



Appeal Decision

Site visit made on 5 February 2013

by Mrs Zoë Hill BA(Hons) MRTPI DipBldgCons(RICS) IHBC

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

Decision date: 7 March 2013

Appeal Ref: APP/H0738/A/12/2187401

72 Durham Road, Stockton-on-Tees, Cleveland TS19 0DG

- 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 T S Chahal against the decision of Stockton-on-Tees Borough Council.
 - The application Ref: 12/1401/FUL, dated 6 June 2012, was refused by notice dated 26 July 2012.
 - The development proposed is the change of use from shop to hot food take-away.
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Preliminary Matters

1. The above description is taken from the application form. The Council describes the proposed development as *change of use from shop to hot food take-away including erection of new shop front, single storey extension to rear, 1.2m high railings to front, side and rear boundaries and erection of 2 no. flues to rear of existing roof* which more fully describes the scheme.
2. The application form indicates proposed opening hours of 9am to 11pm Monday to Saturday with no opening on Sundays. During the application process an alteration to those hours was agreed such that the premises would be open between 8.00am and 10.00pm Mondays to Saturdays and closed on Sundays. I have therefore dealt with the appeal on that basis.
3. The palisade fencing initially proposed was amended to 1.2m high railings with a 1.8m close boarded fence surrounding a bin store area. This is shown on drawing 2012/1/1B. The Council has determined the appeal on that basis and so shall I.

Decision

4. The appeal is dismissed.

Main Issue

5. Whether or not the principle of the proposed change of use is acceptable having regard to Saved Policy S10 of the Alteration 1 of the Stockton-on-Tees Local Plan (2006) and other relevant policies and, if not, the implications this would have for retailing in the Borough.

Reasons

6. The appeal property is an end of terrace unit, situated at the junction of Durham Road and Londonderry Road. It is one of a number of properties in a modest sized parade. This area is designated as a defined Neighbourhood

Centre. The proposed rear extension would be accommodated on the site without harm to the living conditions of neighbours and, whilst it would have a relatively shallow roof this would reflect an existing roofslope such that it would not be discordant. The proposed railings would have a domestic appearance and would create a positive sense of enclosure at a point in the street scene where the existing raised concrete area acts as a detracting element. The proposed shop front would be of simple design and relate acceptably to the character of the property.

7. The Council's policies seek to resist the loss of retail uses such that the local community has access to such facilities without the need to resort to private transport. Although Local Plan Saved Policy S10 predates the National Planning Policy Framework, it has similar objectives in that the purpose of the policy is to protect vitality and viability that contributes to sustainability of local communities. Moreover, it seeks that local planning authorities have policies that make clear which uses will be permitted in designated centres. In this case it is clear which uses are acceptable but some are only acceptable in certain circumstances.
8. Saved Policy S10 resists changes of use from retailing in the defined Neighbourhood Centres unless it can be demonstrated that reasonable efforts have been made to market the premises for retail uses. Saved Policy S14, amongst other things, supports hot food uses within the defined Neighbourhood Centres, subject to Saved Policy S10 being satisfied. The Council sets out in its 'delegated report', which is undisputed in this regard, that the supporting text to that policy requires the applicant to demonstrate that they have marketed the retail unit on the open market at least four times, at roughly equal periods, for a minimum of 12 months and to demonstrate that no unreasonable offer has been refused.
9. The premises were marketed between 2002 and 2004 and subsequently sold as a retail premises in 2006 to the appellant. Since then the only marketing that appears to have taken place was undertaken after the application was refused, commencing in September 2012. Information has been provided of marketing for other premises nearby. However, that is not the same as marketing this particular property; for instance 80 Durham Road is not prominently sited adjoining a side road and 44-48 Durham Road are modern units, with a different setting from the appeal property.
10. The wealth of information before me regarding appeals and available properties suggests that there are numerous similar properties for lease within the Borough. However, this is a pleasant unit in a row of shops on a main thoroughfare, close to a bus stop. As such it is a unit well suited to retail use. To allow its loss to a hot-food takeaway without a concentrated marketing effort for the property, which is well documented, and focused on obtaining a retail use would result in undermining the intentions for the retail function of this defined Neighbourhood Centre and would conflict with Saved Policy S10 of the adopted Local Plan which seeks reasonable marketing efforts are made prior to allowing such changes in use.
11. The Portas Review is also noted by the appellant because it sought that the restrictive aspects of the use class system should be addressed to make it easier to change uses on the high street. However, that was a recommendation to Government and it is not for the appeal to determine such

policy matters. S.38(6) makes it clear that the proposals should accord with the development plan unless materials considerations indicate otherwise.

12. In this case, I agree that long term vacancy of the unit is not desirable and would not add to the vibrancy of the area or footfall. However, the Council's policy, taken with its supporting text, sets out a clear and reasonable approach to ensure adequacy of marketing and does not seek a blanket prohibition on the change of use proposed. To allow changes of use from retail in Neighbourhood Centres without adequate marketing would be likely to undermine their function as Neighbourhood Centres. I therefore conclude that the conflict with Policy S10 and its supporting text would be harmful.

Other Matters

13. Local residents express concern that the fenced area would be used for sitting out. However, this is not specifically sought. Rather the scheme illustrates planters in this space which would introduce a verdant element in an otherwise austere environment.
14. Whilst the potential for litter arising from the development is raised as a concern, littering is a matter for other legislation.
15. The shop unit does not have any parking for customers. However, the existing use is one which could attract similar numbers of visitors. Moreover, there is scope for on-street parking in the vicinity which I consider would be adequate to serve the needs of customers, particularly given the likelihood that some would arrive on foot from the surrounding residential area. The proximity to a bus stop improves accessibility and there is no evidence that the site's proximity to the bus stop would result in vehicular conflict. In this regard I note that the Council's Technical Services explain they have no highway objections.
16. Despite local concerns, and proximity to a store which sells alcohol, there is no substantiated evidence to indicate that this proposal would result in anti-social behaviour. Whilst the proposed use would attract customers who might be talking or use motorised transport with its associated noise, this would be the case for the existing retail use of the premises. Moreover, this is part of a defined Neighbourhood Centre where a degree of noise is to be expected, including later into the evening.
17. Local residents express concern about odours. The scheme would provide for ventilation and extraction equipment to address that concern. Such equipment could be required as a condition of planning permission.
18. Increased competition for trade for existing hot food businesses is not a reason to withhold planning permission.

Conclusions

19. Despite the lack of harm identified in terms of the other matters raised, for the reasons set out in respect of the main issue, I conclude that the appeal should fail.

Zoë Hill

Inspector