The Planning Inspectorate

Appeal Decision

Site visit made on 25 January 2021

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2021

Appeal Ref: APP/A4520/W/20/3260875
199 Prince Edward Road, South Shields, Tyne & Wear NE34 8PL

- 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 Mehmet Demir against the decision of South Tyneside Metropolitan Borough Council.
- The application Ref ST/0886/19/FUL, dated 22 May 2020, was refused by notice dated 20 July 2020.
- The development proposed is change of use from loan shop to cafe serving hot and cold food for consumption both on and off the premises. Enclosure of rear yard and installation of extraction flue to rear elevation.

Decision

1. The appeal is dismissed.

Procedural Matter

2. There does not appear to be any disagreement between the parties in relation to the enclosure of the rear yard and the installation of an extraction flue to the rear elevation. The Council consider these elements to be acceptable and I have no reason to disagree.

Main Issue

3. The main issue, therefore, is the effect of the proposal on the vitality and viability of the Harton Nook District Shopping Centre (the centre).

Reasons

4. The evidence suggests that the centre is successful. Although only a snapshot in time, during my site visit on a cold winter morning the area was vibrant, despite some units being closed as a result of short-term restrictions imposed as a result of the COVID-19 pandemic. Vacancy rates appeared to be low.

5. Policy DM3 of the Local Development Framework Development Management Policies (LDFDMP) (2011) relates to hot food uses. With the aim of maintaining and enhancing the viability of the centre, the policy promotes retail over other uses such as hot food in relation to which it seeks to avoid an over concentration. It seeks to restrain such uses in three main ways. Amongst other criteria, proposals for a hot food use should not result in more than two hot food outlets adjacent to each other.

6. The appeal site is situated next to a café and a takeaway. The proposal would not therefore accord with criteria B of Policy DM3. I accept that the proposal

would not necessarily result in the dead daytime frontage that the policy is concerned with as daytime, as well as evening opening hours are proposed along with a small amount of inside seating to enable food to be consumed on the premises.

7. The supporting text to Policy DM3 suggests that it allows for some circumstances where a proposal for a hot food use would not accord with criteria A-C. While the evidence suggests that the unit has been empty for a number of years, and was previously in use as a loan shop, I have not been supplied with any comprehensive marketing details for the unit and I cannot therefore be certain that it does not have a future in retail use. Given the importance of retail to the vitality of the centre, and the protection and promotion of retail that Policy DM3 offers, I do not consider that the required evidence which would justify the change of use is before me.

8. I therefore conclude that the proposal would have a detrimental impact on the vitality and viability of the centre and would therefore fail to accord with Policy DM3 of the LDFDMP.

Other Matters

9. The National Planning Policy Framework (the Framework) (2019) advises that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. I have afforded significant weight to Policy DM3 of the LDFDMP as it has consistency with the Framework which states that planning policies should make clear the range of uses permitted in primary shopping areas, as part of a positive strategy for the future of each centre.

10. Policies within the emerging local[1] plan have been drawn to my attention. I cannot however afford these any significant degree of weight given the current stage of that development plan.

Conclusion

11. The appeal should therefore be dismissed.

T J Burnham

INSPECTOR

[1] The South Tyneside Local Plan Pre-Publication Draft (Regulation 18) – August 2019