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## Appeal Decision

Site visit made on 29 January 2020

**by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 02 March 2020**

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**Appeal Ref: APP/W0734/W/19/3236913**

**123 Victoria Road, Middlesbrough, Cleveland TS1 3HX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
  - The appeal is made by Mr S Salm against the decision of Middlesbrough Council.
  - The application Ref 18/0294/COU, dated 28 April 2018, was refused by notice dated 10 June 2019.
  - The development proposed is described as a change of use from a retail display shop to proposed take-away (nana bread bakery outlet) with ducting to the rear.
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### Decision

1. The appeal is allowed and planning permission is granted for the change of use from a retail display shop to a proposed take-away (nana bread bakery outlet) with ducting to the rear at 123 Victoria Road, Middlesbrough, Cleveland TS1 3HX in accordance with the terms of the application 18/0294/COU, dated 28 April 2018, subject to the conditions set out in the Schedule to this decision.

### Preliminary Matter

2. I note that the Council has referred to an emerging local plan. This plan has yet to be submitted for examination and consequently I afford it very limited weight.

### Main Issues

3. The main issue is whether the proposal would affect the character of the area, in particular through loitering.

### Reasons

4. The appeal property is located on the intersection of Victoria Road and Egerton Street in Middlesbrough. The development proposal comprises the change of use from retail (A1) to a hot food takeaway (A5) on the ground floor together with the installation of external ducting to vent cooking smells away.
5. The appeal site is a 3-storey end of terrace building in an area comprised of traditional Victorian residential terraced properties, some of which have retail and commercial uses at ground floor level. The proposed hot food takeaway would operate 7 days a week between 11am and 9pm.
6. Victoria Road includes several takeaway units together with other retail units at the ground floor level. I acknowledge that the local members of the committee believed that Victoria Road has a predominantly residential character with retail and other commercial uses being subservient. Nevertheless, I considered that

there was a strong commercial element which exuded vitality. This was reflected in the large number of pedestrians and passing vehicular traffic. The hot food takeaways appeared to be generally very busy. As a result, I found that the area could best be characterised as being mixed residential and commercial use.

7. I acknowledge that an objector that lives in close proximity to the appeal property has stated that the operation of hot food takeaways in the area leads to crowds of people lingering around all night and that this makes life uncomfortable for local residents. During my visit, which I acknowledge was during the day, I did not notice any loitering. Nevertheless, to the extent that this might be an issue at night I consider that it can be resolved through the attachment and implementation of a condition restricting the hours of operation of the proposed hot food takeaway.
8. The same objector also contended that the presence of hot food takeaways is associated with vermin. Further, one of the councillors stated that the level of hot food takeaways in the area had led to issues of litter and fly-tipping, increased traffic with some drivers ignoring no-entry signs and anti-social behaviour. There were also concerns expressed concerning the relationship between hot food takeaways and human health.
9. However, none of the above submissions were accompanied with any sound evidence in the form of systematic data collection or informed investigative reports supporting a causal link between the presence of hot food takeaways and the various types of problems described. Further, I note that according to the officer's report there were no objections to the proposed development received from the Council's highways, waste or environmental health officers.
10. Consequently, in the absence of any substantive evidence to link hot food takeaways with the types of alleged issues stated, and in the absence of any objections from the Council's own experts, I find that, on the balance of probabilities, there is insufficient basis to suggest that an additional hot food takeaway would be the cause of any material social or environmental problems in the area.
11. I find, therefore, that the proposed development would not result in problems of loitering as contended by the Council. As a result, it would not harm the character of the area. Thus, the proposal would accord with the advice set out at Paragraph 127 of the National Planning Policy Framework that new development should be of a high quality that respects the character of the area.

### **Other Matters**

12. I acknowledge that Victoria Road is outside the town centre of Middlesbrough where the Council is seeking to focus new retail investment to protect and promote its continued vitality and viability. The appellant has not undertaken a robust sequential approach study to demonstrate that the proposed use could not be accommodated within the town centre. Nevertheless, I find that the proposal would simply substitute one town centre use for another. Further, the hot food takeaway would probably serve a predominantly local need.
13. I also note that the Council has progressed some way in preparing a replacement development plan for the area. Policy EG6 seeks to protect town,

district and local centres by requiring an impact assessment for proposals above specified size thresholds. The appeal proposal falls below these thresholds and so the policy would have no application in any event.

14. Policy EG7 seeks to control the opening of hot food takeaways by, amongst other things, requiring submission of a Health Impact Assessment (HIA). Because the new plan has not been adopted there is no need for an HIA to be submitted.
15. I also note the comment that no notice advertising the planning application had been displayed within the area. I have no further information in regard to this matter and would advise that it be taken up with the Council.

### **Conditions and Conclusion**

16. In addition to the standard conditions requiring commencement within 3 years and implementation in line with the approved plans I have included conditions requiring preparation, submission and approval of a noise assessment and implementation of any necessary noise attenuation measures. This is to ensure that the development proposal does not have any adverse effects on neighbouring occupants. To protect further the living conditions of neighbours through the prevention of any unpleasant cooking odours I have attached a condition requiring approval and implementation of a satisfactory ventilation scheme. Finally, again to protect the living conditions of local residents, I have attached conditions restricting the hours of operation of the hot food takeaway from 11am to 9pm Monday to Sunday and the hours of delivery and collection from 8am to 8pm Monday to Saturday and from 10am to 8pm on Sunday.
17. For the reasons set out above the appeal is allowed.

*William Walton*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.
- 2) The development hereby approved shall be carried out in complete accordance with the following plans: a. Location plan drawing dated 3rd May 2019 b. Existing montage plan drawing 2018/4/1 dated 3rd May 2019 c. Proposed Montage plan drawing 2018/4/1A dated 3rd May 2019
- 3) A BS: 4142 noise assessment shall be submitted to and approved in writing by the Local Planning Authority before the use hereby approved commences. The assessment shall identify noise levels at the site along with the noise which will be generated by the proposed use and its impact upon neighbouring premises. The assessment shall identify noise from sources such as deliveries being made and noise from fixed plant and machinery at the development. The assessment should include details of any measures identified to protect neighbouring premises from noise. Any measures identified in the assessment to protect residents from noise generated due to the use of the site shall be implemented on site prior to the use hereby approved being brought into use, and shall be maintained in perpetuity.
- 4) Prior to the commencement of the use hereby approved, a noise assessment from a noise consultant detailing the level of attenuation that is created by the existing structure of the building and a scheme detailing the noise levels that residents are likely to be exposed to from the adjoining commercial premises together with a scheme designed to protect these dwellings from any noise transference, shall be submitted to and approved in writing by the Local Authority. The levels required to be met in habitable rooms of the proposed accommodation are those set in BS 8233(2014) measured when the neighbouring commercial business is in use. The approved scheme of noise mitigation shall be implemented prior to the approved use being brought into operation.
- 5) Details of a ventilation and fume extraction system suitable for uses within class A5, including a full technical specification by a suitably qualified technical professional person, specifying the position of ventilation fume or flue outlet points and the type of filtration or other fume treatment to be installed and used at the premises, shall be submitted to and approved in writing by the local planning authority prior to the commencement of the use hereby approved. The approved scheme of extraction shall then be installed on site prior to the proposed use being brought into operation and thereafter shall be retained in full accordance with the approved details. The ventilation and extraction system referred to in this condition shall be operated and maintained in accordance with the manufacturers recommendations including the frequency of replacement filters.
- 6) The hours of opening/use shall be restricted to between the hours of 11am and 9pm Monday to Sunday, unless otherwise agreed in writing with the Local Planning Authority.
- 7) The deliveries and collections to the premises shall only take place between the hours of 8am and 8pm Monday to Saturday, and between the hours of 10am and 8pm Sunday.