the harm to the future vitality and viability of Stockton Town Centre and its regeneration strategy and the thrust of the up to date retail policy in the Development Plan. The Framework confirms that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. Consequently, I also find for the reasons discussed above and having taken account of all of the other matters raised that the appeal should be dismissed.

M Middleton

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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Chris Creighton, Simon Chaplin	Peacock and Smith, 9C Joseph's Well, Leeds, LS3 1AB Christie and Co, Whitefriars House, 6 Carmelite Street, London, EC4Y 0BS
Elizabeth Wright	Athenaeum Developments, The Annex, The Garden House, Newton, Stocksfield, NE43 7UR
Cranford Cole	Smith Cole Wright, Milburn House, Dean Street, Newcastle Upon Tyne, NE1 1LF
Darran Kitchener	Jacobs, Earl Grey House, 71-81 Earl Grey Street, Newcastle Upon Tyne, NE1 6EF
Tony O'Brien	Travelodge, Sleepy Hollow, Aylesbury Road, Thame, Oxfordshire
Tony Palmer	Mitchell and Butlers, 27 Fleet Street, Birmingham, B3 1JP
Peter Atkinson	Nandos, High Muffles, Main Street, Bolton Percy, York, YO23 7AQ

FOR THE LOCAL PLANNING AUTHORITY:

Simon Grundy	Stockton-on-Tees Borough Council, Municipal Buildings, Church Road, Stockton-on-Tees, TS18 1TW
David Bage	Stockton-on-Tees Borough Council, Municipal Buildings, Church Road, Stockton-on-Tees, TS18 1TW
Nigel Laws	Stockton-on-Tees Borough Council, Municipal Buildings, Church Road, Stockton-on-Tees, TS18 1TW

INTERESTED PERSONS:

Cllr Stephen Walmsley
Cllr Tina Large
David Tennet

DOCUMENTS PRESENTED TO THE HEARING

- 1 The North East of England Plan, Regional Spatial Strategy to 2021, Policy 13, Brownfield Mixed-Use Locations
- 2 Stockton-on-Tees Local Plan, Policy EN 17, Supplied by the Appellants
- 3 Stockton-on-Tees Town Centre Prospectus, Supplied by the Council
- 4 Correspondence between Gregory Archer of Stockton Borough Council and Simon Dew of Muse Developments about the suitability of the Northshore area for a hotel and restaurant development, Supplied by the Council
- 5 Areal plans of St Mark's Basin, Boathouse Lane Northshore and the appeal site, Supplied by the Council
- 6 Plans and assessment of potential alternative sites in Middlesbrough, Supplied by the Appellants and the Council
- 7 Plan and schedule of existing hotels in Stockton and Middlesbrough, Supplied by the Appellants
- 8 A comparison of some retail aspects of Teesside Park with Middlesbrough and Stockton Town Centres, Supplied by the Appellants
- 9 Details of bus routes serving Teesside Park and their frequencies, Supplied by the Appellants
- 10 Areal plans and photographs of pedestrian and cycle links to Teesside Par, Supplied by the Appellants
- 11 Assessment of the appeal proposal in the context of paragraph 34 of the National Planning Policy Framework, Supplied by the Appellants
- 12 Unilateral Undertaking relating to the provision of additional bus services, Supplied by the Appellants
- 13 Unilateral Undertaking relating to the Local Labour Agreement, Supplied by the Appellants

PLANS

- A Dwg. No. 100:01 Rev 3, 1/1250, Existing Site Location Plan
- B Dwg. No. 100:02 Rev 3, 1/500, Existing Site Plan
- C Dwg. No. 101:01 Rev 2, 1/200, Existing Building Elevations
- D Dwg. No. 102:01 Rev 3, 1/200, Existing Site Section
- E Dwg. No. 200:01 Rev 17, 1/500, Proposed Site Plan
- F Dwg. No. 200:04 Rev 2, 1/500, Proposed Site Landscaping
- G Dwg. No. 210:01 Rev 9, 1/200, Travelodge GA Plan, Ground and First Floor
- H Dwg. No. 210:02 Rev 3, 1/200, Travelodge GA Plan, Second and Roof Floor
- I Dwg. No. 211:01 Rev 7, 1/200, Travelodge GA Elevations
- J Dwg. No. 212:01 Rev 3, 1/200, Travelodge GA Section
- K Dwg. No. 220:01 Rev 6, 1/200, Nandos GA Floor Plan
- L Dwg. No. 220:03 Rev 3, 1/200, Nandos GA Roof Plan
- M Dwg. No. 221:01 Rev 7, 1/200, Nandos GA Elevations
- N Dwg. No. 222:02 Rev 2, 1/100, Nandos GA Section
- O Dwg. No. 2924/102 Rev C, 1/100/50, Harvester Proposed Floor Plans and Elevations Layout 1
- P Dwg. No. 924/103, 1/100, Harvester Proposed Roof Plan and Section

PHOTOGRAPHS

- 1 3 Photographs of the Appeal Site
- 2 6 Photo-montages of the Appeal Site showing the Appeal Development