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# Appeal Decision

Site visit made on 26 September 2011

**by Bern Hellier BA (Hons) MRTPI**

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

**Decision date: 4 October 2011**

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**Appeal Ref: APP/W0734/A/11/2155918**

**30 Kings Road, North Ormesby, Middlesbrough, TS3 6NF**

- 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 H Singh against the decision of Middlesbrough Borough Council.
  - The application Ref M/FP/0410/11/P, dated 6 April 2011, was refused by notice dated 31 May 2011.
  - The development proposed is change of use from shop (Use Class A1) to hot food takeaway (Use Class A5) and first floor self contained flat.
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## Decision

1. The appeal is allowed and planning permission is granted for change of use from shop (Use Class A1) to hot food takeaway (Use Class A5) and first floor self contained flat at 30 Kings Road, North Ormesby, Middlesbrough, TS3 6NF in accordance with the terms of the application, Ref M/FP/0410/11/P, dated 6 April 2011, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the plans submitted with the application.
  - 3) The premises shall not be open for customers outside the following times: 10:00 to 23:15 hours on Monday to Saturday and 12:00 to 22:00 hours on Sundays.
  - 4) Deliveries to and collections from the premises shall not be made outside the following times: 08:00 to 19:00 on Mondays to Fridays and 09:30 to 18:30 on Sundays.
  - 5) Before the use hereby permitted commences, a scheme for protecting the first floor flat and any adjoining residential accommodation from noise from the takeaway shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved before the use commences.
  - 6) Before the use hereby permitted commences, a scheme for the installation of equipment to control the emission of fumes and smells from the premises shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved before the use commences. All equipment installed as part of the

scheme shall thereafter be operated and maintained in accordance with the manufacturer's instructions.

### **Main issue**

2. I consider the main issue is the effect of the proposed change of use on the vitality and viability of the local shopping centre.

### **Reasons**

3. The appeal property lies within the North Ormesby Local Shopping Centre. It has most recently been occupied as a charity shop. It is in the northern section of Kings Road which, together with a return frontage onto the Market Place, has the greatest concentration of shops. At the time of my visit the area was busy although there were a number of premises, both retail and non retail, which were closed, with shutters down, some of which appeared vacant. The officer report to Committee refers to there being 8 vacant units out of a total of 42. There is a high proportion of non retail uses here, including five hot food takeaways. The proportion of Class A1 shops has fallen from 65%, at the time of a previous appeal in 2010<sup>1</sup>, to an estimated 54% today.
4. Like many traditional shopping streets there has been a gradual decline in the retail function of Kings Road. This is a national trend, reflecting changing shopping habits. The presence of a Sainsbury's supermarket immediately to the south will have contributed to the limited representation of food shops and internet shopping and retail parks have taken a growing slice of household retail expenditure. Takeaways provide a local service but need a central, accessible location that is not too close to housing. The Council acknowledges that, in principle, they are appropriate in local centres but considers their numbers have reached a level which harms the shopping function.
5. The application indicates that the proposed takeaway would not open until 16.00 hours. During much of the day it would not generate any footfall and would be likely to be protected by security shutters, creating a dead frontage. In this respect it would be similar to most of the other Class A5 uses in the centre. However the significant number of closed/vacant premises indicates a lack of demand for Class A1 units. In practical terms, dismissing this appeal would not increase the likelihood of a Class A1 retail use returning to the street. On the other hand the customer activity associated with the takeaway and the creation of a residential flat over the shop would generate investment and usage which would contribute positively to the economic health of the centre.
6. On balance I conclude that the proposal would not detract from the vitality and viability of the local shopping centre and that, as a consequence, it would accord with the relevant provisions of Policies CS13 and REG29 of the Local Development Framework<sup>2</sup>.
7. In coming to this conclusion I have taken account of regeneration activity in the area, including an improved road link to the A66, hard landscaping works to the public realm, a revamped market, new high density residential development and the opening of a health centre. This uplift in the surrounding

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<sup>1</sup> Appeal Ref APP/W0734/A/10/2121315 Change of use to hot food takeaway, 12 Kings Road, North Ormesby. Allowed 23 June 2010.

<sup>2</sup> Policy CS13 *A Strategy for the Town, District, Local and Neighbourhood Centres* in the Core Strategy adopted February 2008 and Policy REG29 *Local Centres* in the Regeneration Development Plan adopted February 2009.

- area provides welcome reinforcement to the service role of the local centre but the appeal property is only one of many opportunities for new Class A1 retail investment in Kings Road available to take advantage of this potential.
8. Some local businesses object on the grounds of potential nuisance to their customers from smells and from the attraction of vermin. However, the premises would be required to operate to appropriate hygiene standards. The emission of fumes and odour can be controlled by condition and I have used the wording applied to the recently allowed appeal at 12 Kings Road, which is clearer than that suggested by the Council.
  9. Further conditions would be needed to restrict times of opening and of deliveries in the interests of the amenity of the surrounding residential area. In relation to noise it would be necessary to agree a scheme to insulate the first floor flat. The Council refers to a neighbouring dwelling, whereas the adjoining premises are a hair and beauty salon and a dog grooming business. It is unclear as to whether there is residential accommodation above these so, as a precaution, I have included this possibility in framing the noise condition. Finally, I have imposed standard conditions relating to commencement and compliance with the approved plans.
  10. I have taken into account the representations made against the proposal by local businesses and the North Ormesby Community Council. Nonetheless, for the reasons given above, I conclude that the appeal should be allowed.

*Bern Hellier*

INSPECTOR