



Appeal Decision

Site Visit made on 31 March 2021

by A Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 April 2021

Appeal Ref: APP/A4520/W/20/3263803

Tanfastic, Ellison Street, Jarrow NE32 3UH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Saleem Hakim (Townglow Ltd) against the decision of South Tyneside Council.
 - The application Ref ST/0398/20/FUL, dated 9 June 2020, was approved on 7 October 2020 and planning permission was granted subject to conditions.
 - The development permitted is change of use of land to form hand car wash, construction of additional storey on existing tanning salon to provide tanning salon to first floor and reception and welfare and waiting to ground floor.
 - The condition in dispute is No 5, which states that:
*Notwithstanding the provisions of Schedule 2, Part A Commercial, Business and Service, Class E Commercial, Business and Service of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order(s) revoking or re-enacting the order with or without modification) or any development order that may be made after the date hereof granting any planning permission (unconditionally or subject to conditions as may be specified in the order) as permitted development, the unit hereby **approved identified as unit 2 on the approved plan 'Drawing number 20.2866-05 Rev G'** received on 18/09/2020 shall be used for no other purpose than as a tanning salon.*
 - The reason given for the condition is:
The Local Planning Authority would wish to carefully examine any alternative use(s) of Unit 2, to safeguard the vitality and viability of the existing town and district shopping centres and other local neighbourhood centres in accordance with the requirements of Policy SC2 of the South Tyneside Local Development Framework and the National Planning Policy Framework.
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Decision

1. The appeal is allowed and the planning permission Ref ST/0398/20/FUL for change of use of land to form hand car wash, construction of additional storey on existing tanning salon to provide tanning salon to first floor and reception and welfare and waiting to ground floor at Tanfastic, Ellison Street, Jarrow NE32 3UH granted on 7 October 2020 by South Tyneside Council is varied by deleting condition 5.

Background and Main Issue

2. The appeal site is a former petrol station and comprises an extensive hard surfaced area and a single storey building, now in use as a tanning salon. Planning permission has been granted for a change of use of the site to a mixed use of tanning salon and hand car wash with the construction of a first floor above the building. The drawings indicate that the waiting and welfare facilities for the car wash would occupy a proportion of the ground floor of the building (Unit 1), with the tanning salon at ground and first floor (Unit 2).

3. The Council considers that both the tanning salon and hand car wash fall within Class E of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (UCO).
4. In short, condition 5 of the planning permission restricts the use of Unit 2 to a tanning salon only, such that planning permission would be required for any change to another use within Class E of the UCO.
5. The appellant seeks to remove this condition on the basis that it does not meet the tests for conditions set out within paragraph 55 of the National Planning Policy Framework (the Framework) and in Planning Practice Guidance (PPG)¹.

Main Issue

6. In light of the above, the main issue is whether or not condition 5 meets the tests for the use of conditions contained in the Framework and in the PPG.

Reasons

7. The reason for imposing condition 5 refers to safeguarding the vitality and viability of the Jarrow Town Centre, as required by Policy SC2 of South Tyneside's Local Development Framework Development Management Policies (2011).
8. The appeal site lies outside the Jarrow Town Centre and is allocated for A2/B1 use classes under Policy J4 **in the Councils' Central Jarrow Area Action Plan** (2010). It is significant that the former A2 and B1 use classes now fall within Class E of the UCO, so the condition is potentially restricting some uses that have been deemed acceptable in principle for the site and to which a change would not otherwise constitute development requiring planning permission.
9. I do recognise that in the absence of condition 5, Unit 2 could, without planning permission, change to a wider range of commercial, business and service uses within Class E. This includes what could be considered main town centre uses. However, as the Council places a tanning salon within Class E, then it is already the case that the existing use of the building could change to another use within Class E, which would have a similar effect. I attach substantial weight to this position.
10. Moreover, I am particularly mindful that the clear intention of the recent changes to the UCO is to make it easier for all of the uses within Class E to seamlessly change without needing planning permission, regardless of location. That this could lead to Class E uses outside town centres is not in itself justification for the condition because the implications have been considered nationally in the regulations. It is reasonable to contend that if greater control was desired outside town centres then the regulations would reflect this. In any event, at some 164m² in floor space, Unit 2 is not large. The Council has not presented any evidence to demonstrate how and why its use for any other purpose within Class E would be harmful to the viability and vitality of the Jarrow Town Centre.
11. Paragraph 53 of the Framework states that planning conditions should not be used to restrict national permitted development (PD) rights unless there is clear justification to do so. The PPG also advises that conditions restricting the

¹ Paragraph: 003 Reference ID: 21a-003-20190723

future exercise of PD rights and conditions restricting future changes of use may not pass the test of reasonableness or necessity². For the reasons above, I conclude that condition 5 is not reasonable, or necessary and therefore, does not meet the relevant tests in the Framework and PPG. Accordingly, condition 5 should be deleted.

Other Matters

12. Interested parties have raised highway safety concerns in relation to the car wash. However, those matters were before the Council when it granted the planning permission and I note that there was no objection from the local highway authority. On the evidence before me and my own observations, I have no reason to form a different view.

Conclusion

13. For the reasons given above, I conclude that the appeal should succeed and that the planning permission should be varied by deleting condition 5.

A Caines

INSPECTOR

² Paragraph:017 Reference ID: 21a-017-20190723