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## Appeal Decision

Site visit made on 23 March 2026

by **F Harrison BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 April 2026

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### Appeal Ref: 6004161

### **3, Plot A, Land South West of Telephone Exchange, Claypath Lane, Crossgate, South Shields NE33 4PG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by George Jenkins against the decision of South Tyneside Council.
  - The application Ref is 250712.
  - The development proposed is the change of use from Class E to sui generis hot food takeaway (Domino's Pizza).
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The draft South Tyneside Local Plan has been submitted for examination to determine its soundness. Notwithstanding the advanced stage of preparation, and so the greater the weight that may be given to relevant policies, I have no detailed information in relation to any unresolved objections. As such the emerging policies attract limited weight and have not been determinative in this appeal.

### Main Issue

3. The main issue is the effect of the proposal on the health and well-being of residents, with particular regard to young people.

### Reasons

4. While not part of the development plan, Supplementary Planning Document 22: Hot Food Takeaways and Health (2017) (SPD) is of relevance. There is no substantive evidence that the SPD conflicts with the development plan or does not meet the legal definition<sup>1</sup> of an SPD. It is a response to identified local health and well-being needs, has been adopted in accordance with the regulations<sup>2</sup> and is a material consideration in decision-making.
5. The SPD advises that planning permission will not be granted for Hot Food Takeaways (HFTs) in areas where the level of obesity in Year 6 pupils is over 10%, based on an assessment of the most up to date annual National Child Measurement Programme data. It is not disputed that the appeal site is located within the Beacon and Brents Ward where the level of obesity in Year 6 pupils is over 10%. The proposal would therefore be contrary to HFT1 and would not

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<sup>1</sup> Regulations 2 and 5 of the Town and Country Planning (Local Planning) (England) Regulations 2012

<sup>2</sup> Regulations 11 to 16 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

accord with the aims of the SPD to limit access to unhealthy food choices and manage the location of HFTs.

6. The appellant may well not agree with the Council's approach of using its planning powers to try to address problems of childhood obesity and obesogenic environments. Nevertheless, the SPD aligns with paragraph 97 of the National Planning Policy Framework (the Framework) which sets out that applications for HFTs should be refused in locations where there is evidence that a concentration of such uses is having an adverse impact on local health. It also says that unless the location is within a designated town centre, HFTs should be refused that are within walking distance of schools. Despite its commercial setting, the appeal site is not within a town centre and is within walking distance of a school. For these reasons, the Fowler Street case<sup>3</sup> is not directly comparable.
7. The links between obesity and unhealthy food choices are well understood, and that food from takeaways is more likely to have a largely unfavourable nutritional content. Furthermore, the Council indicate there is a strong relationship between deprivation and obesity and that the Beacon and Brents Ward is within the top five per cent of most deprived wards nationally. While not a statutory consultee, I also note that the Council's Public Health team object to the proposal, which is of consequence considering their responsibilities for improving and protecting the local population's health.
8. The Framework requires decisions to achieve healthy places which enable and support healthy lives and the planning practice guidance<sup>4</sup> explains that a healthy place is one which supports and promotes healthy behaviours and environments and a reduction in health inequalities for people of all ages. Overall, the proposal would increase young people's access to purchase unhealthy foods and would not promote healthy eating, in an area where obesity levels are high and health inequalities exist. There is no clear evidence that the harm caused by the proposal would not arise or be reduced to an acceptable level if the development was temporary or operator specific, and so this is not a matter that could be overcome by the imposition of a planning condition.
9. The appellant advances a fallback position comprising the existing lawful use of the appeal property within Use Class E(b) which allows for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises. I have no reason to doubt the appellant that there is a real prospect of the fallback position taking place, hence it is material to my decision.
10. Despite the introduction of a broader Use Class E, HFTs is not included and falls outside of any defined use class, that is, materially different to other use classes. As such, even though a takeaway element in line with Use Class E(b) could take place, this would be materially different to the appeal scheme, which proposes to operate the entire unit as a sui generis takeaway. While similar food products could be sold under a Use Class E(b) operation, the nature and characteristics of a sui generis HFT would be different and more likely to offer exclusively fast-food options which are a popular choice with children and younger people and would contribute to unhealthy lifestyle choices being made. Furthermore, there is no clear evidence that a Use Class E(b) operation would generate greater levels of activity

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<sup>3</sup> Appeal ref: APP/A4520/W/24/3349010

<sup>4</sup> Paragraph: 003 Reference ID:53-003-20191101

and congregation than the proposal. As such, the fallback position carries limited weight and does not diminish or otherwise justify the harm identified above.

11. My attention has been drawn to other appeal decisions<sup>5</sup>, however insufficient evidence has been provided about those schemes and therefore it is not clear if they are directly comparable to this case. The Grover Walk case did not relate to a HFT and both schemes were in different local authority areas with a different development plan context and determined under a previous Framework. In any event, I have considered this appeal proposal on its own merits and come to my own view.
12. For the reasons given above, I conclude that the proposal would be harmful to the health and well-being of residents, with particular regard to the health of young people. It would fail to reflect guidance in HFT1 of the SPD and the provisions of the Framework which promote healthy communities.

### **Other Matters**

13. There would be no significant consequences for highway safety, parking provision or neighbouring occupiers' living conditions. However, this, and any other policy compliance would be a neutral matter weighing neither for nor against the scheme.

### **Conclusion**

14. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. The Council has not identified any conflict with the policies of the development plan. Therefore, based on the evidence I have no clear reason to conclude otherwise that the proposal would accord with the development plan as a whole.
15. Under the main issue, my findings are that the proposal would be harmful to the health and well-being of residents. In doing so, the proposal would be contrary to the Framework and the SPD. I attach significant weight to the identified harm. Therefore, the material considerations in this case indicate that the decision should be made otherwise than in accordance with the development plan and I conclude that the appeal should be dismissed.

*F Harrison*

INSPECTOR

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<sup>5</sup> Appeal refs: APP/M1595/W/20/3249241 and APP/H4315/W/21/3270869.