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## Appeal Decisions

Site visit made on 20 January 2015

**by Anne Jordan BA (Hons) MRTPI**

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

**Decision date: 10 March 2015**

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### **APPEAL A**

**Appeal Ref: APP/H0738/A/14/2229063**

**Mandale Retail Park, Ross Road, Stockton on Tees, TS18 2LX**

- 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 Stockton-on-Tees Borough Council.
  - The application Ref 14/1666/FUL, dated 19 June 2014, was refused by notice dated 15 October 2014.
  - The development proposed is described as "external alterations to existing retail units, sub-division to create two additional units for food retail use, including one drive through unit, and erection of two new retail units with associated landscaping".
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### **APPEAL B**

**Appeal Ref: APP/H0738/A/14/2229065**

**Mandale Retail Park, Ross Road, Stockton on Tees, TS18 2LX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr James Harley against the decision of Stockton-on-Tees Borough Council.
  - The application Ref 14/1855/VARY, dated 9 July 2014, was refused by notice dated 15 October 2014.
  - The application sought planning permission for Outline application for the erection of non food retail units without complying with conditions attached to planning permission Ref 94/2109/P, dated 6 January 1995.
  - The conditions in dispute are Nos 1 and 3. No 1 states that: Notwithstanding the provisions of Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, the premises shall not be used for the sale of food, clothing, footwear, toys, books and magazines, watches and jewellery nor those elements identified in paragraphs (b) to (i) of Class A1 of the Schedule to the Order. Condition No 3 states that: The premises shall not be sub-divided into independent units without the prior written consent of the Local Planning Authority.
  - The reasons given for the conditions are: To enable the Local Planning Authority to retain control over development particularly in the interests of protecting the vitality and viability of town centre retailing, and To enable the Local Planning Authority to retain control over the development, particularly in the interest of protecting the vitality of the town centre.
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## **APPEAL C**

### **Appeal Ref: APP/H0738/A/14/2229068**

#### **Mandale Retail Park, Ross Road, Stockton on Tees, TS18 2LX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr James Harley against the decision of Stockton-on-Tees Borough Council.
  - The application Ref 14/1856/VARY, dated 9 July 2014, was refused by notice dated 15 October 2014.
  - The application sought planning permission for erection of single storey building to create 5 No non-food retail units and associated car parks (Blocks B) without complying with conditions attached to planning permission Ref 95/0179/P, dated 12 April 1995.
  - The conditions in dispute are Nos 1 and 3. No 1 states that: Notwithstanding the provisions of Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, the premises shall not be used for the sale of food, clothing, footwear, toys, books and magazines, watches and jewellery nor those elements identified in paragraphs (b) to (i) of Class A1 of the Schedule to the Order. Condition No 3 states that the premises shall not be sub-divided into independent units without the prior written consent of the Local Planning Authority.
  - The reasons given for the conditions are: To enable the Local Planning Authority to retain control over development particularly in the interests of protecting the vitality and viability of town centre retailing, and To enable the Local Planning Authority to retain control over the development, particularly in the interest of protecting the vitality of the town centre.
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## **APPEAL D**

### **Appeal Ref: APP/H0738/A/14/2229070**

#### **Mandale Retail Park, Ross Road, Stockton on Tees, TS18 2LX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr James Harley against the decision of Stockton-on-Tees Borough Council.
  - The application Ref 14/1857/VARY, dated 9 July 2014, was refused by notice dated 15 October 2014.
  - The application sought planning permission for reserved matters for the erection of single storey building to create 3 No non-food retail units (Block A) and associated car parking without complying with conditions attached to planning permission Ref 95/0180/P, dated 10 March 1995.
  - The conditions in dispute are Nos 1 and 3. No 1 states that: Notwithstanding the provisions of Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, the premises shall not be used for the sale of food, clothing, footwear, toys, books and magazines, watches and jewellery nor those elements identified in paragraphs (b) to (i) of Class A1 of the Schedule to the Order. Condition No 3 states that The premises shall not be sub-divided into independent units without the prior written consent of the Local Planning Authority.
  - The reasons given for the conditions are: To enable the Local Planning Authority to retain control over development particularly in the interests of protecting the vitality and viability of town centre retailing, and To enable the Local Planning Authority to retain control over the development, particularly in the interest of protecting the vitality of the town centre.
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## Decisions

1. Appeal A is allowed and planning permission is granted for erection of 2 No retail units with associated landscaping and external alterations to existing retail units at Mandale Retail Park, Ross Road, Stockton on Tees, TS18 2LX in accordance with application ref 14/1666/FUL, dated 19 June 2014 and the conditions contained within schedule A of this permission.
2. Appeals B, C and D are dismissed.

## Applications for Costs

3. Applications for costs were made by Mr James Harley against Stockton-on-Tees Borough Council. These applications are the subject of a separate Decision.

## Procedural Matters

4. Mandale Retail Park was constructed following outline consent ref 94/2109/P and 2 reserved matters applications Ref 95/0179/P and 95/0180/P. These permissions were subject to conditions restricting subdivision and the sale of food from the premises. The appellant subsequently submitted a planning application for the erection of 2 small units within the existing car park for A1 use, and the subdivision of existing units 1 and 5 within the retail park to provide units to be used for a drive through hot food use and occupation by a sandwich chain. This was originally made in the form of a single application ref 14/1666/FUL.
5. The Council altered the description of development to "proposed erection of 2 No retail units with associated landscaping and external alterations to existing retail units" and advised that in addition to the original application, 3 additional applications to vary relevant conditions on the previous consents were also required. These have subsequently been submitted by the appellant and are also the subject of this appeal.
6. The revised description of development refers to "retail units". This description lacks clarity, and for this reason I have sought the views of the parties on what they consider the use proposed to be. The application form refers solely to A1, although the supporting planning statement is ambiguous and refers to both A1 and A1/A3 use within the proposed units. The appellant has confirmed that both A1 and A3 uses were proposed for the units. Although the Council have not been explicit, consideration of the impact of an A3 use within the units is considered within the Council's report. I have therefore determined the appeal on the basis of the revised description and on the basis of an A1/A3 use within the new units.
7. In relation to the applications for variation of conditions. The relevant conditions relate to all the existing units in the development, and in this respect the 3 variation of condition applications extend beyond that sought by the original proposal. The appellant has however indicated that the use for the sale of food is intended within the newly created units 1A and 5A only.
8. Furthermore, the submitted plans show a drive-through, and the accompanying planning statement refers to occupation by a sandwich chain. Nevertheless, the parties agree that use of the units beyond the sale of cold food off the premises would require further planning approval. Therefore,

notwithstanding the details on the submitted plans, I have dealt with these applications on the basis that the uses proposed relate to the sale of cold food and fall within use class A1.

9. The appellant has provided a signed unilateral undertaking, which seeks to revoke a previous consent ref 02/1647/P. This relates to the provision of a coffee shop at mezzanine level within unit 5.
10. At the time of my visit I noted that unit 1 was already in use as a sandwich shop and that, as such, the applications were in part retrospective.

### **Main Issue**

11. The main issue is the effect of the proposal on the vitality and viability of Stockton Town Centre.

### **Reasons**

12. Mandale Retail Park lies around a mile from Stockton Town Centre. It comprises two large buildings which face onto an open car park, which fronts the busy Portrack Lane. At the time of my visit 4 of the 6 retail units within the retail park were vacant. The area immediately to the west is residential, with properties along Walton Street facing directly onto the side boundary to the rear parking area. To the east, the area is made up of industrial and retail warehouse units, and these stretch for some considerable distance along Portrack Lane.
13. The nearby town centre had a significant level of vacancy and was undergoing works to improve the public realm, which the Council advises forms part of an extensive regeneration scheme. The original approvals for the development sought to ensure the development did not compete with the town centre in terms of the type of goods sold, and the size and form of retail units proposed. These aims are consistent with both Development Plan guidance<sup>1</sup> and the *National Planning Policy Framework* (The Framework), which seek to protect the vitality and viability of Town Centres by directing new retail development to within existing centres.

### *Appeal A*

14. Appeal A seeks to upgrade the existing exteriors, provide landscaping and erect 2 small retail "pods" towards the front of the car park. This would provide new floorspace of around 130 square metres. The alterations to the exterior of the buildings would represent a visual improvement to the site. Furthermore, the 2 small freestanding units would increase floorspace within the retail park to only a limited degree.
15. The appellant contends that the proposed units would serve a local need. I noted on site that within the park there was a high level of vacancy. I also noted that the recently opened sandwich shop, for which retrospective permission is now sought, was doing brisk trade. Within the immediate area there were residential properties and a significant proportion of small businesses, which the sandwich shop appeared to be serving. To some extent this reinforces the appellant's claim that at least on a small scale, a food and drink use within the park could primarily serve trade from the local area.

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<sup>1</sup> The Development Plan is made up of the Stockton on Tees Borough Core Strategy and Saved Policies of the Stockton on Tees Local Plan.

16. I note their position at the front of the site would also be attractive to passing customers. I also note that the units could also be used for the sale of other goods in addition or instead of a use as a coffee shop. Nevertheless, the size and format of the proposed units indicates that even if such uses were implemented, on their own they would not realistically be considered to be of a scale that would undermine existing provision within the Town Centre.
17. The proposals would lead to a reduction in the overall amount of available parking within the development which the Council consider would lead to increased parking pressure along Ross Road. On this basis the Council consider a financial contribution towards a Traffic Restriction Order to be necessary. However, taking into account the small number of customer parking spaces that would be lost I find no compelling evidence that such off site works would be necessary.
18. The Council also consider that the visual appearance of the development could be improved if supplementary planting were incorporated into the layout which is currently devoid of any significant greenery. Furthermore, although residential occupiers along Walton Street lie within a short distance of the retail park, taking into account the position of the proposed new units I do not consider that the revised proposal would have a detrimental effect on wider amenity. Finally, I note the comments of the neighbouring industrial premises, but do not consider that the proposals would compromise the operation of this adjoining business should the proposals give rise to increased numbers of visitors to the site.
19. Therefore, in relation to Appeal A I conclude that the proposals would not conflict with guidance contained within policy CS5 of the *Core Strategy*, policies S2 and S15 of the *Stockton-on-Tees Local Plan* and guidance contained within the Framework which all seek to ensure that new development does not compromise the vitality and viability existing town centres.

#### *Appeals B, C & D*

20. These appeals would enable the subdivision of two of the existing retail units, and the use of the new units 1a and 5a, each measuring 140 square metres, for A1 food use. In this regard the proposed variations would not lead to additional retail floorspace, but would alter how the approved retail space would be used. The proposals would allow the sale of food from two separate units which each measure 140m<sup>2</sup> which the parties agree would comprise only A1 use. The submitted plans indicate a drive through and a sandwich shop, although the proposed variation to existing conditions would allow the units to also be used for the sale of convenience goods.
21. The proposals relate to a limited amount of the total floorspace within the park. Nevertheless, taking into account the two new retail units, which would be the subject of a separate permission, the number of potential food uses would amount to 4 of the 10 units within the retail park. An existing restaurant permission also relates to the mezzanine of unit 5, which although wholly contained within the existing shop, nonetheless adds to the potential range of services within the park.
22. The appellant has provided a unilateral undertaking with the appeal which seeks to revoke consent for 430 square metres of food and drink use within the mezzanine of unit 5 should permission be granted. However, the

undertaking would not satisfactorily achieve this aim, which could only take effect following a prescribed procedure undertaken by the determining planning authority. In any case, I am not satisfied that as an undertaking not to use the restaurant for its permitted use the document would be effective, as the document does not appear to be witnessed, or accompanied by evidence of title deed. I therefore give this matter no weight.

23. Having regard to the nature of the surrounding uses, and the size of the existing units, it seems unlikely that a retail park of this size would realistically sustain demand for 4 new units for food related retail, all from the local area, or from existing customers in the retail park. This would go beyond a scale which could reasonably be argued as ancillary. I am also mindful that a drive-through facility is by its nature designed to attract car borne trade from a wider area and so would be unlikely to serve predominantly local custom.
24. The units could also be used for convenience food shopping and this reduces the weight I can attribute to the role these units could play as food and drink uses to support existing non-food retailing within the development.
25. Therefore, notwithstanding the limited amount of floorspace involved, as the uses proposed would not be performing a supporting function, it follows that they would, albeit to a small extent, have the potential to divert trade from the nearby town centre. The Council has drawn my attention to the on-going regeneration works within the town centre, which appears to have higher than average levels of vacancy. I therefore consider that further trade diversion would have the potential to undermine on-going investment within it. Having regard to the emphasis in the Framework to ensure the vitality of town centres, this matter must carry substantial weight.
26. The proposals would thereby conflict with guidance contained within policy CS5 of the Core Strategy, policies S2 and S15 of the *Stockton-on-Tees Local Plan* and guidance contained within the Framework which all seek to ensure that new development does not compromise the vitality and viability existing town centres.
27. I have found that taking into account the character of the surrounding area there is some scope for a small element of food retail within the site, for local needs arising from adjoining employment and residential uses, but that nonetheless the totality of development proposed would go beyond this need and would have the potential to detract from the vitality and viability of the town centre.
28. In coming to a view I have considered whether in first determining that the new units were acceptable, I have prejudged the context in which the other elements of the appellant's proposals can be considered. However, as the aim of the proposals, as expressed by the appellant, is to provide ancillary food and drink uses to support existing non-food retail, it appears to me that permitting the new units, which would also allow use for use as a café, would best suit these aims. This would not be possible through any of the variation of condition applications.
29. Accordingly for the reasons given and having regard to all other matter raised, I dismiss the appeals B, C and D.

## **Conclusion and Conditions**

25. For the reasons given above I allow Appeal A and dismiss Appeals B, C and D. The Council have suggested a number of conditions, which I have considered in relation to the guidance contained within Planning Practice Guidance.
26. In addition to the standard time condition, and a condition requiring the development to be carried out in accordance with the approved plans insofar as they relate to the provision of two new retail units. I also consider it necessary to require approval of the proposed materials for all external surfaces, in order to ensure a satisfactory appearance for the development. Furthermore, in order to provide a satisfactory appearance for the development, it will be necessary for a soft landscaping plan to be agreed as part of this layout.
27. The Council have also proposed restrictions on the hours of operation. The units would not be located close to residential occupiers and the remainder of the development appears to be unrestricted in this regard. I therefore do not consider such a restriction to be reasonable. For the same reason I do not consider it necessary to impose a restriction on the hours of construction. However, as the units could be used for the preparation of hot food, conditions in relation to the approval of refuse collection, ventilation systems, and plant and machinery are reasonable and necessary. Finally, taking into account the floorspace involved, conditions preventing subdivision are not necessary.

*Anne Jordan*

INSPECTOR

### Schedule 1

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Nos 14.1178.01 rev A5, 14.117808.02 Rev A1, 14.1178.03 Rev A1, 14.1178.06 Rev A3, and 14.1178.07.Rev A1, 14-1178.08 Rev A1, ; except in respect of the provision of units 1A and 5A and the proposed alterations to the buildings and car park to facilitate those units shown on plan Nos 14.1178.01 Rev A5, 14.1178.07.Rev A1, 14-1178.08 Rev A1. The buildings shall not be altered or extended in any way without the prior written consent of the Local Planning Authority.
- 3) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting etc); proposed and existing functional services above and below ground (eg. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.).
- 4) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority.
- 5) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) The installation of any plant or machinery on the premise shall be in accordance with a scheme to be approved by the Local Planning Authority for the reduction, where necessary, of the level of noise and vibration emanating from the premises.
- 7) Details of any extract ventilation or fume extraction system, including the provision of ventilation, fume or flue outlet points and the type of filtration or other fume treatment, to be installed and used in the premise in pursuance of this permission shall be first approved by the local planning authority and installed before the development hereby permitted commences and thereafter retained in full accordance with the approved details.