

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 17 December 2008

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APPLICATION REF. NO:	08/00878/CU
STATUTORY DECISION DATE:	23 December 2008
WARD/PARISH:	CENTRAL
LOCATION:	36 Duke Street
DESCRIPTION:	Change of use from shop (A1) to shop with hot food takeaway (A5) (retrospective)
APPLICANT:	Mr Tarek Thoma

APPLICATION AND SITE DESCRIPTION

36 Duke Street is a small commercial premises located on the north side of Duke Street. The property is not listed or located within a conservation area. Planning permission is sought for the change of use of the property from an A1 shop to a mixed use shop with hot food takeaway (A5). Consent for the replacement of the shop frontage was recently granted under delegated powers (08/00737/FUL) on the understanding that there was no change of use taking place. However, it is apparent that the use of the property has changed from a solely A1 use. It is intended that the property by day will primarily continue to be used as a retail shop selling sandwiches and some hot food. There is no provision for seating within the property for the public so all food will be consumed off the premises. In the evening it is proposed to keep the property open until much later than previously (Until midnight on Monday through Saturday and 8.00PM on Sundays and Bank Holidays). This later opening will primarily facilitate hot food takeaway sales.

PLANNING HISTORY

08/00737/FUL – Installation of new shop front.

PLANNING POLICY BACKGROUND

Duke Street is identified in the Borough of Darlington Local Plan as being an area of ‘Fringe Shopping’ (Policy S9). Also of relevance in determining this application is Policy S18 which sets out the criteria against which a proposal for food and drink uses outside the Town Centre should be assessed. To comply with the requirements of this policy food and drink uses, including hot food takeaways, will be permitted within smaller established groups of similar uses. Premises should also be easily accessible by foot, cycle and public transport. Also development will only be permissible provided there is no adverse impact upon residential amenity or highway safety.

Policy S9 identifies various areas around the town centre that provide areas for local shops and services. Duke Street is one such area. Major retail development should be encouraged to locate closer to the town centre but this peripheral area is valuable for smaller retail and service premises. The terms of the policy classifies a small shop as having a gross floorspace of up to 100m², 36 Duke Street has a floorspace of 51m² and therefore complies with the criteria set out in Policy S9.

RESULTS OF CONSULTATION AND PUBLICITY

One letter of objection was received on behalf of the Solicitors Office located immediately to the east of the application site (34 Duke Street).

The objection is on the grounds of highway safety due to the occupants of both 34 Duke Street and the neighbouring property of 32 Duke Street already experiencing difficulty accessing their six space car park located off the rear lane of Duke Street. It is considered by the owner of the solicitors office that an additional, more intensively used, premises will exacerbate this problem which has already led to problems operating their business due to cars being blocked in the car park etc by vehicles parked in the rear lane.

The Council Highway Authority has raised no objections to the proposal.

Environmental Health has inspected the premises and raises no objections.

PLANNING ISSUES

Duke Street has a diverse range of uses which incorporate a mixture of retail, food and drink uses as well as offices and some limited residential accommodation to first floor level. The proposed operation during daytime hours does not represent a significant change from what the premises was previously used for, a sandwich shop. What does represent a change is the intention for the property to remain open into the evening primarily selling rotisserie chicken. The issues associated with this extended period of use will therefore need to be given careful consideration.

36 Duke Street is a terraced property that has been established for a number of years as a retail premises. Adjoining the property to the west is an off-licence/convenience store which has extended opening hours and to the east is a solicitor's office. On the first floor above 36 Duke Street is a small office accessed via a separate door off Duke Street. To the rear there is a small service yard with a gated entrance onto the rear lane of Duke Street.

Environmental Health have inspected the premises and have acknowledged that the premises is operated during the day in a similar manner to the previous usage. However, even though it is proposed to extend the opening hours there are late night hot food takeaway premises within 50 meters of the site with no significant history of complaints. No objections are raised to the equipment that has been installed in order to facilitate the change of use and Environmental Health are satisfied with the existing arrangements for bin storage etc. There is a first floor flat located towards the rear of the property (located immediately behind the adjoining off-licence) but the proposed change of use is unlikely to materially effect the residential amenity it is afforded. Just to reaffirm there are a number of more intensive late night uses within the vicinity of this flat and there is no indication that activities at 36 Duke Street would alter this.

Objection has been raised on the grounds that parking arrangements in this part of town are limited and this has led to one of the neighbouring businesses (34 Duke Street) encountering difficulties accessing their private car park to the rear of the premises. It is considered by the objector that the introduction of an additional late night use with the potential for delivery vans using the entrance off the back lane, would exacerbate the existing problems encountered. Although this situation has undoubtedly caused the neighbouring businesses problems in the past it is not possible for the planning system to enforce individuals' parking habits, this would be for the Police and parking wardens to enforce. A short distance to the east (approximately 35m) there is a council owned car park accessed off Barnard Street with approximately 25 spaces. Beyond this is an even larger car park accessed off Winston Street. So there is adequate parking provision within a short distance of the application site. It should be noted there is no parking provision directly to the front of the premises as this section of Duke Street has double yellow lines. Policy S18 of the Borough of Darlington Local Plan states that food and drink uses would only be permissible where highway safety was not compromised. The Council's Highway Officer does not raise an objection on highway safety grounds. Also its location complies with other requirements of the policy that it is easily accessible by foot and public transport. It would therefore prove difficult to sustain an objection that the proposed change of use would have a detrimental effect on highway safety.

SECTION 17 OF THE CRIME AND DISORDER ACT 1998

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect. It is acknowledged that the back lane of Duke Street has encountered problems with cars parking in a potentially obstructive manner but it is considered that the proposed change of use is unlikely to have a major effect on the use of this lane. There is adequate parking provision within the vicinity and the onus is on individual drivers of vehicles to park in a legal manner.

CONCLUSION

The application site is located within a fringe retail area of Darlington which has a significant number of late night uses within the vicinity including restaurants, off-licences, hot food takeaways and drinking establishments. The proposal to change the use of the small retail unit at 36 Duke Street from a A1 Sandwich shop to and A1 Shop selling sandwiches and other food during the day and an A5 hot food takeaway use at night is unlikely to compromise either residential amenity or highway safety in the locality.

RECOMMENDATION

That Planning Permission BE GRANTED subject to the following conditions:

1. A3 – Time limit for implementation (3yrs)
2. B5 – Detailed Application (Implementation in accordance with approved plans)

3. The premises shall not be used for the sale of food or for any other business purposes other than between 0900 and 0000 (Midnight) Monday to Saturday and 1200 to 2000 on Sundays and Bank Holidays.

Reason : In order to safeguard the amenities of adjoining and nearby premises.

SUGGESTED SUMMARY OF REASONS FOR GRANTING PLANNING PERMISSION

The proposed change of use is considered to be acceptable in this location by virtue of the fact that it would not have an adverse impact on the character or amenity of the area. The proposal does not raise any issues in respect of highway safety or crime prevention. The proposal is considered to comply with the relevant policies in the development plan set out below:

Policy S9 – Fringe shopping areas

Policy S18 – Food and drink uses outside the town centre

INFORMATIVES

The decision to grant planning permission has been taken having regard to the policies and proposals in the Borough of Darlington Local Plan set out below, and to all relevant material considerations, including Supplementary Planning Guidance: