

Item 12

DEVELOPMENT CONTROL COMMITTEE

12th October 2007

Report of the Director of Neighbourhood Services

The following planning appeal decision is reported for information purposes:

11 DARLINGTON ROAD, FERRYHILL

APPEAL DESCRIPTION

The appeal was made against a planning decision to refuse an application for the Change of Use from a vacant financial services office (Class A2) to a Hot Food Takeaway (Class A5) and the installation of ducting to the rear of number 11 Darlington Road, Ferryhill (*planning application reference: 7/2006/0654/DM*). This was not the first time that such an application had been made for the change of use of this premises to a takeaway/food sales use, with 3no. other applications having been refused since 2004.

The application was refused for the following reason:

In the opinion of the Local Planning Authority, this proposed change of use would give rise to noise disturbance and odour emissions which would have a detrimental impact on the amenity of existing and future occupiers of adjoining properties and other properties in the immediate area. This proposal was considered contrary to Adopted Local Plan Policies H18 (*Acceptable uses within housing areas*) and S9 (*Small shops outside town and local centres but within towns and villages*) which collectively seek to secure and maintain a satisfactory level of amenity within residential areas without causing significant harm to the residential amenity of nearby residents.

The appeal was made by the applicant on the following grounds:

- It is only an opinion of the LPA that this proposal would give rise to noise and disturbance,
- 75% of hot food sales would be by telephone orders, resulting in a delivery service to homes,
- Modern ducting methods totally eliminate odour emission,
- The shop is in an area dominated by shops, cafes, public houses and clubs,
- This takeaway would not have any more impact on the occupiers of adjoining properties than existing,

This appeal was heard by way of a written representation.

APPEAL DECISION

In the inspector's decision letter dated 21 August 2007 (a copy of which is attached to this report), this appeal was dismissed.

ANALYSIS OF THE APPEAL DECISION

The inspector in dismissing this appeal considered that:

- The main issue is the effect of the proposal on the living conditions of nearby residents with particular regard to noise/disturbance and odours,
- The appeal property is located outside of the defined boundary of Ferryhill Town Centre in an area comprising a mix of commercial and residential properties,
- Whilst local residents have referred to evening noise and disturbance in their objections, resulting from existing Hot Food Takeaways in the area, the majority of these are in the adjacent Town Centre where it is only reasonable to expect such levels of noisy activity,
- However, the noise and disturbance arising from the arrival and departure of customers (by foot and car) at the proposed takeaway would add significantly to that already experienced by residents living outside of the Town Centre boundary, This would have the effect of extending the level of evening noise/activity currently associated with the Town Centre into the surrounding residential area,
- The 75% forecast provided by the appellant regarding home deliveries can prove incorrect with no practical way of limiting the number of customers visiting the outlet,
- The frequent coming and going of delivery vehicles would likely cause increased disturbance to local residents in the late evening,
- Such additional noise/disturbance will materially harm the living conditions of residents living in close proximity to the appeal premises, conflicting with adopted policies H18 and S9 which seek to ensure proposals for shops (including Hot Food Takeaways) do not significantly harm living conditions/amenities for nearby residents,
- The outlet of the flue to the rear of the premises, whilst close to neighboring properties, would exceed the height of these properties, with it unlikely that the proposal would result in significant odour nuisance to neighbors,
- There is no off-street parking in the immediate vicinity of the proposal site. Despite the existence of parking restrictions to the front and side of the site, it is likely that some customers will park close to the pedestrian crossing on Darlington Road, or in close proximity to the Darlington Road/Eamont Road junction. Whilst Highways Engineers have offered no objections to this proposal, the obstruction of visibility caused by parking in these areas would be prejudicial to highway safety,

CONCLUSION

In conclusion, the inspector is considered to have rightly identified the detrimental impact that such a change of use will have on the residential amenity and living conditions of occupiers in the surrounding residential area. This decision is an important one in that it allows planning officers to use this decision as a reference for future Hot Food Takeaway applications which may be considered unacceptable owing to their location outside of a Town Centre boundary and in a residential area.

The following planning appeal decision is reported for information purposes:

61 DEAN PARK, FERRYHILL

APPEAL DESCRIPTION

The appeal was made against the imposition of 3no. conditions on a previous planning approval for the retrospective erection of raised decking and a shed, and the proposed erection of a conservatory to the rear of number 61 Dean Park, Ferryhill (*planning application reference: 7/2006/0570/DM*).

The 3no. conditions which were challenged by the appellant were:

- *Condition number 2*

The top lights of the conservatory elevation facing number 60 Dean Park shall be glazed with obscure glass to a level sufficient to protect the privacy of neighbouring occupiers. The glazing shall be maintained and retained thereafter to the satisfaction of the Local Planning Authority.

Reason: To safeguard the amenity of neighbouring occupiers.

- *Condition number 3*

The shed hereby approved shall be glazed with obscure glass in the elevation facing the rear garden of number 60 Dean Park to a level sufficient to protect the privacy of neighbouring occupiers. The glazing shall be maintained and retained thereafter to the satisfaction of the Local Planning Authority.

Reason: To safeguard the amenity of neighbouring occupiers.

- *Condition number 5*

The planning permission hereby approved is subject to compliance with additional information received 30/10/2006 which confirms that the 1 ½ decking side panels which form the boundary between numbers 60 and 61 Dean Park will be reduced in height by a distance of 4 inches.

Reason: To ensure that the development is carried out in accordance with the approved documents, allowing for a satisfactory form of development.

These conditions were imposed in the interests of securing a satisfactory level of privacy and residential amenity for the neighbouring occupiers of number 60 Dean Park.

The appeal was made by the applicant on the following grounds that the conditions were unreasonable and unnecessary.

This appeal was heard by way of a written representations.

APPEAL DECISION

In the inspector's decision letter dated 21 August 2007 (a copy of which is attached to this report), the appeal was allowed, with the planning permission also varied in terms of the attached condition 3 regarding the installation of obscured into the shed window. This condition was rephrased to state:

"The eastern side window of the shed hereby approved shall be permanently opaque glazed in accordance with details to be submitted to and approved by the local planning authority within 3 months of the date of this permission"

ANALYSIS OF THE APPEAL DECISION(S)

The inspector in dismissing this appeal considered that:

- The main issue is the effect of the development on residential amenity,
- Condition number 2 is not necessary to protect the privacy of the neighbouring household. As part of this permission, the council has approved a 2metre high fence along the boundary wall with number 60 Dean Park, with only the top portion of the fanlights to be observed above this fence. It is therefore considered unlikely that a person standing within the conservatory would be readily observable from the adjacent dwelling, or that the applicants would be able to see into the neighbouring garden area, or create an intrusive or overlooking impression,
- Condition number 3 is justified with it understandable that irritating circumstances may arise from the outlook of this window despite the close proximity of the dividing fence. However, any problem may be overcome by the application of an opaque film, with this condition adjusted to permit greater flexibility to the appellant,
- There is no need for the retention of condition number 5 regarding the applicant's agreement to lower the fence. The higher level of fence at this point is desirable to provide more amenity protection between neighbors,

CONCLUSION

In conclusion, the inspector has decided to allow this appeal for the removal of these conditions from this planning approval, but has decided to substitute condition number 3 to allow greater flexibility to the appellant. Although the Inspector decided in favour of the applicant the decision is an important one in that it highlights the importance of applying the 6 key tests as outlined in *Circular 11/95 'The use of conditions in planning'*, which defines how all planning conditions must be:

1. Reasonable,
2. Relevant to planning,
3. Relevant to the development,
4. Precise,
5. Enforceable, and
6. Necessary.



Appeal Decision

Site visit made on 14 August 2007

by **Malcolm Rivett BA (Hons) MSc MRTPI**

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

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Date: 21 August 2007

Appeal Ref: APP/M1330/A/07/2039985

11 Darlington Road, Ferryhill, County Durham, DL17 8JP

- 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 Mrs M Moses against the decision of Sedgefield Borough Council.
- The application Ref 7/2006/0654/DM, dated 6 September 2006, was refused by notice dated 28 November 2006.
- The development proposed is hot food takeaway and ducting to rear.

Decision

1. I dismiss the appeal.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of nearby residents with particular regard to noise/disturbance and odours.

Reasons

3. The appeal property is situated on the corner of Darlington Road and Eamont Road close to, but outside the defined boundary of, Ferryhill town centre. This section of Darlington Road comprises a mix of commercial and residential properties.
4. Local residents have referred to the noise and disturbance in the evening resulting from the existing takeaways in the area. However, the majority of these are within the defined town centre where I believe it is only reasonable to expect a degree of noisy activity throughout the day and in to the evening. Outside the town centre the only existing takeaway in the area is at no 14 Darlington Road, three properties along from the appeal premises. In my judgement the noise and disturbance arising from the arrival and departure of customers (both on foot and by car) at the proposed takeaway would be likely to add significantly to that already experienced by the residents in the part of Darlington Road outside the defined town centre. This would have the effect of extending the level of evening noise/activity currently associated with the town centre into the residential part of Darlington Road. The appellant states that 75% of trade would be via telephone order/delivery. However, this forecast could prove to be incorrect and I consider that there is not a practical way to limit the number of customers visiting the outlet themselves. In any case, the frequent comings and goings of delivery vehicles would be likely to cause disturbance to the local residents in the late evening.

5. In my view the additional noise/disturbance resulting from the proposal would materially harm the living conditions of the residents living in close proximity to the appeal premises. I find, therefore, that the proposal conflicts with policies H18 and S9 of the adopted Sedgefield Borough Local Plan. These policies indicate that proposals for shops should not significantly harm living conditions/amenities for nearby residents. As a proposal for a retail outlet, I am satisfied that the reference in these policies to "shops" applies to the appeal proposal.
6. I note that the outlet of the flue proposed at the rear of the premises, whilst close to neighbouring dwellings, would be above the height of these properties' windows. I therefore consider it unlikely that the proposal would result in significant odour problems for the surrounding residents. Nevertheless this does not negate my concerns about the proposal set out above.
7. Local residents and the Town Council have also raised concerns about parking and highway safety. It appears to me that there is no off-street parking in the immediate vicinity of the proposal. Therefore, despite the existence of parking restrictions to the front and side of the appeal premises, I consider it likely that some customers of the takeaway would park close to either the pedestrian crossing on Darlington Road or on the Eamont Road/Darlington Road junction. In my judgement the obstruction of visibility caused by such parking, even if only for a few minutes, would be prejudicial to highway safety, particularly for pedestrians. Therefore, whilst I note that the Highway Authority has not objected to the proposal, these concerns have added weight to my decision.
8. For the above reasons I conclude that the appeal should be dismissed.

Malcolm Rivett

INSPECTOR



Appeal Decision

Site visit made on 6 August 2007

by **A C Pickering** FRTPI

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

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Date: 21 August 2007

Appeal Ref: APP/M1330/A/07/2040275
61 Dean Park, Ferryhill DL17 8HR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by R E Arrand against the decision of Sedgefield Borough Council.
- The application Ref 7/2006/0570/DM, dated 5 September 2006, was approved on 2 November 2006 and planning permission was granted subject to conditions.
- The development permitted is the construction of fencing, decking, and conservatory and a shed.
- The conditions in dispute are Nos. 2, 3 and 5 which require obscure glazing to be installed in the conservatory and the shed and the reduction in height of the side boundary panels.
- The reasons given for the conditions are to safeguard neighbouring amenity and to ensure that development is carried out in accordance with the approved documents.

Summary of Decision: The appeal is allowed, and the planning permission varied in the terms set out below in the Formal Decision.

Main issue

1. The main issue is the effect of the development on residential amenity.

Reasons

2. Condition no.2 entails the obscure glazing of the top lights of the conservatory that face the neighbouring property. I take it this means the opening fanlights on the east side elevation and the adjoining splayed elevation. In my opinion this requirement is not necessary to protect the privacy of the household next door. As part of the proposals the Council has approved the erection of a 2m high fence along the party boundary for a depth that would project about 1.6m beyond the outstand of the conservatory. The drawings indicate that only the top portion of the fanlights would be observed above the fence. I consider it is most unlikely that a person standing within the conservatory would be readily observable from the garden of no.60 Dene Park or would be able to easily see into the garden or otherwise create an intrusive or overlooking impression.
 3. Condition no.3 involves the side shed window immediately adjacent to the garden of no.60. Although there is an intervening slatted timber fence I can understand that irritating circumstances might arise because of the outlook from this window, so I think the condition is justified. However any problem could be overcome by the application of an opaque film, as effectively as obscure glazing, and the condition will be adjusted to permit that flexibility.
 4. The application was amended by the applicant's letter received on 30 October by a reduction of 100mm in the height of the panel and half-panel around the
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decking along the boundary between nos.60 and 61. It is this amendment to which condition no.5 applies. I note the appellant's desire to withdraw the amendment. In my judgement the higher level of fence at this point is desirable to provide more amenity protection for the neighbours from people sitting or relaxing on the decking and given the appellant's intention I see no need for the retention of condition no.5.

5. For these reasons and having regard to all other matters raised I have decided that the appeal should succeed. I will vary the planning permission by deleting conditions nos.2 and 5 and substituting condition no.3.

Formal Decision

6. I allow the appeal, and vary the planning permission Ref 7/2006/0570/DM for the construction of fencing, decking, a conservatory and a shed at 61 Dean Park, Ferryhill granted on 2 November 2006 by Sedgefield Borough Council, by deleting conditions 2, 3 and 5 and substituting the following condition:
 3. *The eastern side window of the shed hereby approved shall be permanently opaque glazed in accordance with details to be submitted to and approved by the local planning authority within three months of the date of this permission.*

A C Pickering

Inspector