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## Appeal decision

Site visit made on 3 April 2012

by **Mike Croft MA DipTP MRTPI**

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

Decision date: 23 April 2012

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### Appeal ref APP/H0738/A/12/2169176

#### 373 Thornaby Road, Thornaby, Stockton-on-Tees, TS17 8QN

- 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 K Amin against the decision of Stockton-on-Tees Borough Council.
- The application (ref 11/0650/FUL), dated 11 March 2011, was refused by notice dated 28 November 2011.
- The development proposed is change of use from Class A1 to Class A5 with external alterations.

**Summary of decision: the appeal is allowed and planning permission is granted subject to conditions set out in the formal decision below.**

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#### Inspector's reasons

1. The main issues are whether the change of use in question would (a) cause danger for users of the highway and/or (b) seriously harm the living conditions of local residents.
  - a. *Highway danger*
2. The Council considers that the proposed takeaway would generate unacceptable levels of traffic to the detriment of highway safety. It claims that a large proportion of the takeaway's trade would come from people driving to the premises, that cars would be unlikely to use the car park in front of the premises, that this would add to the number of cars being parked on the surrounding streets, blocking driveways and footways, and leading to highway safety problems.
3. I accept that the takeaway would be well located to draw trade from an area beyond the immediate locality. But that is also true if the now-vacant unit here were to be occupied, as it lawfully could be, by an A1 (shop) use. As a case in point, the existing aquatics shop in the adjacent unit is clearly a specialised retail use which is likely to cater for more than the immediate residential neighbourhood. I note local residents' concerns about additional traffic, but some of these concerns, at least, appear to be based on a comparison with the present circumstances of the unit in question being vacant. The Council, too, took the view that "no matter was [*sic*] went into

the unit significant traffic would be generated ...". But these are false comparisons, the proper comparison being between the unit being used as a takeaway and an active shop use. I saw also that this part of Thornaby Road is more or less straight, and there is generally satisfactory visibility at road junctions.

4. Local residents express some concern particularly in relation to inappropriate parking that already arises. But I remain of the view that it has not been demonstrated that the proposed takeaway would be materially worse in this respect than a retail shop.
5. I conclude that the arguments against the project on highway safety grounds have not been substantiated. I see no conflict with the highway engineering component of policy S14(i) of the Stockton-on-Tees Local Plan Alteration Number 1 (2006).

*b. Local residents' living conditions*

6. The Council contends that the proposed takeaway would have an unacceptable impact on the neighbouring residential area because of noise disturbance, anti-social behaviour and litter, making the area less pleasant to live in.
7. I accept that problems of this sort can arise near takeaways. The Council's officer, who recommended that permission be granted, saw a relationship between the potential for problems of this kind here and the opening hours of the proposed takeaway. The application form to the Council indicates that at that stage the appellant was seeking opening hours of 1630 to midnight on Mondays to Saturdays and 1800 to 2300 on Sundays and bank holidays. The Council's officer recommended the imposition of a permission restricting the use to 0600 to 2200 hours on any day. That was put forward on the basis of similar conditions (with opening to 2130 or 2200) applying to the appeal premises and its commercial neighbours, but with the Red Rose Chippy on Laburnum Avenue about 70 m or so from the appeal premises not being subject to any planning condition limiting opening hours and in fact opening until midnight. The officer took the view that limiting the opening hours to those he recommended would produce no significant increase in the levels of activity and disturbance beyond those already agreed as part of the established retail permissions in the vicinity.
8. Given the absence of evidence about additional noise and disturbance being brought to the area by a takeaway use at the appeal premises, I consider that the Council officer's analysis deserves support. So far as noise, disturbance and anti-social behaviour are concerned, therefore, I am not satisfied that the appeal project ought to be rejected.
9. As to litter, the Council argues that, in view of the opening hours suggested in its officer's report, the takeaway would be predominantly used by children and that would increase the possibility of litter. This argument seems tenuous to me, as there would be fewer children at more extended (later) hours. The provision of a litter bin would in any case be likely to assist, and that could be required through a condition on a permission.
10. Some local residents object on the basis of cooking smells resulting from the takeaway use. However, the Council's Environmental Health Unit had no

objections in principle, and again a condition could be imposed on a permission to require a fume extraction system.

11. I come to the conclusion that, with appropriate conditions, the takeaway would be satisfactory in relation to issue (b). It would not conflict with the amenity elements referred to in policies S14(i) and S14(ii) of Local Plan Alteration Number 1.

*Overall conclusions and conditions*

12. My decision to grant permission arises from my favourable conclusion on the appeal project on both main issues. The Council has drawn my attention to a number of elements in the National Planning Policy Framework, published in March 2012, particularly about amenity, noise and disturbance, and highway safety. I have dealt with those elements above. The Framework also says significant weight should be placed on the need to support economic growth, and the fact that the appeal premises have long been vacant supports the appeal project in that respect.
13. The Council suggests the imposition of four conditions in the event of permission being granted – the same four as would have been imposed if the Council had accepted its officer's recommendation. The appellant does not object to the opening hours condition, although the limits are different from those he put forward in his application to the Council. I do not impose a requirement for a grease trap, that being a matter for the Building Regulations. I follow the thrust of the Council's other suggestions, for the reasons that they put forward. I also add further conditions giving a time-limit for the permission and, arising from my remarks at paragraph 9 above, relating to a litter bin.

**Formal decision**

14. I allow the appeal and grant planning permission for change of use from Class A1 to Class A5 with external alterations at 373 Thornaby Road, Thornaby, Stockton-on-Tees, TS17 8QN, in accordance with the terms of the application ref 11/0650/FUL, dated 11 March 2011, subject to the following conditions:
  1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
  2. The development hereby permitted shall be carried out in accordance with the following approved plans: drawing nos 001 (existing site location), 01 (existing ground floor), 02 (existing first floor), 03 (existing elevations), 04 (proposed ground floor), 05 (proposed first floor) and 06 (proposed elevations).
  3. The use hereby permitted shall not be open for customers outside the hours of 0600 to 2200 on any day.
  4. Before the use hereby permitted begins, equipment to control the emission of fumes and smell from the premises, consistent with approved drawing 06, shall be installed in accordance with details previously submitted to and approved in writing by the local planning authority. All such equipment shall thereafter be retained and shall be operated and maintained in accordance with the manufacturer's instructions.

5. Before the use hereby permitted begins, a litter bin shall be installed in accordance with details previously submitted to and approved in writing by the local planning authority. The approved bin shall thereafter be retained.

*Mike Croft*

Inspector



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## Costs decision

Site visit made on 3 April 2012

by **Mike Croft MA DipTP MRTPI**

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

Decision date: 23 April 2012

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### **Costs application in relation to appeal ref APP/H0738/A/12/2169176 373 Thornaby Road, Thornaby, Stockton-on-Tees, TS17 8QN**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr K Amin for a full award of costs against Stockton-on-Tees Borough Council.
  - The appeal was made against the refusal of planning permission for change of use from Class A1 to Class A5 with external alterations.
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### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **Inspector's reasons**

2. Circular 03/2009, "*Costs awards in appeals and other planning proceedings*", advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
  3. As the appellant points out, the Council disagreed with its officer's recommendation which was to grant permission. The officers had commented that there was no reason to refuse permission on the basis of levels of activity and disturbance, on highways grounds or in relation to environmental health.
  4. In response, the Council is right to remind me that Circular 03/2009 makes clear that planning authorities are not bound to accept officers' recommendations. The Council says that the amenity matter in question here (which is issue (b) in my appeal decision) is one of judgement. It also says that judgement was applied to highway safety matters (issue (a) in my appeal decision).
  5. I disagree with the appellant when he says that the matter at issue was not one of judgement. But Circular 03/2009 also gives guidance, in paragraph B18 of its Annex, about the assessment of matters of judgement. Two sentences from that paragraph are worth quoting in full: "Where the outcome of an appeal turns on an assessment of such issues it is unlikely that costs will be awarded if realistic and specific evidence is provided about the consequences of the proposed development. On the other hand vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any
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objective analysis, are more likely to result in a costs award." I appreciate that the Council had before it a concern from Cleveland Police that the proposed takeaway would lead to an increase in calls relating to noise and disturbance, but this did not amount to evidence that was at all specific. Overall, it is clear that the basis for the Council's refusal fell very much within the scope of the second of the two sentences I quote above from Circular 03/2009 insofar as it relates to vague and generalised assertions.

6. As I indicate in my appeal decision, some of the local residents' concerns about traffic matters – clearly given considerable weight by the Council – appear to be based on a comparison with the present circumstances of the appeal shop being vacant, but that is a false comparison. The impact on local residents' living conditions was carefully assessed in the Council officer's report to members, and there was little of substance to be set against that.
7. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and that a full award of costs is justified.

**Costs Order**

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Stockton-on-Tees Borough Council shall pay to Mr Kamran Amin the costs of the appeal proceedings described in the heading of this decision.
9. The applicant is now invited to submit to Stockton-on-Tees Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Mike Croft*

Inspector