



Appeal Decision

Site visit made on 4 September 2009

by **Christopher Checkley**
BA(Hons) MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
22 September 2009

Appeal Ref: APP/N1350/A/09/2105677

91 Surteees Street, Darlington, DL3 6PP

- 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 Singh against the decision of Darlington Borough Council.
- The application Ref 09/00099/CU, dated 14 February 2009, was refused by notice dated 17 April 2009.
- The development proposed is change of use of ground floor shop (A1) to hot food takeaway (A5) incorporating internal alterations and installation of extractor flue.

Decision

1. I allow the appeal, and grant planning permission for change of use of ground floor shop (A1) to hot food takeaway (A5) incorporating internal alterations and installation of extractor flue at 91 Surteees Street, Darlington, DL3 6PP in accordance with the terms of the application, Ref 09/00099/CU, dated 14 February 2009, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Main Issues

2. There are two main issues in this appeal regarding the effects of the change of use to a hot food takeaway and the associated alterations. First, the effect upon the living conditions of nearby residents, with particular regard to noise, disturbance and cooking fumes. Second, the effect upon the appearance and character of the host building and the street scene.

Reasons

Living conditions of nearby residents

3. Policy S18 of the Borough of Darlington Local Plan (LP) seeks to encourage hot food takeaways to locate in shopping areas as these are generally the most appropriate locations for such uses, with the proviso that there should be no adverse effect on residential amenities or on highway safety. LP Policy H15 indicates that the establishment or intensification of non-residential uses which would unacceptably conflict with the amenities of surrounding areas having a predominantly residential character will not be granted.
 4. The appeal site is a traditional two-storey end-of-terrace property fronting a well used road and lies on the edge of a housing area adjacent to an area of parkland. Although the neighbourhood is predominantly residential it also
-

includes a scattering of local shops and hot food takeaways. There is an existing hot food takeaway within the housing on the opposite side of the road and it appears to remain open into the late evening. Until recently the ground floor premises at the appeal site were used as a 24-hour shop, whilst the first floor comprises a residential flat.

5. The presence of the road and the takeaway opposite means that this is not a quiet residential area but one that is likely to experience noticeable levels of background ambient noise into the latter part of the evening from road traffic and takeaway customers, many of whom would be likely. In this context, and having regard to the site being on the edge of the housing area, I do not consider it would result in unreasonable additional noise disturbance at unsocial hours for local residents to allow another takeaway that would only remain open until the 21.00 hours closing time sought each night, with the premises remaining closed on Sundays. Also, if appropriate modern ventilation equipment were properly installed, operated and maintained, there should not be an unacceptable increase in cooking smells and fumes apparent to local residents. Both matters could be the subject of planning conditions. However, the prevention of litter and unsocial activities are the subject of other more appropriate legislative controls and enforcement measures.
6. I conclude that subject to the imposition of conditions restricting the opening hours to those sought and requiring the installation of ventilation equipment there would be no unacceptable harm to the living conditions of local residents through noise disturbance and cooking fumes and no material conflict with the objectives underlying LP policies H15 and S18.

Appearance and character of the street scene

7. The submitted plan shows the installation of an external full-length ventilation flue on the exposed western elevation of the end-of-terrace property where it would appear obtrusive within the street scene. However, the appellant has indicated a willingness to install the flue internally within the premises so that only the topmost section would be visible externally. A condition to this effect would ensure the ventilation flue was not unsightly.
8. The drawings also indicate a new shop front and minor elevation changes. The Council accepts that the proposed roller shutters could be adequately hidden within the design of the shopfront and be masked largely by the frame or surround and designed in a traditional manner to enhance the appearance of the property and the locality in general. These matters could similarly be secured by the imposition of an appropriate condition requiring approval to the details of the shopfront and elevational changes, to ensure there was no conflict with the objectives underlying LP policies E38 and E29 and national guidance in PPS1 regarding the design of development including business premises. A condition could also require the provision of appropriate refuse storage facilities out of sight within the premises.
9. I conclude that, subject to the imposition of the conditions described, there would be no harm to the appearance and character of the building or the street scene in general.

Other matters

10. Some representations express an objection to competition with existing takeaways, but this is not a material planning consideration. The highways officer is satisfied that the proposed use would not result in a loss of highway safety since on street parking is available for customers using the premises, and I have no reason to take a different view. I have taken account of all other matters raised, but none are sufficient to outweigh the considerations set out above and my conclusion that planning permission should be granted subject to the necessary conditions set out in the schedule below for the reasons stated.

C J Checkley
INSPECTOR

Schedule of conditions to which the permission is subject:

- (1) The development hereby permitted shall be commenced before the expiration of three years from the date of this decision.
- (2) The business shall not operate and customers shall not be present on the premises outside the hours of 11:30 – 21:00 hours Mondays to Saturdays inclusive including Bank Holidays. The premises shall not be open to customers on Sundays.
- (3) The development shall not be commenced until details of the arrangements for the storing of refuse and waste have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the details of the refuse scheme that is approved.
- (4) Before the change of use is brought into effect and notwithstanding the information shown in the application regarding the proposed ventilation flue, full details of an odour suppression and ventilation system shall have been submitted to and approved in writing by the local planning authority. The system shall have been installed in accordance with the approved details before the change of use is first brought into operation. The system and any associated equipment shall be used whenever the permitted use is operating or cooking is taking place and it shall be regularly maintained and serviced in accordance with the manufacturer's recommendations.
- (5) Notwithstanding the information provided in the submitted application, full details of the external elevation changes including the new shop window with roller shutters and the altered window openings and any external ventilation vent/flue shall have been submitted to and approved in writing by the local planning authority. The external elevation changes shall have been completed in accordance with the approved details before the change of use is first brought into operation.

