



## Appeal Decision

Site visit made on 19 February 2021

by **J Hunter BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 February 2021

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**Appeal Ref: APP/H4505/W/20/3259325**

**15, Clavering Road, Bleach Green, Blaydon, Gateshead NE21 5HH**

- 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 Anthony Lang against the decision of Gateshead Council.
  - The application Ref DC/20/00093/COU, dated 4 February 2020, was refused by notice dated 20 March 2020.
  - The development proposed is described as change of use from café with ancillary takeaway (Use Class A3) to a mixed use of café and hot food takeaway (mixed uses A3/A5), with retention of previous approved extraction equipment (head permission for use approved: GMBC DC/18/01032/COU on 13 February 2019 / extraction approved: GMBC 18/01032/DOC1 on 15 May 2019) and one hour extension of opening hours to 9pm).
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The Government recently reformed the planning use classes with a revised use class order coming into force 1 September 2020. The amendments to the Use Classes Order revoke Class A (shops) and Class D (non-residential institutions and assembly & leisure) and create a new 'Commercial, business and service' use class (Class E) which incorporates the previous shops (A1), financial and professional services (A2), restaurants and cafes (A3) and offices and other business uses (B1) use classes. The (A5) use class is excluded from Class E and therefore falls within a class of its own, '*Sui Generis*.'
3. Paragraph 4 of the Regulations provides that: "*If prior to the commencement of the material period, a relevant planning application was submitted, or was deemed to be submitted, to the local planning authority which referred to uses or use classes which applied in relation to England and were specified in the Schedule to the Use Classes 4 Order on 31st August 2020, that application must be determined by reference to those uses or use classes.*"
4. The planning application was submitted before the relevant period. Therefore, the appeal must be determined by reference to those uses or use classes which applied in relation to England on 31st August 2020.

5. The parties had the opportunity to consider and comment on these reforms during the course of the appeal I am therefore satisfied that no prejudice has been caused.

### **Main Issue**

6. 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**

7. The appeal property is a mid-terraced, two storey building within a predominantly residential area. There are residential properties adjoining to the east and west however, I saw during my site visit that there were some ground floor commercial uses close by including a convenience store and two other takeaways.
8. The appeal site currently operates as a café with an ancillary element of takeaway which the appellant estimates as accounting for around 20% of sales. The proposal would see an increase in the takeaway element to around 50% with the remainder of the sales arising from the 'sit in' café and an extension of opening hours to 9pm. I note that the appellant refers to a preferred closing time of 10:30pm within the appeal statement, nonetheless, the application form states the proposed closing time of 9pm and therefore it is on this basis that I have assessed the proposal.
9. The Gateshead Council Hot Food Takeaway Supplementary Planning Document 2015 (SPD) identifies a high level of child obesity within the Borough of Gateshead. At the time of publication, the rate of child obesity in Gateshead (measured against year 6 children) was 23% against the national average of 19%, within Blaydon ward it was 13%. The Council submit that more recent data from 2015/2016 -2016/2017 suggests that the figure in Blaydon ward was at 23.1%, I have not been provided with this additional evidence however, I note that the figures have not been disputed by the appellant.
10. The SPD sets out 12 key principles for assessing the suitability of proposals for Hot Food Takeaways (HFT). It states amongst other things, that planning permission will not be granted for hot food takeaways where there are high levels of obesity (>10%), where the establishment would be within 400m of areas where young people congregate eg; secondary schools, parks, leisure centres or where the HFT would share a party wall with a residential property. It goes on to state that where there are fewer than 20 shops in a parade, only 1 HFT will be permitted.
11. Even if I were to take the lower childhood obesity rates from the adopted SPD, the rates would be higher than the 10% target as set out in the SPD. If I were to accept the more recent 23.1% figure cited by the Council than it would be more than double that set out in the guidance. You, Furthermore, the site lies approximately 300m south of Shibden Park and skate park, it is in a local parade of shops of fewer than 20 and where there are already 2 other HFTs and appeal building shares its party walls with terraced housing to the east and west. In these regards there is clear conflict with the several of the principles set out in the SPD.
12. The appellant makes the argument that due to the relatively small size of the unit the increase in takeaway sales would have little effect on health or obesity.

In addition, they submit that fast food could still be purchased from the premises under the current arrangement. Whilst I accept that the unit is small in scale and there is already an ancillary takeaway aspect to the business, the proposal would lead to an estimated 30% increase in takeaway sales, which would directly contradict the very clear objectives of Policy CS14 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle 2015 (CSUCP), which are to promote health and wellbeing by introducing measures such as controlling access to and the location of unhealthy foods.

13. I have considered the appellant's suggestion to limit the purchase of takeaways to customers under 18 years old by way of a planning condition. However, the proposal would lead to the increased availability of unhealthy food in general which would include but not be limited to under 18s. Therefore, the introduction of an age restrictive condition would not make the proposal acceptable in planning terms as the overarching aim of national and local policies is to improve health and wellbeing across the population and not just children.
14. Similarly, a temporary planning permission for 2 years as suggested by the appellant would not address the very clear conflict between the proposal and the local and national planning policies on health and wellbeing as set out above. In assessing whether a temporary permission is appropriate I have considered whether the harm attributed to the permanent change of use would be reduced to an acceptable level if it were in place temporarily. The appellant has not provided any data in relation to obesity rates or trends in the Borough, nor have they disputed the information provided by the Council. Therefore, I have no reason to disagree with the Council's submissions which suggest that obesity rates in the Blaydon ward have increased since the adoption of the SPD in 2015. To my mind this is strong justification for the Council objectives and set out in Policy CS14, the SPD and echoed in the National Planning Policy Framework with regard to supporting and encouraging people to take opportunities to improve their health and lifestyle.
15. Accordingly, I do not consider that a temporary permission would serve to assist in meeting these objectives nor would it reduce the potential harm caused by the increased accessibility to unhealthy foods to a level that would be acceptable in the context of local and national policy.
16. Notwithstanding the above, I acknowledge the appellant's point in relation to the Government's relaxation of permitted development rights with the aim to support small businesses during the pandemic. This expands on existing permitted development rights by inserting a new Class DA, which allows restaurants / cafés (Use Class A3) and drinking establishments (Use Class A4) to provide takeaway services for up to one year, expiring on 23 March 2021. Nevertheless, the availability of a short term fallback position would not outweigh the significant harm I attribute to the proposal in the context of the main issue.
17. I therefore conclude that the development would result in increased access to unhealthy food 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 and with the SPD insofar as they seek to promote healthy communities.

**Conclusion**

18. For the reasons set out above and taking into account all other matters raised, I conclude the appeal should be dismissed.

*J. Hunter*

INSPECTOR