

**DARLINGTON BOROUGH COUNCIL**

**PLANNING APPLICATIONS COMMITTEE**

**COMMITTEE DATE: 5 August 2015**

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<b>APPLICATION REF. NO:</b>	15/00548/FUL
<b>STATUTORY DECISION DATE:</b>	26 July 2015
<b>WARD/PARISH:</b>	BANK TOP AND LASCELLES
<b>LOCATION:</b>	Breezey's Sandwich Bar, 120 Neasham Road
<b>DESCRIPTION:</b>	Change of use from sandwich shop (Use Class A1) to hot food takeaway (A5) incorporating installation of extractor fan and external flue to gable wall
<b>APPLICANT:</b>	Mrs Surinder Singh

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**APPLICATION AND SITE DESCRIPTION**

The premises are located on the end of a terrace of residential properties located on the corner of Neasham Road and Walton Street. The existing premises are used as a sandwich shop, with ancillary sales of hot food, with a servery/customer area on the ground floor and a food preparation kitchen and food store areas to the rear. Access to the yard is via two entrances off Walton Street. There is a pedestrian door also off Walton Street which leads to a first floor flat. The sandwich shop currently operates between the hours of 0830 to 1400 Monday to Saturday.

The proposal involves a change of use of the premises to a hot food takeaway to be operated between the hours of 0830 to 2000 Monday to Saturday. The applicant aims to continue and predominately sell cold food and drink during the day with the hot food becoming the focus from early evening onwards. The hot food that the applicant wishes to sell would be an expansion of what they sell at the moment along with pizzas and kebabs (albeit the type of hot food that is sold and when it is sold during the hours of operation is not a material planning consideration and should not be the subject of any planning controls)

The internal layout of the ground floor would remain unchanged and there would be no external alterations to the premises other than the erection of a stainless steel flue on the external wall of the gable end. The food waste and waste storage bins would be located in the rear lane in appropriate bins to be emptied by a licensed waste management operator.

The immediate area is predominately residential interspersed with other commercial outlets such as General Dealers, a sandwich bar, hairdressers, barbers, and electrical repairs shops. The Neasham Road Local Centre (which includes Matalan and Asda) lies approximately 70m to the north and a parade of retail units (Tanning shop/café/pharmacy/beauty salon) is approximately 90m to the south. Within the immediate vicinity of the application site there is a Fish and Chip

shop on Neasham Road, another one on Thirlmere Road and a Chinese Takeaway on Eastbourne Road.

### **PLANNING HISTORY**

8/95/435/FUL In November 1995 planning permission was GRANTED for the erection of a replacement garage roof with a pitched roof

### **PLANNING POLICY BACKGROUND**

The relevant planning policies are:

#### **Darlington Core Strategy Development Plan Document 2011**

CS2 – Achieving High Quality Sustainable Design

CS16 – Protecting Environmental Resources, Human Health and Safety

### **RESULTS OF CONSULTATION AND PUBLICITY**

Seven letters of objection have been received raising the following concerns:

- *To our knowledge the proposed hot food takeaway is going to be a kebab/pizza shop with late night opening probably 7 nights a week. If this is the case then we wish to oppose the planning application because of the late night/early morning noise from cars including doors slamming, radios etc and the likelihood of rowdiness from drunken customers. We live one block away from the shop and will easily hear any disturbances*
- *I object to the change of use for Breezy's sandwich shop. The reasons are; increased rubbish being deposited in gardens along Neasham Road, increased traffic and more parking congestion, increased noise and rowdiness from customers who have had a lot to drink who will patronize the shop which will by its very nature be open very late into the night. There are enough hot food outlets in Darlington and most of them deliver so there is no need for one in Neasham Road.*
- *There are already three fish shops, café, shops that sell food to take out in the area. The litter which is thrown down already on the pavement, back lane and in the front gardens of the houses in this area. The parking situation is also a problem with customers parking on the yellow lines. Pedestrians having to be very careful in crossing the roads because of the amount of traffic which already use the shop. If it was selling hot food until later than it is already open, I don't think this is safe. The amount of rats that has been found also in the area would increase. The smell of the food and noise could be considered a health problem.*
- *These are 100+ year old terrace houses, not bespoke food preparation premises. The current sandwich shop impacts on my house (No 118 Neasham Road) due to cooking smells penetrating the joining wall. My concern is that cooking hot food and garlic will be stronger smelling and due to the increased opening hours impact my family more. The current premises make noise that can be heard from phones, talking, music, pans clanging, and fridge and vent noises. With the increased late night hours, this will be a greater impact on my family's quality of life. The addition of the flue could potentially generate extra noise and vibrations*
- *Parking is at a premium and although I live on Neasham Road I have to try and park on Walton Street. The additional traffic from customers and delivery drivers will impact further on the parking of surrounding properties.*
- *My property currently seems to be a dumping ground for rubbish, the extra hours and take away nature of the food will increase this. The current street bin is inadequate as it is, and from testing does not allow pizza boxes to be put in it.*

- *Disruption to my young family evenings/sleep and in the area from longer hours of service (until 2100)*
- *Potential of being another “hang out” for gangs of youths or a call in point from drunks on an evening. Potential of my front wall being used as a seat by customers*
- *A5 status would not add value to the community given the proximity to other takeaway premises on Yarm Road, Thirlmere Road, Eastbourne Road, Park Lane and Victoria Road. Darlington already contains 63 takeaways according to Just Eat or 145 registered with the Food Standards Agency. ASDA has recently added a takeaway pizza counter in its Neasham Road store (open 7 – 11).*
- *There are no proposed changes to the level of employment so it won't impact employment in the area/town*
- *The addition of a takeaway would go against Darlington's ethos of Healthy Eating and being a British Heart Foundation town. The shop is approximately 0.2miles from a local school and nursery and 0.1miles from a Doctors Surgery.*
- *The shop has no access for people with disability.*
- *Neasham Road is a very busy area of town and one of the main routes into the town centre. Parking is on street only in the area which causes issue with the traffic on Neasham Road especially with the larger vehicles that use the road. The premises are on the corner of a busy road and have double yellow lines in place. A child was tragically killed across from the road from Breezys which highlights the dangers of the level of traffic on Neasham Road. The street is already impacted by deliveries to the shop across the road.*
- *The bin on the front is inadequate for current purposes. Shop waste bins are in the rear lane. Breezey's can't store these bins in any other location and I believe that the bins will entice rodents to neighbouring properties. Will they need emptying more?*
- *Rear lane is already damaged by heavy vehicles. Will the ageing sewer system of the premises be enough to handle the extra waste? The current road drain floods in heavy rain as it is.*
- *The building externally is poorly maintained, the damage to the shop front windows was caused by a youth with an air rifle which hasn't been repaired in 5 years. A builder recently came to repair the roof on the flat and had to access the roof via my property as they couldn't do anything safely from the street. He commented that the chimney at the rear of the property is coming away from the wall. This was one year ago and hasn't been resolved. The sewer pipe from the flat above drops into the food preparation area of Breezeys*
- *With regards to the requested planning application submitted by Breezeys to change its hours and type of food being served I have a couple of issues that I wanted to submit.*
- *Firstly just to make clear that I like the owners and staff from Breezeys, they are friendly people and I understand they have a business to run so I do not want to object just to be spiteful or cause issues for them. The objections I have to the proposed plans are that I live in the flat above the shop and there is very little (if any) soundproofing between the shop and upstairs. I can literally hear every conversation, every pan that's banged and every buzzer from the time they first start until the time the shop closes. This currently doesn't cause a huge issue for me as I get up early to go to the gym anyway and then I'm at work until after the shop has closed. On days that I have been off and in the flat I have usually just sat with headphones in or gone out for the day so as not to be bothered by the noise. As mentioned at the moment this is an inconvenience currently but something that I can live with however if the new license is granted it means that this noise will be a constant for such a large portion of the day that it will be unbearable (usually staff start*

*around 6.45 in the morning and with the new closing time it would be after 9 at night before the noise had stopped which is almost 15 hours of noise a day, 6 days a week). I also have young children who live with me part time, it would be impossible for them to sleep through the noise created by the takeaway which would leave me with an issue of when and where I would get to spend my nights with them. Also with the planning of the new extraction system and the amount of additional staff and other fridges, ovens, units etc will also create further noise. If nothing was done with regards to efficient soundproofing then the flat above will become uninhabitable due the levels of noise and long hours proposed.*

- *At the moment the smells from the shop travel directly up to the flat however as the food that they currently prepare is "plain" type foods the smell doesn't become unbearable. I leave the windows in the flat open all day and by evening the smell has usually cleared slightly however with takeaway foods being prepared and the increased hours the flat will be completely flooded with the smells of whatever is being prepared downstairs. This smell will linger constantly and will end up on all my clothes etc. Aside from this not being ideal from a personal sense; in my work I come into close contact with the public and this really help with presenting the professional clean image that the studio I work for aims to impress upon our customers.*
- *I understand that there may be other concerns when it comes to things like parking, litter, and other areas but I think these issues come as part and parcel from living in close proximity to business' and would trust the owners to have already to have took this into consideration. I am open to any suggestions that could be put forward to resolve these but I am massively concerned that if nothing was to be done to address these points then the flat would be rendered completely unliveable, I have 4 months remaining on my lease before I would be able to move out and wouldn't imagine that the owner of the property would be able to rent it out to anyone else under those circumstances either*
- *Already within 5 minutes walking distance of the planned takeaway there are at least 11 establishments that sell hot takeaway food. 3 fish and chip shops, 3 Chinese takeaways, 1 pizza/kebab shop, 2 sandwich shops (at least one sells hot food), 1 cafe and 2 Indian takeaways and if you care to walk another 5 minutes there are numerous fast food outlets along Victoria Road.*
- *There is no information on the council website about the type of takeaway this will be. If there would be late night opening hours this would have a severe detrimental effect on the surrounding neighbourhood with teenagers/kids hanging around these places at night being a nuisance, people walking home from pubs and clubs (especially Friday Saturday and Sunday nights) can bring serious trouble to the neighbourhood. Many of the families who live on the same block of houses as the proposed new takeaway have young children, the lady and gentleman who live next door have a young child. They would possibly witness or be victims of the abuse / violence that these establishments can attract.*
- *Another takeaway would mean more litter in the area. An example of this is the litter that is caused by the Breezy's sandwich shop (white paper bags, polystyrene containers and waste food) especially in the back lane behind the shop. This part of Neasham Road does not need any more litter.*
- *The current Breezey's sandwich shop is open from about 9 in the morning till about 2 in the afternoon, later opening hours and more customers would mean more noise. There would be a lot of noise from the new takeaway, from the takeaway itself and its customers which if happened at night time would affect neighbouring houses. eg. customers arriving by car*

- *People in the neighbouring houses would be able to smell the food and also the waste. An example of this is again Breezey's sandwich shop (I can smell the shop especially when they start work in the morning 7.30 am - 8.00 am)*
- *This takeaway would have an effect on the house prices in the area. I know the council do not take this into consideration but it is important to local residents who are also important to the Council.*
- *Should the council be encouraging people to eat more takeaway food by granting permission for more new takeaways?*
- *Anyone can see that at busy times at Breezey's there is a safety risk because of the way people park their cars when they use Breezey's. Yellow lines on the street corners in the area are ignored and people park the wrong way in the road (against the traffic). No one would like to see a repeat of the terrible accident that occurred just over the road about 18 months ago.*
- *In closing I would ask that fair consideration is given the residents in the area. I have lived in the neighbourhood for 19 years and in my opinion I think that the proposed hot food takeaway would have a severe detrimental effect on myself, my neighbours and other residents in the area. Whilst Neasham Road is a busy thoroughfare at times it is not that busy that we would not notice a new business like the proposed takeaway starting in the area.*
- *Although the A5 hot food licence is quite generalized in its application, the applicant plans on opening up a Fish & Chip Shop. However there are already 2 Fish and Chip Shops within about a 100-200 Yards of the concerned applications address at 120 Neasham Road. Concerns would not arise if the business was to be of a different nature. However running a business myself it is very difficult with the already low margins on food due to high stock prices, and another business of the exact same nature to open this close is detrimental to mine and my families livelihood, as unlike the applicants we do not own multitudes of properties and businesses, and simply have our one shop where we make a living and this would be severely impacted with what would become 3 businesses of the same kind running in extremely close proximity of each other. The Current two business being Thirlmere Chippy which is mine, and "Chips & Things" which would also be impacted as it is also within very close proximity of this applicants property for the A5 licence.*

### **Consultee Responses**

The Council's Highways Engineer has raised no objections

The Council's Principal Environmental Health Officer has raised no objections to the scheme subject to the imposition of appropriate planning conditions

Darlington Association on Disability has raised no objections to the proposal

The Durham Constabulary Architectural Liaison Officer has raised no objections to the proposal

### **PLANNING ISSUES**

The main issues to be considered are whether or not the proposed change of use would be acceptable in the following terms:

Residential Amenity

Highway Safety

Disabled Access

Impact on the Visual Appearance of Area

Other Matters

**Residential Amenity**

Policy CS16 of the Core Strategy states that new development (which includes proposals to change of the usage of a building) should ensure that there is no detrimental impact on the environment, general amenity and the health and safety of the community.

The surrounding area is predominately residential interspersed with some commercial and retail units. Hot food takeaways have the potential to cause disturbance to neighbours due to noise generated by the comings and goings of customers and the operation of equipment to deal with fumes and smell. This can be particularly so at times when neighbours might have a reasonable expectation of a quieter environment.

The two fish and chip shops in the immediate locality (Neasham Road and Thirlmere Road) have closing times of 20:00 and the Chinese takeaway on Eastbourne Road operates until 23:00.

Environmental Health records show that no complaints have been received about the existing premises apart from a single complaint about litter in 2003.

Following discussions with Officers, the applicant has agreed to a closing time of 20:00 to match the existing Fish and Chip shops in the locality.

The Council's Principal Environmental Health Officer (Commercial) has no objections to the principle of the change of use provided that conditions are attached to any grant of planning permission to secure the hours of operation, control over an effective form of external plant and machinery for controlling fumes and odours (also subject to any necessary noise mitigation measures), the fitting of internal grease traps and the submission of a Noise Impact Assessment to ensure the neighbours and the occupiers of the upper floor flat are not unduly disturbed by the ground floor usage.

There is an existing waste bin in the forecourt outside of the premises which can be used by patrons of the premises and the bin is considered to be appropriate. The refuse storage bins for the sandwich bar are already stored in the rear lane and whilst this arrangement is not necessarily ideal, it is commonplace throughout the Borough. If the bins cause an obstruction, there is scope for them to be moved into the rear yard area.

The Durham Constabulary Architectural Liaison Officer has advised that the Police have no objections to the proposal. The Police consider that the proposal will not attract undue anti-social behaviour and the closing time of 8pm will help minimise any disruption to neighbours.

It is considered that the proposed hours, especially the agreed revised closing time, are not at antisocial times or when residents would reasonably expect a certain degree of peace and quiet.

It is considered that by limiting the proposed hours of use and imposing appropriate planning conditions to control noise, fumes and odours which might be generated by the use, the proposed change of use would not materially harm the amenities of the neighbouring dwellings. The proposal, subject to appropriate planning conditions, would accord with Policy CS16 of the Core Strategy.

**Highway Matters**

The property occupies an end terrace location and benefits from a long gable onto Walton Street which has unrestricted parking. There is also unrestricted parking on Neasham Road to the front

although the immediate junctions have double yellow lines to protect the junction area and visibility. Servicing and public access to the premises would be required to take place from the public highway.

The Council's Highways Engineer has advised that the accident records over the previous 5 years show that there have been 2 slight accidents and 1 fatal within 200m of the existing premises. The fatal accident was unrelated to the sandwich shop at was at the junction of Falmer Road (opposite the application site). The 2 slight accidents were not in close proximity to the shop or the junction of Walton Street and therefore it would be difficult to constitute a refusal based on traffic safety grounds as there is a not an existing accident problem and extending the opening hours of the premises to provide a takeaway should not have a severe additional impact.

### **Disabled Access**

Policy CS2 of the Core Strategy states that all developments (which include proposals for a change of use) should provide safe, convenient and attractive access for disabled people

The existing premises have two steps that lead into the customer serverly area and therefore the building is not currently accessible for wheelchair users. At the moment any person that is unable to enter the building can be clearly seen by staff and that person is attended to whilst they wait outside and this practice would continue if this planning application is approved.

Darlington Association on Disability accept that there is insufficient internal or external space to facilitate a ramp with a safe platform and turning area and they consider that attending to a person outside of the premises is not an unreasonable position. However, DAD has requested that to ensure the premises are not libel any action under the Equality Act 2010, a sign should be erected informing persons who can't enter the premises that a member of staff will still serve them. This can be secured by a planning condition.

### **Impact upon the Visual Appearance of the Area**

There are no external alterations to the premises other than the erection of an external flue on the gable wall fronting Walton Street. The applicant has agreed to painting the flue an appropriate colour (blue to match the shop front) in order to minimise the impact of the flue on the appearance of the building and locality. This would be secured by an appropriate planning condition.

### **Other Matters**

Some of the concerns raised by objectors relate to possible effects on property values, business competition and the current maintenance of the premises. However, Members are advised that these are not material planning considerations and cannot carry any weight in the determination of the planning application.

### **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 change of use of the property to a hot food takeaway is acceptable due to the proposed hours of use that can be secured by a planning condition. Any noise, smells and odours from the premises can be controlled by appropriate extractors, vents and sound insulation and there is sufficient parking provision within the street for customers. The proposed change of use would accord with the relevant development plan policies.

### **RECOMMENDATION**

**PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:**

- 1) A3 – Implementation Limit (Three Years)
- 2) The use hereby approved shall not operate outside the hours 08:30 – 20:00 Monday to Saturday only unless otherwise agreed in writing by the Local Planning Authority  
REASON: In the interests of residential amenity
- 3) Prior to the commencement of the development, a Noise Impact Assessment shall be submitted to and approved in writing by the Local Planning Authority. The scope of the Assessment shall be agreed with the Local Planning Authority but the Assessment shall take account of noise from all commercial activities connected with the approved ground floor use, including the arrival and leaving of customers, and noise and vibration from all fans, louvres, ducts and external plant associated with the takeaway, along with an assessment for the need for any sound insulation between floors and walls of the premises and the neighbouring dwelling and the flat above. The agreed scheme of noise mitigation measures shall be fully implemented prior to the commencement of the use and shall be retained and maintained in accordance with the manufacturers specifications as long as the premises shall continue to operate as a hot food takeaway.  
REASON: In the interests of the amenities of the existing residential properties in the surrounding area and the future occupants of the proposed first floor flat
- 4) Prior to the use hereby permitted commencing, a scheme shall be submitted to, and approved in writing by the local planning authority for the effective control of fumes and odours from the premises. The agreed scheme shall be fully implemented prior to the commencement of the use and shall be retained and maintained in accordance with the manufacturers specifications as long as the premises shall continue to operate as a hot food takeaway.  
REASON: In the interests of the amenities of the existing residential properties in the surrounding area and the future occupants of the proposed first floor flat
- 5) The use hereby permitted shall not begin until a grease trap has been provided on the drainage outlets from the food preparation areas.  
REASON: In order to prevent flooding and pollution.
- 6) Notwithstanding the details shown on the approved plans, precise details of a colour scheme for the external flue shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the use. The flue shall then be maintained to the satisfaction of the Local Planning Authority as long as the premises shall continue to operate as a hot food takeaway  
REASON: In the interests of the visual appearance of the building and the surrounding area.



- 7) Prior to the commencement of the use, a sign shall be erected at the entrance of the premises informing any persons unable to enter the premises that a member of staff will serve them. This sign shall remain in situ unless otherwise agreed in writing by the Local Planning Authority  
REASON: To ensure that a disabled person can use the services that are provided within the building in accordance with Policy CS2 (Achieving High Quality Sustainable Design) of the Darlington Core Strategy Development Plan 2011 and the Equality Act 2010.
- 8) B5 – Detailed Drawings (Accordance with Plan)

**THE FOLLOWING POLICIES AND DOCUMENTS WERE TAKEN INTO ACCOUNT WHEN ARRIVING AT THIS DECISION:**

**Darlington Core Strategy Development Plan Document 2011**

CS2 – Achieving High Quality Sustainable Design

CS16 – Protecting Environmental Resources, Human Health and Safety

**INFORMATIVE TO BE INCLUDED SHOULD PLANNING PERMISSION BE GRANTED**

**Environmental Health**

The Environmental Health Section enforces Food Safety and Health and Safety legislation at this premises and the applicant is advised to contact Environmental Health (Mr S Todd – 01325 406427) prior to the undertaking of any work to ensure that all legislative requirements are met.