

**APPEAL BY MR KULVINDER KANDOLA AGAINST THE DECISION OF THE COUNCIL TO REFUSE PLANNING PERMISSION FOR A CHANGE OF USE FROM EXISTING COMMERCIAL UNIT INTO A5 PIZZA HUT DELIVERY STORE WITH NEW EXTERNAL FAÇADE AT EXCHANGE HOUSE, LIVERPOOL ROAD, NEWCASTLE**

<b><u>Application Number</u></b>	<b>12/00788/FUL</b>
<b><u>Recommendation</u></b>	<b>Approval</b>
<b><u>LPA's Decision</u></b>	<b>Refused by Planning Committee on 5<sup>th</sup> February 2013</b>
<b><u>Appeal Decision</u></b>	<b>Dismissed</b>
<b><u>Date of Appeal Decision</u></b>	<b>4<sup>th</sup> November 2013</b>

The full text of the appeal decision is available to view on the Council's website (as an associated document to application 12/00788/FUL) and the following is only a brief summary.

The Inspector considered the main issues are the effect of the proposal on the character and appearance of the immediate area, the living conditions of nearby residents and local service provision.

In dismissing the appeal, the Inspector made the following comments:

- A number of retail units, including a hot food takeaway, are located in close proximity to the north of Wilton Road, with the KFC located to the south of the site. At a larger scale a significant number of hot food takeaways are located pm the A34, approximately 400m to the north, whilst a further 2 are 500m to the south.
- The building would be clad on all sides open to public view with a metal façade in a style consistent with the Pizza Hut brand. The plans show that the proposed cladding would not follow the existing building form and would result in the gables of the double pitched roof being visible from the southern and northern elevations.
- The Appellant argued the appearance of the nearby KFC premises is similar to the one being proposed. However, the Inspector considered that the design of the KFC building is more coherent and is of a higher standard to that being proposed. The Inspector disagreed with the applicant owing to the discordant mix of building materials that would be visible, concluding that the proposal is contrary to paragraphs 56 and 64 of the *National Planning Policy Framework 2012* (the Framework) because it constitutes poorly designed development.
- The Inspector considered that the building was clearly related to the properties immediately to the rear and side of the site as they are constructed from similar materials and have pitched roof designs. This residential backdrop gives the building a clear architectural context that would be disrupted by the proposal. There are a minimal number of retail properties along the nearby stretches of the A34 are clad in this manner and consequently it cannot reasonably be argued that this is a common design feature in the local area.
- Whilst the disused building has an unkempt appearance, the proposed changes would not constitute a positive enhanced when weighed against the harm that would result to the character and appearance of the immediate area.
- The Inspector noted that there was already a strong and pervasive background odour of fried food. However the Inspector considered that the technical specification for the fume extraction system would achieve satisfactory operation.
- The local Police Architectural Liaison Officer (PALO) objected to the proposal because the opening hours were felt to be inappropriate for a residential area and that this was likely to lead to anti-social behaviour. The Council also asserted that takeaways attract groups of people after closing. However the inspector felt there was have no cogent evidence to suggest that this would, in fact, be the case. The Inspector further noted that conditions have been suggested by both the PALO and the case officer that would, in any event, adequately address any potential concerns in this regard.

- The Council stated that the development would lead to an over-intensification of hot food takeaways in the local area that would adversely impact the potential range of goods and services that are available. However, no further evidence was before the Inspector concerning this claim. The Inspector also noted from the site visit that two retail units in the parade of shops North of Wilton Road are empty. Whilst the provision of local services is limited, there would clearly be scope for this situation to improve even if another hot food takeaway were to be introduced.
- This reason for refusal was therefore not substantiated. Given this no conflict with the development plan in relation to this issue was found.

### **COSTS APPLICATION IN RELATION TO THE ABOVE APPEAL PROCEEDINGS**

- The Council's first reason for refusal concerned the effect of the proposal on the character and appearance of the local area. Circular 03/2009 (as amended) paragraph B18 makes clear that such issues often involve matters of judgement which, at times, are finely balanced. Whilst the case officer's report stated that the proposal would have 'no reference to the locality', it went on to conclude that no material harm would, in fact, be caused.
- The Inspector indicated that although authorities are not bound to accept the recommendations of their officers they are expected to produce relevant evidence on appeal to support a decision. The Council have provided a clear justification for the refusal based on the design as described in the plans. The Inspector considered that the first reason for refusal had been adequately substantiated.
- In respect of the second reason for refusal relating to the effect of the proposal on the living conditions of nearby residents and the provision of local services, at issue is whether the Council failed to adequately consider the use of conditions to mitigate potential impacts and whether it offered a sufficiently robust and cogent argument in relation to the potential impact on local services.
- The Council has acknowledged that the use of conditions would mitigate the effects of the proposal on the living conditions of nearby residents, albeit it is argued that this would not result in an acceptable level of amenity for neighbouring residents. The Inspector noted, however, that the PALO suggested a number of conditions that, in the view of the Council's officer, would have led to an acceptable development. The Inspector also noted that the Environmental Health Division raised no objections to the development subject to the imposition of suitable conditions. The Council has failed to substantiate its contrary stance with any cogent evidence.
- The Council claimed that the proposal would lead to an over intensification of hot food takeaways in their second reason for refusal. Although they have claimed that this would have a negative impact on local service provision, they failed to provide any substantive evidence to justify this claim other than a reference to the use of 'cumulative impact' as a justification for the refusal of a similar application some 150m South of the site (Ref. 12/00475/FUL). Even though the Council argued that this indicates that their behaviour in relation to the present case was reasonable they failed to develop any convincing argument in their rebuttal statement. The Inspector accordingly concluded that the Council has failed to substantiate its second reason for refusal and has failed to justify taking a contrary decision to that of its officers.
- Whilst the first reason for refusal was substantiated, the second reason was not, therefore the Inspector found that unreasonable behaviour had been demonstrated that a partial award of costs was justified.

### **Officer's comments**

The decision of the Inspector in this case is similar to that given in the appeal relating to the refusal of a hot and cold food takeaway at 43 London Road, Chesterton (12/00243/FUL). In both cases the Inspector concluded that the impact on living conditions arising from such a use could be appropriately addressed through conditions relating to hours of operation and fume extraction. This highlights the need to carefully consider the use of conditions and it is only where substantive evidence of harm arising from the development, which could not be addressed through conditions, that planning permission should be refused.

**Recommendation**

That the officer's comments and decisions be noted.