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## Appeal Decision

Site visit made on 19 March 2013

**by E Norma Farish BA DIPTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 25 March 2013**

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**Appeal Ref: APP/N1350/A/12/2188837**  
**109 Neasham Road, Darlington DL1 4AT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Lakhbir Singh against the decision of Darlington Borough Council.
  - The application Ref 12/00205/CU dated 12 March 2012 was refused by notice dated 6 June 2012.
  - The development proposed is change of use of ground floor from shop (A1) to hot food takeaway (A5).
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### Application for Costs

1. An application for costs has been made by Mr Lakhbir Singh against Darlington Borough Council. That application is the subject of a separate decision.

### Decision

2. The appeal is dismissed.

### Main issues

3. This case turns on the likely impact of the proposed development on the living environment of the occupiers of surrounding residential properties.

### Reasons

4. The appeal site lies in a long established predominantly residential area characterised by parallel terraces of late 19th century houses at right angles to Neasham Road, which is a well used and, at least during the daytime, noisy through route into the town. In this stretch there are to either side fronting on to Neasham Road short terraces, mostly residential but with sporadic commercial premises. No.109, on the east side of Neasham Road at the junction with a purely residential street, Lewes Road, is a vacant corner shop with a one-bedroom flat above. The last use of the shop was as a retail bakery; it is evident that the baking took place elsewhere. The shop has display windows to both roads. The appellant wishes to use the shop as a hot food takeaway, using the room behind, which has an opening window on to Lewes Road, for food preparation and cooking, and a back room for storage. The back room has a window and door into a small yard which has a high boundary wall, a door onto Lewes Road, a wc and other outhouses and space for a commercial-size wheelibin.

5. The National Planning Policy Framework of March 2012 (the Framework) sets out certain core principles, requiring that planning should drive and support sustainable economic development but at the same time take account of the different roles and character of different areas and seek to secure a good standard of amenity for present and future occupiers of land and buildings.
6. Policy CS16 of the Darlington Core Strategy Development Plan Document 2011 states that new development should protect and, where possible, improve environmental resources, whilst ensuring that there is no detrimental impact on the environment, general amenity and the health and safety of the community. This is consistent with the provisions of the Framework.
7. The council and local residents who have made representations argue that the proposed development would adversely affect the residential environment of nearby occupiers by reason of smell, litter, noise and general disturbance, especially from late night activity. The appellant contends that a flue would be installed to deal with cooking odours, and that there is a litter bin outside the premises and in any case, depending on the type of food available, most people would take the food home. He also argues that the use itself would not generate noise and, whilst visiting customers would give rise to some increased noise, the shop is on a busy thoroughfare. In addition, there is unrestricted parking available on Lewes Road.
8. The appeal scheme includes an extraction flue which would terminate on the back wall of the building and I accept that, subject to compliance with Environmental Health requirements, there should be no material impact from odours on the amenities of neighbouring properties or the upper floor of No.109.
9. As to litter, a shop proprietor cannot easily prevent the unwelcome and antisocial dumping of spent food wrappings in the street or gardens, but whether the food is consumed on the street or at home will depend on the type of food sold, and there are existing businesses in the locality whose clientele is likely to behave no differently.
10. No.2 Lewes Road, to the rear of the appeal property and separated from it by a narrow back service road, has no windows in the gable wall facing the appeal site. A full height projection to the rear of No.109 screens the appeal premises' yard, and activities therein, from the rear amenity area and back elevation of the residential property adjoining the appeal site, No.111 Neasham Road.
11. However, the latter property has a small front garden separated from the forecourt to No.109 only by a low wall; the end terrace house on the other corner of Lewes Road, No.107 Neasham Road, has two habitable room windows in the flank wall facing the window to the proposed kitchen and the yard of the appeal premises, and on the opposite side of Neasham Road are a dwelling house and living accommodation above commercial premises. The occupiers of Nos.107 and 111 and the dwellings opposite could not fail to be aware of the general comings and goings associated with a successful business of the type proposed which would be likely to cause disturbance at otherwise quieter times. Moreover, although the appellant does not propose to facilitate the consumption of food on the premises, some customers might well choose to congregate outside and sit on the garden wall of the adjoining house, which could be very annoying and disturbing to the occupiers.

12. A hot food takeaway shop usually does a good deal of its trade during less social hours, and indeed the appellant proposes that the appeal premises would be open for business until 2330 hours every day including Sundays and Bank Holidays, and that does not include preparation and clearing up which tend to take place before the business opens to customers or after closing time and which in themselves could cause noise disturbance, especially in warm weather when windows and doors were left open. There are several other corner shops in the locality which are open into the evenings, including two fish and chip shops, but I found none that stayed open later than 2130 even on weekdays and only three that opened on Sundays and those then close at 2100 or earlier. ASDA, which is set well back from Neasham Road, closes at 2100 on other days but 1600 on Sundays. Clearly the amount of commercial activity in the area, and indeed traffic on Neasham Road, is likely to be significantly less outside normal working hours, making the area much quieter, and the occupiers of nearby dwellings are reasonably entitled to enjoy their homes in greater tranquillity in the evenings.
13. Hot food takeaway facilities tend to generate a high level of car-borne trade and customers tend to park as closely as possible to the outlet, often regardless of any parking restrictions, and might be prepared to "take a chance" and park inconsiderately or illegally in order to get away quickly before their food gets cold. The local highway authority has raised no objection to the scheme, but as local objectors have pointed out, this section of Neasham Road has double yellow lines on both sides and parking there even briefly would be potentially hazardous or inconvenient to passing traffic. There are no parking restrictions in Lewes Road and there are four kerb-side spaces outside the appeal premises, though those might be occupied by vehicles belonging to staff or to the occupiers of the flat above. In the rest of Lewes Road the front main wall of the houses is directly at back of footway and few properties have off-street parking accommodation, and so any customer parking there would potentially inconvenience resident car owners and would certainly be close to the front windows and doors of dwellinghouses, where the sounds of vehicles manoeuvring, car doors banging, engines starting, voices, and headlights would be likely to cumulatively cause significant disturbance to occupiers especially in the later evening hours.
14. I share the appellant's view that re-occupation is preferable to leaving a shop empty, but this is predominantly a residential frontage, and for the reasons given above the change of use proposed would have a materially adverse impact on the living environment of neighbouring residents which could not be overcome by the imposition of planning conditions and so would conflict with the aims of Core Strategy policy CS16.
15. I have given careful consideration to the above and all other points raised in the representations received, but on balance I have come to the conclusion that the permission sought should not be granted. The appeal fails.

*E Norma Farish*

INSPECTOR





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## Costs Decision

Site visit made on 19 March 2013

by **E Norma Farish BA DIPTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 March 2013

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### **Costs application in relation to Appeal Ref: APP/N1350/A/12/2188837 109 Neasham Road, Darlington DL1 4AT**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - Application is made by Mr Lakhbir Singh for a full award of costs against Darlington Borough Council.
  - The appeal was made against the refusal of planning permission for change of use of ground floor shop (A1) to hot food takeaway (A5).
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### **Decision**

1. I dismiss the application for an award of costs.

### **Reasons**

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
  3. The applicant has made an application for a full award of costs on the grounds that the council behaved unreasonably in giving reasons for refusal that are vague, imprecise and unsubstantiated, in failing to submit relevant evidence on appeal to support its decision in all respects, and in failing in its statement to provide conclusive evidence that matters of concern cannot be addressed by the imposition of conditions, so causing the applicant to incur unnecessary or wasted expense on an agent's fees in preparing and submitting the appeal and this costs application.
  4. The council submits that its reason for refusal is quite clear, referencing this to the development plan in accordance with Paragraph B16 of the Circular, and that its statement explains why the proposal would be harmful to residential amenity, that there are residential properties in the immediate vicinity being a matter of fact. With regard to Paragraph B25 of the Circular, the council maintains that the possibility of approving the proposal subject to conditions was considered, as evidenced in the references in the Officer's Report to the requirements of the Environmental Health Officer, but that given the proximity of residential properties and the nature of a hot food shop in that it operates late in the evenings it did not consider the proposed use to be acceptable.
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5. The council's reason for refusal is complete and relevant to the application, giving a list of matters which it considered would adversely affect residents living near to the appeal premises and referencing this to the development plan. Its statement also makes reference to the National Planning Policy Framework. However, the statement does not expand on the reason for refusal and fails to substantiate it. Whether or not consideration was given to the possibility of granting planning permission subject to conditions additional to that advised by the Environmental Health Officer, no indication of this, or of why it would not effectively overcome the problems anticipated, is given in either the Officer's Report or in the council's appeal statement. The council has, therefore, acted unreasonably in this respect.
6. That being said, substantial evidence was put forward by local residents in support of the council's reason for refusal, and which the applicant was obliged to address. This, together with what was evident on the site inspection, enabled me to reach a conclusion and to determine that a conditional permission could not be granted.
7. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated and that an award of costs is not justified.

*E Norma Farish*

INSPECTOR