
Appeals Received South Sunderland

Between 01/06/2009 and 30/06/2009

Ref No	Address	Description	Date Appeal Lodged
09/00022/REF	Cedars Cottage Belford Road Sunderland SR2 7TJ	Erection of single storey and two storey extension to front (south elevation), rear (north elevation) and sides (east/west elevation) to include alterations to existing roofline.	16/06/2009
09/00024/REF	MGT Paving And Garden Ltd Pallion New Road Sunderland SR4 6UA	Retrospective change of use from waste transfer station to garden and block paving supplies but keeping existing non ferrous metals operation and erection of portacabin.	25/06/2009

Appeals Determined Sunderland South

Between 01/06/2009 and 30/06/2009

TEAM	Ref No	ADDRESS	Description	Decision	Date of Decision
	08/00052/COND	Bengal Spice Tandoori 21-22 Melbourne Place Sunderland SR4 8LN	Variation of condition 2 on appeal 88/00011/WR to allow business to trade on Sunday.	DISMIS	04/06/2009
	09/00005/ADV	Petrol Filling Station 22- 23 Pallion Road Sunderland SR4 6LS	Erection of 1no. 48-sheet hoarding sign.	DISMIS	10/06/2009
	09/00006/REF	1 Durham Terrace Sunderland SR 3 1BW	Change of use from retail (Class A1) to hot food takeaway (Class A5).	DISMIS	05/06/2009



Appeal Decision

Site visit made on 1 June 2009

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

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

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Decision date:
4 June 2009

Appeal Ref: APP/J4525/A/08/2091419

Bengal Spice, 21 Melbourne Place, Sunderland, SR4 8LN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Syed Ahmed against the decision of Sunderland City Council.
- The application Ref 08/03265/VAR, dated 15 August 2008, was refused by notice dated 10 October 2008.
- The application sought planning permission for change of use from a retail shop to a take away hot food shop without complying with a condition attached to planning permission Ref T/APP/J4525/A/89/114039/P4.
- The condition in dispute is No 2 which states that: the premises shall not be open for business before 09:00 hrs nor after 23:30 hrs on Mondays to Saturdays nor at any time on Sundays.

Preliminary matter

1. The appellant indicates that he wishes the disputed condition to be varied to permit opening of the takeaway on Sundays.

Decision

2. I dismiss the appeal.

Main issue

3. The main issue of the appeal is the effect of the proposed Sunday opening on the living conditions of nearby residents, having particular regard to noise/disturbance and odours.

Reasons

4. Bengal Spice is situated at the end of a short parade of shops and is separated from residential properties (3-17 Melbourne Place) by a service road. Given its proximity to these dwellings I envisage that the noise of customers arriving at/departing from the takeaway, by both car and on foot, can be heard from, at least, the nearest dwelling, no 17. I also note that what appears to be the premises' flue is located at the rear of the property where westerly winds would blow its vapours towards the rear windows and back gardens of the Melbourne Place dwellings. In my view these effects have the potential to cause harm to the living conditions of the nearby residents. Indeed, despite the appellant's statement that no complaints about odours have been made, a resident at no 7 (five properties away from the takeaway) indicates that cooking fumes are a problem and prevent him from using his garden.

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5. I note that when permission was granted for the takeaway Sunday opening was expressly prevented in order not to extend the hours during which there is activity at the shopping parade, its other takeaway being closed on Sundays. I also understand that an application for Sunday opening was refused, and dismissed at appeal, in 2002/2003, on the basis that, given the proximity of residential properties, it would be inappropriate to extend the hours of commercial activity at the shopping parade.
6. I am not aware that there has been any material change in circumstances since 2003 and it appears that the other premises in the parade remain closed on Sunday evenings. In the absence of other similar activity in the vicinity at this time I consider that permitting the appeal premises to open on Sundays would unacceptably extend the amount of time the nearby residents are subject to adverse effects on their living conditions. Varying the condition as sought by the appellant is therefore inappropriate and conflicts with the intention of policy S12 of the adopted *City of Sunderland Unitary Development Plan* (UDP) which indicates that permission for hot food takeaways will be granted unless they have a detrimental effect on residential amenity.
7. The appellant believes he is at a competitive disadvantage because other takeaways in the surrounding area are permitted to open on Sundays, which he indicates is a prime trading day. However, I understand that these are either further from residential properties than is Bengal Spice, were granted permission 30 or more years ago (before the adoption of the UDP) or are operating in breach of a condition. Consequently, I consider that these other takeaways, and any competitive disadvantage which may exist, do not justify allowing the appeal, bearing in mind the harm I have found varying the condition would cause.
8. For the above reasons I conclude that the appeal should be dismissed.

Malcolm Rivett

INSPECTOR



Appeal Decision

Site visit made on 2 June 2009

by **J S Deakin FRICS**

an Inspector appointed by the Secretary of State
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Decision date:
10 June 2009

Appeal Ref: APP/J4525/H/09/2098447

Petrol Filling Station, 22-23 Pallion Road, Sunderland, SR4 6ND

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is made by Clear Channel UK Ltd against the decision of Sunderland City Council.
- The application Ref 08/04693/DV, dated 15 December 2008, was refused by notice dated 6 February 2009.
- The advertisement proposed is one x 48 sheet freestanding advertising panel.

Decision

1. I dismiss the appeal

Main Issues

2. I consider that the main issues are the effect of the panel on the visual amenity of the area, and its impact on public safety.

Reasons

3. The appeal site is at the end of a block of commercial development which extends northwards from the Hylton Road/Pallion Road junction. Further to the north, and to the west, there is mainly residential development with very little commercial activity.
4. The advertising panel would be about 6.1m wide by 3.05m high with an overall height at the Pallion Road end of approximately 4.25m. When approaching from the north, the back of the panel would have a limited impact as it would be partially screened by the adjoining houses. However, the panel would be a substantial feature in the street scene when viewed from the south and west. It would be clearly visible across the petrol station forecourt and would obscure a large part of the gable wall of the end-terrace house at 19 Pallion Road. I appreciate that it would be seen in conjunction with the commercial buildings and activity on the forecourt but it would be on the northern edge of the site immediately adjoining a residential area.
5. The panel would have no visual impact on the adjoining houses but would be seen, albeit at an angle, from the dwellings on the opposite side of Pallion Road and from Highfield.
6. I conclude that, at this point on Pallion Road, the residential character of the area has a stronger visual influence than the commercial character. In my opinion, such a large, prominent sign on the edge of a mainly residential area



would cause unacceptable harm to the visual amenity of the street scene and to local residents.

7. The Council says that existing visibility at the junction of the vehicle access and Pallion Road is sub-standard as it does not meet the relevant sight line standards. The advertising panel would be set back about 3.2m from Pallion Road and would cause some additional obstruction to the southwards visibility of drivers emerging from the access. Nevertheless, the access appears to be lightly used as it only serves three dwellings and the yard of commercial premises. Whilst I accept that the panel would reduce visibility to some extent, I conclude that, having regard to the present sub-standard sight lines and the low volume of traffic, the increased harm to public safety would not be sufficient to justify dismissing the appeal on that ground alone.
8. The Council refers to Policies B2, B21, and T14 of City of Sunderland Unitary Development Plan and to Topic 12 of Development Control Supplementary Planning Guidance. The Regulations require that decisions be made only in the interest of amenity and, where applicable, public safety. Therefore, the Council's policy alone cannot be decisive. However, I have taken the policies into account as a material consideration in my determination of the appeal.

JS Deakin

INSPECTOR



Appeal Decision

Site visit made on 1 June 2009

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

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

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Decision date:
5 June 2009

Appeal Ref: APP/J4525/A/09/2098403

1 Durham Terrace, Silksworth, Sunderland, SR3 1BW

- 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 Pauline Carl against the decision of Sunderland City Council.
- The application Ref 08/03950/FUL, dated 14 October 2008, was refused by notice dated 4 December 2008.
- The development proposed is change of use from use as retail (Class A1) to hot food retail (Class A5).

Preliminary matter

1. The planning application form describes the proposal as change of use to hot food retail (Class A3). However, it is clear that the proposal is for a hot food takeaway, which now falls within Use Class A5, and I have therefore determined the appeal on this basis.

Decision

2. I dismiss the appeal.

Main issues

3. The main issues of the appeal are the effect of the proposal on highway safety and on the living conditions of neighbouring residents having particular regard to odours and noise/disturbance.

Reasons

4. To the front of the appeal premises, and continuing for some distance along Durham Terrace, there is a parking bay and additional unrestricted parking is available, a few moments walk away, in the road linking Durham Terrace with its back lane. Given this I am satisfied that sufficient safe on-street parking exists in the locality to cater for the demands likely to arise from the proposal. To my mind the reversal of vehicles onto/off the proposed on-site parking spaces, crossing the footway and close to the junction of Durham and Warwick Terraces, would be prejudicial to vehicular and pedestrian safety. However, I agree with the appellant that its provision is not necessary to the acceptability of the proposal and, therefore, its use could be prevented by a condition of planning permission.
5. I thus conclude that, suitably conditioned, the proposal would be unlikely to cause any significant highway safety problems and that it consequently has no conflict with the requirement of policy T14 of the adopted *City of Sunderland*



Unitary Development Plan (UDP) that new development should not cause highway safety problems.

6. It is proposed that the property's existing, roof-ridge, chimney would be the outlet for the takeaway's ventilation system. This is considerably higher than the windows of any neighbouring properties and thus it appears to me that, assuming appropriate installation/operation/maintenance of the system (which can be ensured by condition), no significant problems of odours would be caused to residents in the vicinity.
7. The entrance door of the premises is approximately 5m from the bay window of 4 Durham Terrace, above which is what appears to be a bedroom window. The front of nos 4 – 10 Durham Terrace are also very close to the on-street parking bay likely to be used by customers of the proposal. Given this I envisage that the arrival/departure of the takeaway's customers (whether on foot or by car) would be readily heard by the residents of these properties. I note that the Council's Environmental Health department did not object to the proposal. Nonetheless, I consider that, in the mid-late evening and given the likely number of customers visiting the proposal, this noise would have the potential to cause unacceptable disturbance to the occupants of no 4 and, to a lesser although still material degree, those of nos 6-10, harming their living conditions.
8. Whilst the appellant indicates that she would be receptive to a reasonable restriction on opening hours she also states that these would need to be commercially viable. Whilst the appeal evidence gives no indication of what such restrictions might be I note that the planning application form refers to a Monday - Saturday closing time of "potentially 10pm". However, even at this time I envisage that the comings and goings associated with the proposal would be likely to disturb the residents adjoining the premises. Reference is made to the potential for double glazing "to assist with potential acoustic issues", although it is unclear to me what is proposed and how this would eliminate problems of disturbance.
9. I conclude, therefore, that the proposal conflicts with UDP policies S12 and B2 which indicate that hot food takeaways will be permitted unless they would have a detrimental effect on residential amenity and that the setting of new development should respect nearby properties. It also conflicts with the guidance in section 9 of the *Development Control Guidelines Supplementary Guidance to the UDP* which indicates that takeaways will not normally be permitted where the principal elevation of the nearest dwelling house is less than 50m away.
10. I recognise that the pub on the opposite side of Durham Terrace means that there is likely to be some existing evening activity and noise in the area. However, it is some 20m or so from no 4 and therefore I envisage that activity associated with it (including customers smoking outside) is unlikely to disturb this property's occupants in the way that I have found would be likely with the, much closer, appeal proposal. That only two residents have submitted formal objections to the proposal is not good reason to allow it, given the harm I have found it would cause and I note that one of the objectors is the resident of no 4, the dwelling I have identified would be likely to be most affected by the scheme.

11. Reference is made to a recent approval for residential development on the site of the former Warwick Garage, near to an existing takeaway. However I am unclear as to precisely where this is and I have seen nothing to indicate that this development is as close to the takeaway as the proposal would be to 4 Durham Terrace.
12. Whilst I have found the proposal to be acceptable in terms of highway safety and odours it would be likely to cause significant harm to neighbouring residents in terms of noise/disturbance, which I consider alone justifies the refusal of permission. I have reached this conclusion bearing in mind the improvements to the physical appearance of the property, local convenience provision and employment opportunities that it is stated the scheme would bring about. For the above reasons, and having regard to all other matters raised, including the appellant's comments on the adequacy of the officer's delegated report, I conclude that the appeal should be dismissed.

Malcolm Rivett

INSPECTOR