



## Appeal Decision

Site visit made on 3 April 2014

by **C J Checkley BA(Hons) MRTPI**

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

Decision date: 22 April 2014

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### **Appeal Ref: APP/H0738/A/14/2211674**

### **Former Wolviston Court Butchers, 2 Clifton Avenue, Billingham, TS22 5DE**

- 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 H Singh against the decision of Stockton-on-Tees Borough Council.
  - The application Ref 13/2653/COU, dated 21 October 2013, was refused by notice dated 28 November 2013.
  - The development proposed is change of use from shop A1 to hot food takeaway A5.
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### **Decision**

1. The appeal is allowed and planning permission is granted for change of use from shop Class A1 to hot food takeaway Class A5 and installation of flue at Former Wolviston Court Butchers, 2 Clifton Avenue, Billingham, TS22 5DE in accordance with the terms of the application, Ref 13/2653/COU, dated 21 October 2013 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) The use hereby permitted shall not be open or have customers on the premises outside the hours of 09:00 and 23:00 on Mondays to Saturdays inclusive and shall not be open at all on a Sunday.
    - 3) Before development is commenced and notwithstanding the details shown on the approved plans, details of a scheme of ventilation and odour and fume extraction, including a full technical specification by a suitably qualified person, specifying the position of ventilation, fume or flue outlet points and the type of filtration or other fume treatment equipment to be installed, shall have been submitted to and approved in writing by the local planning authority. The scheme shall be completed in accordance with the approved details before the use commences. The approved scheme shall be operated and maintained in accordance with the manufacturer's recommendations, including those regarding the frequency of replacement of any filters, throughout the period that the use is in operation.
    - 4) Unless otherwise required by condition 3, the development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Existing and Proposed Elevations and Plans, drg 01 dated 21/10/13.
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### **Preliminary matter**

2. I have used the Council's description of the proposal since it is more accurate and comprehensive than that in the application form.

### **Main Issue**

3. The main issue is the effect of the change of use upon the retail character, vitality and viability of the designated Clifton Avenue Neighbourhood Centre.

### **Reasons**

4. The application site is a vacant butchers shop within a single-storey L-shaped shopping parade with a car park set within a suburban residential area. The Wolviston Court parade comprises a Sainsbury's Local supermarket and some 6 small units and a large public house. The parade is included within the Clifton Avenue Neighbourhood Centre within Alteration No 1 of the Stockton-on-Tees Local Plan (adopted 2006) (LP).
5. The retail function of the Centre is anchored by the supermarket which sells a wide range of convenience goods including: fruit and vegetables; frozen, chilled and canned foods; some meat and poultry; magazines, cards, newspapers and stationery; and alcoholic drinks. A sign shop indicates it is open from 06:00 until 23:00 hours daily.
6. The vacant former butchers shop adjoins an external corner. To one side (around the corner) is a sandwich shop selling snacks (which the Council says is a Class A1 use). To the other side of the vacant shop within the main run of units is a barbers shop (A1), followed by a Chinese hot food takeaway (A5), a hairdressers (A1), and a pizza hot food takeaway (A5).
7. Saved LP Policy S14 allows Class A3, A4 and A5 uses within Neighbourhood Centres where a list of criteria and Policy S10 are met. Saved LP Policy S10 resists changes of use of Class A1 units within Neighbourhood Centres unless 3 criteria (i-iii) are met. Regarding criterion (iii), the Council does not dispute that the development would be appropriate in scale and function to the Centre.
8. Criterion (ii) requires that reasonable efforts have been made to market the premises for retail uses. The appellant's agent has not submitted documentary evidence proving how long the unit has been empty and the marketing that has been undertaken, simply stating that the unit has been empty since June 2011. At my visit I saw that there was a notice in the window dated 17 August 2011 indicating that the premises had that day been seized by bailiffs on the authority of the landlord. I am therefore persuaded that the premises have been empty since at least that date, a vacancy period of some 2 years 8 months. I also saw that there was a "To rent" sign on the premises that included contact phone numbers and the words "great incentives".
9. In my experience this sort of small neighbourhood unit is likely to appeal primarily to local businesses. Any retailers interested in new premises in the local area could reasonably be expected to be aware of this available opportunity after so long a period. The presence of a national supermarket operator selling a wide range of goods and opening long hours each day will be a factor affecting interest from retailers. I consider that the facts suggest that the previous retail business failed and that the unit appears no longer viable for

- retail use in the foreseeable future. If the appeal is refused it seems likely the unit will remain empty, continuing to present a dead frontage and attracting no footfall.
10. Criterion (i) is reflected in the main issue outlined above. The main role of a Neighbourhood Centre is to provide convenience shopping and local services for the surrounding residential area. The existing occupied units including the supermarket adequately perform this role, even with the appeal premises unoccupied. At present there are two Class A5 units which would increase to three out of the six smaller units in the parade (excluding the supermarket) if the appeal were allowed. However, I would estimate that the gross floorspace of the supermarket (Class A1) alone takes up about 45% of the overall floorspace within the parade (excluding the large public house) and that if the appeal were allowed about half of the small units' gross floorspace would also remain in A1 use. Therefore, having regard to the proportion of floorspace remaining in Class A1 use and the importance of the supermarket, I find that the retail function of the parade would continue to remain dominant.
  11. Although the appellant indicates an intention to operate a fish and chip shop that would open both at lunchtimes and in the evenings, I am mindful that planning controls cannot ensure this will be the case. The existing takeaways were not open at lunchtime on the day of my visit. Nevertheless, on balance, I consider that the change of use of this empty shop is justified since there is no evidence of retailer interest after a period that is now approaching 3 years, and the new takeaway would offer a facility of service to the local community whilst preventing the unit standing empty for a further long period. I find that criterion (i) of Policy S10 would be satisfied.
  12. There is no suggestion by the Council that the additional set of criteria within the second part of LP Policy S10 would not be satisfied and, where necessary, conditions can be imposed to meet their objectives. There is already a large car park available to meet parking needs and the local highway authority has raised no objections. The Council considers adequate litter bins exist in the local area. The installation of an agreed extraction and filtration system is required to ensure adequate and effective control of cooking odours and fumes, to avoid nuisance to nearby businesses or local residents. The proposal includes an extract flue which would not be unduly prominent in visual terms, although its position might need to be amended as part of the approval of a detailed extraction and ventilation scheme. The installation of a grease trap is a matter more appropriately dealt with under other legislation. Since the amount of construction work is limited a condition regarding hours of construction does not seem essential.
  13. The original application sought opening until 23:00 hours on Mondays to Saturdays and until 21:30 on Sundays. Having regard to the late opening of the supermarket and the presence of the public house, and the fact that the nearest residential properties lie on the other side of Clifton Avenue, I consider that opening until 23:00 Mondays to Saturdays with no opening on Sundays would strike an appropriate balance in this case between safeguarding the amenity of local residents and meeting the needs of the takeaway business and its customers.

14. I conclude that, subject to the imposition of the conditions stated, the change of use of this vacant shop would not cause material harm to the retail character, vitality and viability of the Neighbourhood Centre. There would be no conflict with the provisions of LP Policies S10 or S14.
15. I have taken into consideration the representations from third parties, some of whom argue there are too many takeaways in the area. However, a third takeaway in the parade would not result in a harmful over-concentration of such uses and it is not the function of the planning system to safeguard existing businesses from competition. Mention has been made of an appeal for a takeaway that was dismissed at Ingleby Barwick in 2010 but since no details have been supplied I have no evidence that it is comparable in all respects to the current appeal. Neither these nor the other matters raised are sufficient to lead me to a different conclusion. Finally, the Planning Practice Guidance was published on 6 March 2014. The content of the Guidance has been considered but in light of the facts of this case it does not alter my conclusions.

*C J Checkley*

INSPECTOR