



Appeal Decisions

Site visit made on 15 May 2018

by Roy Merrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2018

Appeal A: APP/H4505/C/18/3193759

Da Vincis, 10 Harraton Terrace, Durham Road, Birtley, Chester-le-Street DH3 2QG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Afshin Pouresmaileh against an enforcement notice issued by Gateshead Council.
- The enforcement notice was issued on 22 December 2017.
- The breach of planning control as alleged in the notice is without planning permission the change of use from a cafe (A3) to a mixed use, including cafe, hot food take away and hot food delivery.
- The requirements of the notice are: (i) Stop using the Land for the purposes of a hot food take away and delivery and (ii) Remove from the Land all external and internal signage, visible from the outside of the premises, seeking to advertise use as a hot food take away and delivery.
- The period for compliance with the requirements is two calendar months.
- The appeal is proceeding on the ground set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal B: APP/H4505/W/18/3193758

10 Harraton Terrace, Durham Road, Birtley, DH3 2QG

- 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 Afshin Pouresmaileh against the decision of Gateshead Council.
- The application Ref DC/17/00899/COU, dated 4 August 2017, was refused by notice dated 15 November 2017.
- The development proposed is change of use from A3 to A3 / A5 to allow for home delivery.

Summary of Decision: The appeal is dismissed.

Preliminary Matter

1. With regard to Appeal B, it was agreed by the parties that the address of the appeal site is 10 Harraton Terrace as specified above, and not 10a Harraton Terrace as specified on the application form.

Appeal A on ground (a) and Appeal B

Main Issue

2. The main issue is the effect of the development on the health of the local community in terms of the availability of unhealthy food.

Reasons

3. The National Planning Policy Framework (the Framework) supports strong, vibrant and healthy communities and states that local planning authorities should work with public health leads and health organisations to understand and take account of the health status and needs of the local population. Policy CS14 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle Upon Tyne 2015 (CSUCP) is concerned with wellbeing and health. It seeks amongst other things to control the location of and access to unhealthy eating outlets. Saved Policy RCL6 of the Gateshead Unitary Development Plan 2007 (UDP) states that planning permission will be granted for hot food takeaways within an existing centre or locality provided they would not lead to an over-concentration of such uses in any one location.
4. Furthermore the Council has published the Hot Food Takeaway Supplementary Planning Document 2015 (SPD). This identifies that the Borough currently has a high level of obesity. It is undisputed by the main parties that levels of child obesity (measured in relation to year 6 pupils) are higher in the Borough (23%) and in Birtley ward (25%) compared to the national average (19%) and that a survey of takeaway food in Gateshead generally revealed a very high calorie and fat content in certain foods. The Council's point that the number of hot food takeaways per 1000 population in the Birtley ward (1.68) is nearly twice the national average (0.86) is also unchallenged. It therefore seems to me that there is strong justification for the Council objective, referred to in the SPD, of transforming health in Gateshead by supporting and encouraging people to take opportunities to improve their health and lifestyle.
5. The aims of the SPD include resisting new A5 use class development, where the primary use is the sale of hot food for consumption off the premises, within 400 metres of locations where children and young people congregate; in wards where more than 10% of the year 6 pupils are classified as obese and where the number of A5 units equals or exceeds the national average per 1000 population. If it is accepted that the proposal would introduce a new A5 use, then there is no dispute that it would be in conflict with these criteria. Furthermore the SPD also seeks to cap the number of A5 uses within commercial centres to 5% of the total commercial uses there. The relevant figure for the Birtley District Centre, where the appeal site is located, is undisputed to be 11.6%.
6. It was apparent from my visit that a range of fast food types can be purchased on the appeal site premises including pizzas, burgers and kebabs, with seating available to allow up to 20 customers to dine there. Signage promoting the availability of the delivery service, through the Just Eat website is also displayed outside. Whilst a takeaway service to passing trade is not promoted from the site, there is no obvious means of precluding this.
7. There is disagreement between the Council and appellant regarding the proportion of business generated through the A5 element, (the online delivery

service in particular). The Council state that the delivery service accounts for 80% of the business, with the appellant saying it is two thirds. Either way, there is no dispute that a clear majority of the business falls within the A5 use class.

8. Even if passing trade continues to account for a small proportion of the overall business, from the information provided I am in no doubt that the online delivery service results in fast food being made increasingly accessible and more convenient to obtain, compared to the premises remaining as a cafe for the consumption of food on the premises. The appellant does not seek to make the case that the fast food choices available would not constitute unhealthy products and I have not been provided with any evidence to suggest that the business has a significant customer base outside the Gateshead area. Notwithstanding the opportunity to purchase some healthier items such as salad and fruit, the A5 element of the business would translate into an increased availability of a generally unhealthy diet for local residents, obviously including but not limited to children.
9. Whilst the business would have a relatively limited impact in the context of the many similar services already available, it would nevertheless contribute to counteracting comprehensive and unambiguous policy objectives aimed at tackling and improving poor health within the Borough. Therefore the argument that the use, in itself, would have limited impact and would therefore be acceptable for this reason, would not be compelling in principle, as it could be repeated too often to the overall detriment of public health. This similarly applies to the argument that fast food could still be purchased and consumed on the premises due to the existing A3 Use Class relating to the Land. Whilst this is so, the limitation of the use serves to restrict the availability and convenience of access to unhealthy food, a limitation which the A5 element of the business would serve to undermine.
10. Whilst the SPD states that it is aimed at the control of hot food takeaways (A5 uses only), for the above reasons the argument that this should not encompass A5 uses that are part of a proposed mixed use and where a significant amount of the business derives from online ordering, is not persuasive.
11. I therefore conclude that the development would result in increased access to unhealthy food and would add to an over-concentration of such uses within the Borough, which would be detrimental to the health of the local community. Accordingly there would be conflict with the Framework; with Policy CS14 of the CSUCP; with Saved Policy RCL6 of the UDP and with the SPD insofar as they seek to promote healthy communities; control access to unhealthy eating outlets and avoid an over-concentration of such uses in any one location.

Other Matters

12. The appellant has raised a number of further matters in support of the development. These include that considerable wasted investment would have been made in the business which would struggle without the support of the A5 use, risking closure, job losses and another vacant commercial unit and that the business has a valuable social role in providing a meeting place for shoppers.
13. I acknowledge these benefits and potential impacts, and any wasted investment would be regrettable. However I have not been presented with any

compelling evidence that closure of the A3 element of the business with the consequent loss of a meeting place for shoppers and 'dead' frontage during the daytime, would inevitably follow. Whilst I afford these considerations moderate weight, in my view they do not justify setting aside the policy presumption against the development in this case, which is designed to protect and improve the health of the local population in the longer term and to which I therefore give significant weight.

14. The points raised that there is adequate parking for delivery vans to the rear of the site and that because the takeaway element of the business is focussed on delivery it would serve to mitigate potential littering and anti-social behaviour outside the premises are matters of harm avoidance rather than positive impact and therefore attract neutral weight in the planning balance. In terms of the possibility of the delivery service being able to operate from a different site in Birtley, this would only be true if an appropriate planning permission was in place.

Conclusion

15. For the reasons given above I conclude that Appeals A and B should not succeed.

Formal Decisions

Appeal A

16. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

17. The appeal is dismissed.

Roy Merrett

INSPECTOR