



Appeal Decision

Site visit made on 15 March 2021

by Alison Partington BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st March 2021

Appeal Ref: APP/F4410/W/20/3264953

30 High Street, DONCASTER, DN1 1DW

- 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 P Heaton (Wickframe Ltd) against the decision of Doncaster Metropolitan Borough Council.
 - The application Ref 20/01817/COU, dated 7 July 2020, was refused by notice dated 2 October 2020.
 - The development proposed is the change of use of part of ground floor from retail A1 to Takeaway A5.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On 1 September 2020 the Town and Country Planning (Use Classes) Order 1987 was amended and as part of this a new Class E was created which incorporates former Use Classes A1, A2, A3, B1 and some uses that were formerly in Class D1 and D2. The former A4 and A5 Use Classes no longer fall within any Use Class and so are Sui Generis uses. However, as the application was made before this date, I must determine the appeal on the basis of the Use Classes Order that existed at the time the application was made.
3. The Council are currently in the process of producing the Doncaster Local Plan 2015-2035 (the DLP). This emerging plan is currently coming towards the end of the examination stage with the consultation on the proposed main modifications having just finished. I will consider any relevant policies in the DLP in the light of the advice in paragraph 48 of the *National Planning Policy Framework* (the Framework) which states that weight can be given to relevant policies in emerging plans according to the stage of preparation, the extent to which there are unresolved objections and the degree of consistency to the Framework.

Main Issues

4. The main issues in the appeal are whether or not the site is a suitable location for a hot food takeaway having regard to:
 - Health; and
 - The vitality and viability of the town centre.

Reasons

5. The appeal site is a vacant unit located in a Primary Shopping Frontage in Doncaster town centre as defined in the *Doncaster Unitary Development Plan (adopted July 1998)* (UDP). The surrounding area mainly comprises a mix of shops, offices, and eating and drinking establishments, with active ground floor frontages.

Health

6. Policy SH14 of the UDP indicates that hot food takeaways are normally acceptable within Doncaster town centre subject to criteria such as the proximity of residential development, availability of parking, highway safety and the number and location of other similar outlets in the area. The Council have stated that in the immediate locality of the appeal site there are 13 existing hot food takeaways. Furthermore, the ward in which it is located there are 49 such uses which represents 2.2 per 1000 people compared to the national average of 0.86 per 1000 people. These figures have not been disputed by the appellant. As such, there is already a significant number of such uses in both the immediate and the wider area.
7. Evidence from the Council also indicates that the ward has high levels of obesity and deprivation. Figures show that 23.6% of reception class children are overweight and 11.4% are obese with the figures increasing to 36.8% and 24.1% respectively by year 6. In addition, the income deprivation level for the ward is 25.2% compared to 14.6% in England as a whole.
8. Paragraph 91 c) of the Framework indicates that planning decisions should enable and support healthy lifestyles, especially where this would address identified local health and well-being needs. Further advice is given in the 'healthy and safe communities' section of the *Planning Practice Guidance* (PPG) which indicates that planning can influence the built environment to improve health and reduce obesity and excess weight in local communities¹. Where the evidence demonstrates it is appropriate, the PPG indicates that planning can seek to limit the proliferation of particular uses. In doing so it indicates that, amongst other things, it should have regard to: proximity to locations where children and young people congregate; evidence indicating high levels of obesity, deprivation, health inequalities and general poor health; and over-concentration of certain uses in an area.
9. The *Doncaster Council Core Strategy 2011-2028 (adopted May 2012)* (CS) predates the increased emphasis given in recent years to the contribution planning can make to improving public health. Nonetheless, Policy CS1 seeks to strengthen communities and enhance their well-being by providing a benefit to the area in which they are located, and ensuring healthy safe places where amenities are protected. Furthermore, whilst the DLP is not yet adopted, evidence that health and the need to control the location of, and access to, food and drink uses, are important matters that need to be addressed in the borough is shown in Policy 51 of the plan.
10. Thus, both national and local policies highlight the role of planning in helping to improve the health of the population. The evidence outlined above shows that this is an area where there is already a high number of hot food takeaways and

¹ Paragraph ID 53-004-20190722

where there is high levels of obesity and deprivation. Moreover, town centres are places where older children / teenagers often congregate.

11. The appellant has argued that as no end user is specified it is not known what food might be sold, and so it could be a takeaway that sold healthy rather than unhealthy food. It is not disputed that there is no planning mechanism by which the food that would be sold can be controlled. However, both national and local evidence outlined by the Council suggests strong links between hot food takeaways and obesity issues in the population as the food sold in them is generally cheap, energy dense and nutrient poor.
12. Overall, whilst UDP Policy SH14 states that the town centre may in principle be a suitable location for hot food takeaways, and the proposal may not give rise to concerns with regard to residential amenity or parking and highway safety, the policy also requires consideration to be given to the cumulative impact of such uses in the area. Although the policy may not specifically mention the cumulative impact of such uses on the health of the population, more recent national guidance clearly supports consideration being given to such matters. This is also supported by the emerging DLP policy.
13. Therefore, in this case, given the existing high concentration of hot food takeaways in the area and the poor health of the local population, I consider the site would not be a suitable location for a hot food takeaway having regard to health. Accordingly, it would be contrary to Policy SH14(d), CS1 and the Framework outlined above.

Vitality and Viability

14. Policy TC6 of the UDP seeks to protect the predominant retail function of primary shopping frontages, but states that some limited changes to what were at that time defined as A2 and A3 uses may be allowed if they contribute to the vitality and viability of the centre and do not seriously interrupt the continuity of the shopping frontage. At the time the UDP was adopted a hot food takeaway was an A3 use and so it is appropriate to consider the proposal in accordance with these principles.
15. The surrounding area contains a variety of retail and non-retail uses, with the Council stating that the proportion of retail to non-retail uses being around 50%. This figure has not been disputed by the appellant. The proposal would therefore result in a further increase in non-retail uses in the area. Moreover, hot food takeaways are often open mainly in the evening and so during the daytime often present a 'dead' frontage to the street. As such, although bringing a vacant unit back into use, it is likely to contribute little to vitality and vibrancy of the centre especially during the daytime.
16. The new Class E allows much greater flexibility in the uses that are permitted on the high street. However, the uses allowed within this Class are likely to be open during the daytime and have an active frontage to the street. As such, they would contribute to the vitality of the town centre in a way that a hot food takeaway may not. In not including hot food takeaways within this use class, it is clear that such uses were not considered to necessarily be an appropriate way of helping retain the vitality and vibrancy of retail centres.
17. The appellant has argued that despite marketing the unit has remained vacant for a substantial period of time. However, no details of the marketing have

been provided. Whilst it is stated the layout and configuration mean it is unlikely to be attractive for other Class E uses, this is not supported by any marketing evidence either. As a result, I am not persuaded that a hot food takeaway is the only feasible use of the unit.

18. All in all, I therefore consider that having regard to the vitality and viability of the centre, the site does not represent a suitable site for a hot food takeaway and it would conflict with Policy TC6 of the UDP outlined above.

Other Matters

19. The appeal site is located within Doncaster High Street Conservation Area. The proposal would not involve any external changes to the building and so the impact the building has on the conservation area would remain unchanged.

Conclusion

20. For the reason set out above, I conclude the appeal should be dismissed.

Alison Partington

INSPECTOR