



## Appeal Decision

Site Visit made on 1 June 2021

by **F Wilkinson BSc (Hons), MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 14<sup>th</sup> June 2021**

---

### **Appeal Ref: APP/W0734/W/21/3268549**

#### **2 Newport Crescent, Middlesbrough TS1 5EP**

- 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 Asad Shahzad of Ariston Pizzas against the decision of Middlesbrough Council.
  - The application Ref 20/0629/COU, dated 16 October 2020, was refused by notice dated 19 January 2021.
  - The development proposed is described as "proposed change of use from shop A1 [E(a)] to hot food takeaway A5 [sui generis] – contemporary fish and chip shop".
- 

#### **Decision**

1. The appeal is allowed and planning permission is granted for a change of use from retail A1 [E(a)] to hot food takeaway A5 (sui generis) at 2 Newport Crescent, Middlesbrough TS1 5EP in accordance with the terms of the application, Ref 20/0629/COU, dated 16 October 2020, subject to the conditions in the attached Schedule.

#### **Preliminary Matters**

2. The description of development in the banner heading is taken from the application form. The description of development used by the Council is "change of use from retail A1 [E(a)] to hot food takeaway A5 (sui generis)". I consider that this more accurately describes the proposed development and it is the description that I have used in my decision. This description of development includes reference to the Use Class of the shop as it was prior to changes that took place on 1 September 2020<sup>1</sup>.
3. The applicant was Asad Shahzad of Ariston Pizzas. The applicant has confirmed that authority to make the appeal on his behalf has been given to Mr Zarar Gulbahar.

#### **Main Issue**

4. The main issue is the effect of the proposed development on the retail function of the town centre.

#### **Reasons**

5. The appeal property is a vacant 2 storey commercial property located within the town centre and is the end property in a block of 3 commercial properties. Other units in the vicinity include shops, cafes and restaurants, drinking establishments and professional services.

---

<sup>1</sup> Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

6. Policy CS13 of the Middlesbrough Local Development Framework Core Strategy 2008 (the Core Strategy) seeks to encourage retail, commercial and leisure developments within the town centre of an appropriate type and scale commensurate with its current scale and function and to safeguard the retail character and function of centres by resisting developments that detract from their vitality and viability, amongst other matters. Policy REG20 of the Middlesbrough Local Development Framework Regeneration Development Plan Document 2009 (the Regeneration DPD) also seeks to protect the retail function of the town centre. Policy REG20 of the Regeneration DPD identifies a number of principal use sectors, including a retail sector which includes the primary retail area. From the evidence presented, the appeal property is located within the retail sector.
7. The Council's Interim Hot Food Takeaway Policy 2020 (the Interim Policy) identifies that under national planning policy, hot food takeaways are a town centre use that should be located within centres. The Interim Policy identifies that high proportions and concentrations of hot food takeaway establishments within centres can have a negative impact on their vitality and viability. The Interim Policy is not part of the adopted development plan and, whilst relevant, I give it limited weight.
8. The Interim Policy aims to manage the location of hot food takeaways by setting out that they will only be permitted if certain criteria are met. From the evidence before me, the proportion of hot food takeaways in the town centre is well below 10%. The appeal property is not beside any other hot food takeaways and so would not result in more than 2 adjacent hot food takeaways A5 uses. The evidence presented identifies that the appeal property is located just outside of the primary shopping front area. There are no secondary school entry points within 400m of the appeal property. I did not observe a large number of hot food takeaways A5 uses or other fast food type outlets within the vicinity of the appeal property, and in my view, the proposed development would not result in a proliferation of such uses.
9. Consequently, the proposed development would not harm the principal function of the retail sector and would not detract from the retail function of the town centre. The proposed development would therefore accord with Policy CS13 of the Core Strategy and Policy REG20 of the Regeneration DPD. It would also comply with the Interim Policy.
10. The Interim Policy states that there is a recognised link between takeaway food and obesity, which it highlights as a significant health issue in Middlesbrough. Carefully managing applications for hot food takeaways in specific locations and controlling their proliferation is part of the Council's approach to improving health and wellbeing and encouraging healthier eating choices. As noted above, the proposed development would not be located within 400m of a secondary school entry point and would not result in a proliferation of such uses, and so would comply with the Interim Policy in this respect.

### **Conditions**

11. I have considered the conditions suggested by the Council, having regard to the six tests set out in the National Planning Policy Framework. For the sake of clarity and enforceability, I have amended the conditions as necessary.

12. A condition to require the development to be carried out in accordance with the approved plans is necessary in the interests of certainty. It would also be necessary to secure details of the proposed kitchen exhaust equipment in order to ensure that what is installed prevents unacceptable odours in the interests of the amenity of users of neighbouring premises.

**Conclusion**

13. I have found that the proposed development would not have an adverse effect on the retail function of the town centre and would not result in a proliferation of hot food takeaways or other fast food type outlets within the area. It would not conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should succeed.

*F Wilkinson*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: site location plan and drawing number 02\_R1 dated 18/11/2020.
- 3) An odour and particulate impact assessment shall be provided by a competent and suitably experienced, specialist air quality or odour consultant and approved in writing by the Local Planning Authority before first use of the proposed development. The assessment shall identify the impact of cooking odours and grease released to the air from the premises and detail methods to control them to prevent harm to amenity. The report shall be carried out in accordance with the EMAQ guidance 'Control of Odour and Noise from Commercial Kitchen Exhaust Systems' 2018 or an alternative appropriate assessment tool agreed in advance with the Local Planning Authority. The report should include details of the position of internal ventilation extraction canopies, the position and height of the flue outlet and the type of filtration and/or odour control units or other fume treatment to be installed. The systems and filtration and odour control units shall be installed prior to the first use of the development hereby permitted and shall thereafter remain for the lifetime of the development. The systems and filtration and odour control units shall be maintained in accordance with the manufacturer's recommendations including the frequency of replacement filters.