

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 13 January 2010

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APPLICATION REF. NO:	09/00789/CU
STATUTORY DECISION DATE:	6 January 2010
WARD/PARISH:	LASCELLES
LOCATION:	147 Neasham Road
DESCRIPTION:	Change of use of first floor and part of ground floor from tanning studio to A3 restaurant.
APPLICANT:	Mr Saleem Hakim

APPLICATION AND SITE DESCRIPTION

The application premises is a two-storey end terrace building on the corner of Thirlemere Road. The terrace comprises of four retail units; the appeal site itself (a tanning studio), a café, a chemists and a hardware shop. The surrounding area is otherwise predominantly residential in character although there are several more commercial premises interspersed amongst the dwellings along this part of Neasham Road. Traditional two storey terraced properties lie adjacent to, and to the rear of the site. The modern Windermere Court housing development, comprising of detached dwelling houses is situated opposite the site, on the western side of Neasham Road.

A small number of parking spaces are present along the frontage of the site and the other properties within the terrace, parallel to the carriage of Neasham Road.

The application proposes the change of use of the first floor of the building and part of the ground floor to a restaurant. The application indicates that the hours of operation that are sought are from 6pm until 11pm, Monday to Sunday.

Internal works have commenced within the building in connection with the proposed change of use.

PLANNING HISTORY

96/179 – In May 1996 planning permission was refused for a change of use from retail shop to ladies leisure club (gym, sunbeds, aerobics, toning table, etc).

99/353 – Planning permission was granted in August 1999 for the sub-division of the property to provide a shop unit and a unit for use as a launderette. Installation of extraction equipment to rear of premises.

PLANNING POLICY BACKGROUND

The following policies in the Borough of Darlington Local Plan are relevant: -

H15 – The Amenity of Residential Areas

S18 - Food and Drink Uses Outside the Town Centre

T24 - Parking and Servicing Requirements for New Development

RESULTS OF CONSULTATION AND PUBLICITY

Three letters of objection have been received in total, one from a local resident and two from the adjoining café operation, objecting to the proposal on the following grounds: -

- Noise from traffic movements and customers associated with the use. Noise would also carry through to the adjoining first floor flat.
- Odours
- Lack of parking with associated traffic congestion
- It would attract vermin
- The adjoining café has restrictions on the hours of operation preventing operation after 6pm. It would be unfair to allow the restaurant to open beyond this time.
- There is no need for a further food outlet in the area.
- The A3 consent would also allow takeaway food resulting in rubbish and possibly people loitering outside the premises.

The Council's Highway's Engineer has made the following comments: -

The parking standard for the proposed use is much higher than that of the existing use and the standards recommend that a maximum number of spaces of in the region of 40 spaces could be provided. The proposal relies on parking on Neasham Road and Thirlmere Road, and there is space for 6no vehicles on the site frontages on these streets. Operating times will be in the evening when the majority of adjacent streets are already in use by residents and it would be likely that customers would park in inappropriate locations or would use spaces that would normally be occupied by residents or their visitors. Therefore though the quoted requirement is a maximum standard the significant shortfall is of significant concern and I would therefore consider that this is an inappropriate location for a restaurant of the size proposed.

I would recommend refusal of this application on the grounds that it would be likely to encourage parking on the public highway that would interrupt the free flow of traffic and prejudice the safety of road users. Also, it would be likely to encourage parking on street and reduce such provision for existing residents and their visitors.

The Council's Environmental Health Section has raised no objections to the proposal but request the imposition of conditions to any approval to cover the following matters; refuse storage, sound insulation, control of fumes and ventilation equipment.

PLANNING ISSUES

The main issues to be considered in the determination of this application are: -

- Residential Amenity,
- Highway Implications; and
- Other Matters raised by Objectors

Residential Amenity

The area is generally residential in character consequently there is the potential for the operation, namely through noise associated with the comings and goings of customers either arriving by foot or by car to give rise to noise nuisance problems for neighbouring residents. Members may wish to note that planning permission was refused on appeal for a hot food takeaway at the adjoining premises (153 Neasham Road) in January 2000. One of the reasons being that there would likely be an adverse impact on the amenities of neighbouring residents during the evening hours as a consequence of additional noise associated with voice noise from both pedestrian customers outside the premises, and noise from customers arriving by car due to vehicle manoeuvring, car doors slamming, engines revving and car radios. Notwithstanding this officers do not consider that a restaurant use would have the same impact on residents as a takeaway use due to the lower rate of customer turnover that is normally experienced. Consequently it is not considered that the level and frequency of noise and disturbance from the restaurant operation would be so significant as to justify a refusal of planning permission on these grounds. Furthermore a hot food takeaway (fish and chip shop) is located near to the application site, on the opposite side of Thirlmere Road, which is not controlled by an hours of operation condition and noise associated with the restaurant operation is likely to be subsumed in existing noise connected with this use. However, if members are minded to grant planning permission it would be prudent to prohibit the restaurant operating beyond the hours proposed in the application, by a suitable condition.

One of the objectors has raised the issue of potential noise problems for the occupier of an adjoining first floor flat, however the Environmental Health Section are satisfied that an adequate soundproofing scheme could address this matter, which again can be achieved by condition.

In terms of potential odours associated with cooking, modern systems of filtering and extraction are normally efficient enough to reduce smells to acceptable levels. The Environmental Health Section has requested conditions requiring the submission of details concerning the control of fumes and ventilation equipment should permission be granted.

Highway Implications

The Council's Highways Engineer has commented as follows: -

"The parking standard for the proposed use is much higher than that of the existing use and the standards recommend that a maximum number of spaces of in the region of 40 spaces could be provided. The proposal relies on parking on Neasham Road and Thirlmere Road, and there is

space for 6no vehicles on the site frontages on these streets. Operating times will be in the evening when the majority of adjacent streets are already in use by residents and it would be likely that customers would park in inappropriate locations or would use spaces that would normally be occupied by residents or their visitors. Therefore though the quoted requirement is a maximum standard the significant shortfall is of significant concern and I would therefore consider that this is an inappropriate location for a restaurant of the size proposed.

I would recommend refusal of this application on the grounds that it would be likely to encourage parking on the public highway that would interrupt the free flow of traffic and prejudice the safety of road users. Also, it would be likely to encourage parking on street and reduce such provision for existing residents and their visitors.”

Other Matters raised by Objectors

One of the objectors has raised a concern about litter from the proposed use, however litter is not a problem normally associated with restaurants, furthermore this is regulated by other legislation. Similarly any issues in respect of vermin would be dealt with under environmental legislation.

The remark made that there are sufficient food outlets in the area and that no further outlets should be allowed is not a material planning consideration. Ministerial advice has often reiterated that considerations of commercial competition are not planning matters.

Regarding the question of opening hours, the operators of the adjoining café have stated that they are not allowed to operate beyond 6pm and to allow the restaurant to do so would be unfair. Members may wish to note that planning permission for the use of the premises (No.153 Neasham Road) as a café, granted in August 2002, followed the unsuccessful appeal to operate a hot takeaway use from the building. One of the reasons for the Inspector's decision to refuse permission was as a result of likely noise and disturbance to neighbouring residents during evening hours. With regard to the operational hours of the café the then applicants stated that their intention was to operate between the hours of 8am and 6pm. In view of this the proposal was considered acceptable subject to the imposition of a condition prohibiting its operation beyond 6pm. The Council's Highways Engineer had also raised concerns similar to the application currently under consideration, should the premises be open during the evening hours.

It should also be noted that the Town and Country Planning (Use Classes) Order 1987 was amended in 2005 resulting in a disaggregation of the former A3: *Food and Drink* use class which included both restaurant and hot food takeaways. The new use class A3 relates to restaurants and cafes, which embrace uses for the sale of food and drink for consumption on the premises, with hot food takeaways now coming within the new A5 class. In the creation of the new use classes it has been recognised by the Government that the various types of food and drink establishments have different types of environmental impacts.

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.

CONCLUSION

It is considered that the proposed use is likely to result in any significant harm to the amenities of adjoining and neighbouring residents either by way of noise, disturbance or odours. However, the proposal makes no provision for any off street car parking, neither could it do so. The proposed operation of the premises during the evening hours, when on street parking is at a premium due to high levels of resident parking, is likely to result in parking on the neighbouring roads in a manner that would interrupt the free flow of traffic and result in conditions that would prejudice the safety of other road users.

RECOMMENDATION

THAT PLANNING PERMISSION BE REFUSED FOR THE FOLLOWING REASON

The proposal fails to provide any off- street car parking and is therefore likely to result in the parking of vehicles on the surrounding roads, which would interrupt the free flow of traffic and prejudice the safety of other road users. In view of this the proposal would be contrary to policies H15 (The Amenity of Residential Areas) S18 (Food and Drink Uses Outside the Town Centre) and T24 (Parking and Servicing Requirements for New Development) of the Borough of Darlington Local Plan 1997.