

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 2 April 2008

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APPLICATION REF. NO: 07/01232/FUL

STATUTORY DECISION DATE: 10 February 2008

WARD/PARISH: PIERREMONT

LOCATION: (Unit 2) Site Of Former Petrol Filling Station,
28 - 56 West Auckland Road, Darlington

DESCRIPTION: Variation of condition 4 attached to planning
permission reference 06/01147/FUL dated 5
February 2007 to extend trading hours by 1 hour
until midnight

APPLICANT: UTOPIAN (FIVE) LIMITED

APPLICATION AND SITE DESCRIPTION

The application site is the site of the former petrol filling station on the east side of West Auckland Road and within the Cockerton District Centre. To the east are existing residential properties on Moorlands Road, to the south are commercial properties also within the district centre and to the west, opposite the application site, are residential dwellings and commercial properties, again situated within the defined District Centre.

Planning permission was granted for a mixed-use commercial and residential development in October 2005. This consisted of a two storey building providing two commercial units, a larger unit in shop use, and a smaller unit with an option for use as a restaurant/café, a shop or a hot food takeaway to the ground floor, together with residential flats/office use to the first floor. Condition 4 limits the opening hours of unit 2, the smaller unit, to 8am to 11pm for the preparation and/ or sale of hot food. At the time, this was a standard planning condition that was placed on such units to control local residential amenity.

The new occupier of the unit seeks to start trading as a Hot Food Takeaway in the near future and seeks to extend the permitted opening hours by one hour until midnight.

This is an application under Section 73 of the Town and Country Planning Act 1990 to modify the condition to allow use of the premises for the preparation and/or sale of hot food between the hours of 8am to midnight.

PLANNING HISTORY

The site has a lengthy planning history, the most recent and relevant of which is set out below:

05/00775/FUL – In October 2005 planning permission was granted for the development of a mixed use scheme comprising one retail (Class A1) unit and one retail or restaurant / café or Hot Food Takeaway (Class A1 or A3 or A5) unit to ground floor and; scheme 1: Provision of five flats to first floor; or scheme 2; Provision of two flats and 151m² of office space (Class B1) to first floor; together with associated access, car parking and landscaping.

06/01147/FUL – In February 2007 planning permission was granted for an amended scheme to the above to provide additional floor space at ground floor, work to boundary wall to rear and repositioning of building.

07/01129/FUL – An application for the installation of an ATM cash machine is currently pending consideration.

07/01233/FUL – An application for proposed shop front alterations to Unit 2 is currently pending consideration.

07/01234/ADV – An application under the Advertisement Regulations for the display of 2 No. Internally illuminated fascia signs, 1 menu box and 1 internally illuminated logo / opening hours panel to Unit 2 is currently pending consideration.

PLANNING POLICY BACKGROUND

The following policy of the Borough of Darlington Local Plan is relevant: -

H15 – The Amenity of Residential Areas

RESULTS OF CONSULTATION AND PUBLICITY

Two letters of objection have been received from a resident on the opposite side of West Auckland Road (No. 43) and the occupier of 223 Brinkburn Road raising the following concerns: -

- *I live opposite these premises and the reason for my objection is the detrimental effect the midnight closure will have for me and other residents;*
- *Diners at the restaurant need time to finish their meals, customers at the take away will wait for meals to be cooked, departure times could take up to 1am, resulting in noise and disturbance as taxis sound their horns, voices call out goodnight, car doors slam, engines rev;*
- *As the premises has permission to trade from 6am, this leaves little quality sleep time for myself and other residents;*
- *There is likely to be additional litter and upset*

PLANNING ISSUES

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

- Planning Policy
- Residential Amenity

Planning Policy

Policy H15 (The Amenity Of Residential Areas) of the Borough of Darlington Local Plan 1997 seeks to control the effect of non-residential uses, which are situated within or close to residential areas, and can have a harmful effect, for example by reason of noise, smell, traffic and parking.

It is set out in the Act that on receipt of an application under Section 73, the Local Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted. Therefore the principle of the use of the unit is not at issue, but rather, and in the context of the above policy, whether the impact of the proposed extension to opening times of one hour is at an acceptable level, given the proximity of the unit to residential properties. These issues will be addressed in the proceeding paragraphs.

Residential Amenity

The retail centre is situated in a mixed residential and commercial use area, with a number of A3 (Restaurants and Cafes) and A5 (Hot Food Takeaways) situated on both sides of this main road. On determining the original scheme for the development of the site the Council's Environmental Health Officer recommended a number of conditions to ensure protection of local residential amenity including the installation of satisfactory ventilation and extraction equipment.

The Council's Environmental Health Officer has been consulted and is satisfied that the addition of one hour to the opening times will not be significantly detrimental to residential amenity given the opening times of other businesses in the vicinity of the development and the location and nature of the scheme, which is relatively well contained within a discrete shopping centre. Given these facts, and the position of the scheme on a main arterial route, it is considered that the additional hour will have a negligible effect on the overall noise levels at this time. Furthermore, the application has come about as the business has established a requirement for an additional hour due to the nature of the scheme and operational requirements of the business, and it is officer opinion that the refusal of the application would not be justified given that it would not significantly alter the existing residential amenities of the area.

Furthermore, an additional level of control has been available since the Licensing Act 2003, which requires premises, to include Hot Food Takeaways, operating beyond 10pm, to apply to the Local Authority for a Late Night Refreshment License. The Public Protection Division processes this and the same issues are considered in respect of the impact of this activity on local amenity in terms of additional noise and disturbance. It is therefore imperative that the Council has a co-ordinated approach to these matters. It is now generally the practice of officers to leave the control of opening hours to these other statutory controls, as advised by Government, unless there are sound planning reasons for applying a separate control. As the Council's Environmental Health Officer has raised no objections to the planning application, this will correspond with the processing of the Late Night Refreshment License. As there are no planning restrictions on the opening times of the larger shop (now trading as a Co-operative store) attached to Unit 2, it is not considered that it would be justified to refuse planning permission for this particular proposal.

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 can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

CONCLUSION

The proposed opening times are considered to be acceptable by virtue of the location and position of the application site. Consequently, the proposal would not have an adverse impact on the character or amenity of the area. No issues are raised in respect of highway safety or crime prevention. The proposal is considered acceptable in the light of Policy H15 (The Amenity of Residential Areas) of the Borough of Darlington Local Plan 1997.

RECOMMENDATION

THAT PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

- 1) A3 Implementation Limit (Three Years)
- 2) The unit shall not be used for the (preparation of) or sale of food or for any other business purposes between the hours of 12 midnight and 8am.

REASON – In order to safeguard the amenities of nearby residential properties.

SUGGESTED SUMMARY OF REASONS FOR GRANTING PLANNING PERMISSION

The proposed opening times are considered to be acceptable by virtue of the location, size and nature of the application site. Consequently the proposal would not have an adverse impact on the character or amenity of the area. No issues are raised in respect of highway safety or crime prevention. The proposal is considered acceptable in the light of Policy H15 (The Amenity of Residential Areas) of the Borough of Darlington Local Plan 1997.