



Appeal Decision

Site visit made on 8 June 2010

by **John L Gray DipArch MSc Registered Architect**

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

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Decision date:
23 June 2010

Appeal Ref. **APP/W0734/A/10/2121315**

12 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 Hardip Singh against the decision of Middlesbrough Borough Council.
- The application, ref. M/FP/1395/09/P, dated 20 October 2009, was refused by notice dated 18 January 2010.
- The development proposed is the change of use from newsagent to hot food takeaway; storage area on the first floor to be converted to a flat; installation of illuminated sign and flue to rear.

Procedural matter

1. The installation of an illuminated sign falls to be dealt with under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. I am therefore deleting that element from the description of the development subject of this appeal. Also, the description of the flue as to the rear is ambiguous – the plan shows it to the rear of the original building rather than the building as it exists. I shall therefore delete that element of the description as well.

Decision

2. I allow the appeal and grant planning permission for the change of use of 12 Kings Road, North Ormesby, Middlesbrough, TS3 6NF, to a hot food takeaway on the ground floor and a flat on the first floor, in accordance with the terms of the application, ref. M/FP/1395/09/P, dated 20 October 2009, and the 1:1250 and 1:500 locations plans and drawings nos. 01/0 and 02/0 submitted with it, subject to the following conditions.
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) Before the use hereby permitted begins, 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 as approved shall be implemented. All equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the manufacturer's instructions.
 - 3) Before the use hereby permitted begins, a scheme for protecting the first floor flat from noise from the ground floor takeaway shall be submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before the first floor flat is occupied.
 - 4) The use hereby permitted shall not be open to customers outside the following times: 10:00-23:15 hours on Mondays to Saturdays and 12:00-22:00 hours on Sundays.
 - 5) Deliveries to and collections from the premises must not be made outside the following times: 08:00-19:00 on Mondays to Saturdays and 09:30-18:30 on Sundays.

Reasons

3. Kings Road appeared, when I visited it, to be busy and popular. The obvious length of street to look at is the one-way section at its northern end, plus James Street, where virtually all of the shops are located. Just under 65% of the 42 premises which I counted were in retail (Class A1) use, just over 20% in use for financial or professional services (Class A2), less than 15% in café/restaurant/takeaway use (Classes A3/A4/A5). That tallies with the Council's figure of 35% non-retail uses. The public house in James Street is clearly disused. A number of premises were shuttered but it was impossible to tell whether some were vacant or simply not open for business on the day (the Council says that there are 8 vacant units, which amounts to about 19% if it and I are addressing the same frontages). There was what appeared to be a popular open market on the land north of James Street when I visited the site (though I imagine it operates on only one or two days of the week). There is also a Sainsbury's supermarket immediately south of this section of Kings Road, which must, to some extent, help to maintain the flow of shoppers.
4. The proposed change of use would reduce the number of shops (by about 2.4%) to around 62% of the total number of units and increase those in café/restaurant/takeaway use to approaching 17%. That does not seem to me to amount to a significant change. I cannot imagine that a takeaway in this location would serve other than a local need. Its scale would fit with its surroundings. The evidence of my site visit and of the difficulties suffered by the (no longer) existing retailer suggest that, rather than causing material harm to the vitality and viability of Kings Road, the effective use of the building (for a flat as well as a takeaway) could actually prove beneficial, even if opening might differ from those of most shops. And, subject to conditions, there is no reason why there should be any adverse impact on the surrounding environment or the amenities of nearby residents or traders. Accordingly, I find no objection in terms of Local Development Framework Policies CS13 or REG29, cited in the reason for refusal, or even those policies referred to in the accompanying informative. I agree with the Council that there should be no objection to the proposed residential accommodation on the first floor.
5. The Council suggests a number of conditions, all but one of which I consider reasonable and necessary to secure a satisfactory standard of development. Details of equipment to control the emission of fumes and smell from the premises and the provision of sound insulation are appropriately required in the interests of the residents of the first floor flat and other nearby residences. Opening and servicing hours are appropriately controlled in the interests of the amenity of the area generally. I have numbered the plans in the permission itself. It is, however, wholly unclear what is meant by "building in accordance with secure design principles" or why what is proposed might not be so built; given the absence of precision, I have omitted that suggested condition.

John L Gray

Inspector