

Appeals Received North Sunderland

Between 01/01/2010 and 31/01/2010

<u>Ref No</u>	<u>Address</u>	<u>Description</u>	<u>Date Appeal Lodged</u>
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Appeals Determined North Sunderland

Between 01/01/2010 and 31/01/2010

Team	Ref No	ADDRESS	Descriptio	Appeal Decision	Date of Decision
N	09/00037/REF	8 Ethel Terrace Sunderland SR5 3BQ	Change of use from shop (A1 USE) to hot food takeaway (A5 USE)	DISMIS	26/01/2010



Appeal Decision

Site visit made on 12 January 2010

by **J Chance** BSc DipTP MRTPI

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

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Decision date:
26 January 2010

Appeal Ref: APP/J4525/A/09/2114411
8 Ethel Terrace, Castletown, Sunderland, Tyne & Wear SR5 3BQ

- 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/E Forster 2004 Trust against the decision of Sunderland City Council.
- The application Ref 09/01542/FUL, dated 15 April 2009, was refused by notice dated 15 June 2009.
- The development proposed is a change of use from A1 (shops) to A5 (Hot Food Takeaway).

Decision

1. I dismiss the appeal.

Procedural Matter

2. On the application form the applicant's details were as above and appeared to be incomplete. The appeal form makes reference to Mr Ian Forster (E Forster 2004 Trust) and I have assumed that this is what was intended for the applicant's details and have determined the appeal on this basis.

Main Issues

3. The main issues are:
 - (a) the effect of the proposed development on the living conditions of the occupiers of nearby residential properties, paying particular attention to noise and disturbance and smells; and
 - (b) the effect of the proposed development on the Council's masterplan strategy for Castletown.

Reasons

Effect on the Living Conditions of the Occupiers of Nearby Residential Accommodation

4. The appeal property is a single-storey unit located on the south side of Ethel Terrace within the local shopping centre which is represented at ground floor level by a variety of shops, two existing hot food takeaways and a bookmakers. The appeal unit has been vacant for several years, having last been used as a butchers. The appeal property is located between the bookmakers and a flower shop, which the appellant indicates is now vacant.

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5. The majority of the properties within this part of the shopping centre have living accommodation at first floor level, much of which appeared on my visit to be unoccupied, in line with the information in the appellant's Statement. I understand that the first floor living accommodation above the flower shop is currently vacant. One of the properties on the north side of Ethel Terrace within this part of the shopping centre is a dwelling.
6. The appellant proposes to locate the flue from any extraction system alongside and up the gable wall of the adjacent property, No 6 Ethel Terrace, at first floor level. I saw that No 6 has a blank gable side elevation facing towards the appeal property. While I note the previous appeal Inspector's concerns about the adverse effects of cooking odours on the occupants of that first floor accommodation, I consider that, with careful detailed design of the flue which would broadly follow the adjacent gable wall, it would be possible for most of the time to avoid adverse discharges of such odours in the vicinity of habitable room windows at No 6. Furthermore, like the previous Inspector, I find it unlikely that there would be potential for many other residents of Ethel Terrace to be adversely affected by cooking odours.
7. I have also taken account of the intention to incorporate a modern carbon filtration system within the design of any extraction/ventilation system. While it is never completely possible to eliminate all cooking smells, I consider that through the imposition of planning conditions to ensure satisfactory design of the full extraction/ventilation system including the design and location of the flue, it would be possible to adequately mitigate the adverse impacts of such odours and prevent unacceptable smell nuisance for nearby residents.
8. Turning to the matter of noise and disturbance, I have had regard to the appellant's survey information concerning the method of arrival of customers to the existing fish and chip takeaway on the opposite side of Ethel Terrace. I note the restricted nature of the survey and I have doubts about the assumption that the pattern of the survey findings would apply to this proposal. Nevertheless, even if I were to accept that future customers of this proposed hot food takeaway would travel similarly, on average nearly 30% of customers would arrive by car, rising to about 50% at particular times.
9. Those cars would be likely to park or wait outside or close to the premises on Ethel Terrace. Given that there would still be some car-borne customers visiting the fish and chip takeaway opposite, it would be likely that the area of parking for takeaway food would be extended beyond its present limits, so affecting more residential occupiers. Local residents already refer to noise and disturbance from the existing takeaways within the shopping centre. In my view, noise and disturbance from the starting of vehicle engines, shutting of car doors, car radios and vehicles undertaking turning and parking manoeuvres in connection with visits to the proposed takeaway would be clearly evident to nearby residential occupiers.
10. Furthermore, as referred to by the previous appeal Inspector, conversations in the street would also be a further source of noise, whether between individual customers or groups of people who had arrived on foot or between people who were walking to and from their cars. There would, in my opinion, be an increased likelihood of this with two takeaway premises operating on opposite sides of the street. In addition, it would be likely that there would be further

noise and disturbance associated with groups of people lingering outside the premises to eat their food. If such movement and activity were to take place in the late evening at a time when residential occupiers should be able to enjoy relative peace and quiet when most of the smaller shops would be shut, this would cause additional noise and disturbance over and above the levels which those occupiers already experience and find unacceptable.

11. I have taken account of the appellant's comments regarding a willingness to accept a condition preventing the operation of a delivery service. However, whether or not a delivery service was operated, there would still, in my view, be additional noise and disturbance associated with the comings and goings of vehicles to and from the proposed takeaway, whether belonging to direct customers or delivery staff, which would disrupt the peaceful enjoyment by nearby residential occupiers of their homes. Moreover, even if not all the upper floor residential accommodation is currently occupied, there is no reason why this should continue to be the case in the future, particularly if regeneration of the local centre and the surrounding area were to occur. Allowing this appeal would be prejudicial to the living conditions of future occupiers of first floor residential accommodation, as well as to existing residents, through late evening noise and disturbance.
12. I have had regard to the appellant's proposal to incorporate noise attenuators into the design of the flue. While this would assist in mitigating any transferred noise from the cooking process, it would not assist in reducing noise and disturbance outside the premises by customers arriving on foot and by car.
13. I note that the appellant proposes a similar closing time of 22:30 to the fish and chip takeaway opposite and indicates that he would be prepared to accept a condition not to open on Sundays. I accept that some of the larger retail units are open in the evenings. However these still close before 22:30 and are unlikely to encourage groups of people to linger outside them eating hot food. I understand from the appellant that Mario's Pizza at the other end of the centre remains open later. Nevertheless, even with a closing time limited to 22:30 I consider that there would be an unacceptable increase in the level of evening noise and disturbance experienced by nearby residential occupiers, if I were to allow this appeal.
14. I have been provided with copies of appeal decisions for other sites, as well as with a previous appeal decision for this site. I note the different views of other appeal Inspectors on various criteria set out under section 9.1 a. of the Council's Supplementary Planning Guidance Development Control Guidelines on Class A3 Uses (SPG), notwithstanding that the use class references have been subject to subsequent amendment. Nevertheless, the main thrust of criterion (i) is the protection of residential amenity from noise and general disturbance associated with food preparation and vehicle and pedestrian movement relating to hot food takeaway uses. Similarly criterion (iii) seeks to prevent car parking connected with hot food takeaways causing nuisance to nearby residents in the evenings.
15. I have also taken into account the intentions of criterion (iv) of the SPG to gain benefit through attracting a new use to a run down or declining group of shops, where the judgement against other criteria is finely balanced. While I accept that there would be benefits to the use of this unit which has been vacant for

several years, the judgement against other criteria is not finely balanced because, even though I have found that odour would not be a serious problem, the additional noise and disturbance would be significantly detrimental to the living conditions of nearby residential occupiers, and therefore contrary to the general intentions of criteria (i) and (iii) of the SPG. As the proposed use would have a detrimental effect on the living conditions of nearby residents through unacceptable noise and disturbance, it would conflict with the intentions of Policy S12 of the City of Sunderland Unitary Development Plan (UDP). It would also be contrary to criterion (b) of UDP Policy S3, as it would conflict with the established residential use within the local centre. Since, when assessed on its own merits, this proposed development would unacceptably harm the living conditions of the occupiers of nearby residential properties, it would be contrary to UDP Policy S11.

Effect on the Council's Masterplan Strategy for Castletown

16. I note the appellant's views about the prematurity of the Castletown Masterplan Interim Supplementary Planning Document (SPD) with respect to improvements to local retail provision at Ethel Terrace, given the lack of identified funding, current market conditions and the need for further consultation. Nevertheless, paragraph 6.43 of that SPD cites improvements to this local retail centre as a key component of the masterplan strategy. Furthermore, the SPD was approved in December 2008, following public consultation, and is therefore a material consideration of some weight, despite its lack of formal adoption.
17. Paragraph 6.47 refers to redevelopment to the south of Ethel Terrace to provide new modern shopping provision. While there is also reference to flexibility to permit other supporting uses, I note that takeaway outlets are not included in the list, although restaurants and cafes are.
18. Paragraph 6.46 states that it is the aim of the masterplan to support Ethel Terrace to become a more attractive and vibrant local centre. This would clearly be desirable, given the present nature of the centre with its numerous vacant premises. Furthermore, paragraph 6.51 explains that the improvements to this retail area would both serve the households from, and complement the improvements to, the adjacent housing area.
19. Although the proposed use would only affect one small unit within the retail centre, it would not be in line with the uses envisaged in the larger scheme for the overall area, even though it might bring use back, possibly only for a relatively short time, to a unit which has been vacant for a long time. If such a pattern were to be repeated at other units, this would amount cumulatively to development which could make it more difficult to achieve the aims and objectives set out in the masterplan and so take longer to bring much needed comprehensive improvement to the area.
20. I therefore conclude that allowing the proposed development would be contrary to the intentions of the masterplan strategy for Castletown, as set out in the SPD, and adversely affect the Council's future implementation of it. This would add to the harm I have identified above to the living conditions of nearby residential occupiers.

Other Matters

21. I have had regard to the appellant's points regarding lack of interest in the unit despite a marketing campaign, benefits of re-use of a brownfield building in a sustainable area and that the current appearance of the unit contributes towards the appearance of a centre in decline. While I agree it would be of benefit for the unit to be used again, the proposed use would result in increased noise and disturbance for local residents and would not be in accordance with the uses listed in the masterplan strategy. Notwithstanding that other appeal decisions allowed takeaway uses at other sites, in this particular case the proposed development would be unacceptable.
22. I have taken account of other concerns raised relating to highway safety matters, encouragement of the congregation of youths particularly in the evenings, increased litter and the lack of need for more takeaways. However, I consider that there would be little adverse impact on the safety of pedestrians and other highway users and I see no reason why use of the nearby bus stop should be impeded. I note the appellant's intention to provide a litter bin for customers. Nevertheless, these matters do not change my conclusions on the main issues.

Conclusion

23. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

J Chance

INSPECTOR