

Report to:	Planning Committee
Relevant Officer:	Gary Johnston, Head of Development Management
Date of Meeting:	5 April 2016

PLANNING/ENFORCEMENT APPEALS DETERMINED/ LODGED

1.0 Purpose of the report:

1.1 The Committee is requested to note the planning and enforcement appeals lodged and determined.

2.0 Recommendation(s):

2.1 To note the report.

3.0 Reasons for recommendation(s):

3.1 To provide the Committee with a summary of planning appeals for information.

3.2a Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

3.2b Is the recommendation in accordance with the Council's approved budget? Yes

3.3 Other alternative options to be considered:

None, the report is for information only.

4.0 Council Priority:

4.1 Not applicable

5.0 Background Information

5.1 Planning/Enforcement Appeals Determined

5.2 60 FOXHALL ROAD, BLACKPOOL (15/0277)

5.2.1 The appeal is made by Mr M Nief against a refusal to grant planning permission by

the Council for the change of use into a hot food takeaway (Use Class A5).

5.2.2 Decision- The appeal is dismissed.

5.2.3 Main Issue

The main issue is the effect of the proposed change of use on the living conditions of nearby residential occupiers in terms of odours, noise and additional late night activity.

5.2.4 Reasons

The appeal site is a vacant shop unit situated on the eastern side of Foxhall Road backing on to Dale Street Mews and the rear of properties on Bairstow Street. There are four flats above the premises and to either side are public house/entertainment venues. The general area is a mixed residential and commercial area, situated to the south of the Town Centre and close to the Promenade.

5.2.5 It is proposed to change the use of the ground floor unit to a hot food takeaway (Use Class A5) and to install an extraction flue on the rear of the building, terminating around 1 metre above eaves level. The application forms indicate that the business would operate daily from 10.00am until 5.00am on the following day, although the appeal representations give a closing time of 3.00am. The Council is concerned about the impact on residential amenity because of cooking odours and because of noise and disturbance from both the operation of the business and customers. In particular, the Council's concern is with the living conditions of the occupiers of the four flats directly above the proposed takeaway and in Dale Street Mews.

5.2.6 The appellant maintains that there is already considerable late night activity in the vicinity so that the business would be serving people already present in the area, not bringing in new customers. I saw that there is a pub/bar on the ground floor to either side of the appeal site and several other such establishments in the local area. The appellant states that the majority of these are open until between 2.00am and 3.00am, although there is no substantiated evidence to support this assertion or to show whether or not that applies to the venues adjoining the appeal site. Furthermore, the Council's Environmental Health Officer (EHO) states that such venues are subject to strict regulation via the licensing system and are not allowed to have doors and windows open and management/door staff have to ensure that customers disperse and leave the premises quietly. This would not apply to the proposed use, and it seems to me that the takeaway, possibly open later than other nearby venues, would mean that people are encouraged to stay in the area longer when they would otherwise disperse, resulting in more noise and disturbance in the street. There is no evidence of appropriate noise insulation between the ground floor shop unit and the flats above. With such late opening times proposed (be it 3.00am

or 5.00am) and seating for around 20 people inside the premises, the occupiers would not only be likely to experience noise and disturbance from customers arriving and departing, but also noise from the kitchen and the operation of equipment and extraction systems. Much of this activity would be at a time when they could reasonably expect peace and quiet to be able to sleep. The occupiers of the flats may currently be aware of night time activity in the general area, but not right under their homes.

- 5.2.7 The appellant argues that noise from the extraction system and flue can be attenuated. However the EHO comments that the decibel level for the extractor fan proposed is above the World Health Organisation's recommendations for night time noise so that it is extremely likely to impact adversely on residents' sleep. It may also not deal effectively with odours; post decision correspondence indicates that effective and quiet systems are expensive to install and maintain, so I am not wholly satisfied that, even if a condition were imposed to require details of an alternative system, that an acceptable solution which would be viable for a small business such as this, could be achieved.
- 5.2.8 In addition to noise from the extraction unit, it is highly likely that there would be noise at the rear of the premises emanating from the kitchen, staff putting refuse out in the yard, especially at closing time, and possibly standing outside during breaks. Dale Street Mews is an enclosed space and noise from such activity at the premises would easily carry to the surrounding residential properties and may even be intensified because of the enclosed space. In support of the appeal, the appellant has referred to two applications where the Council has approved takeaway uses where there was residential accommodation, unconnected to the proposed business, above. In addition, no opening hours restrictions were imposed. However I do not know the exact circumstances surrounding those approvals and I have to consider this appeal on its own merits. In my judgement, on the evidence before me, I find that the living conditions of the occupiers of the residential accommodation above and near the appeal site would be significantly harmed by the proposal.
- 5.2.9 It is suggested that I could impose opening hours restriction commensurate with other businesses in the area. However, as I have already noted, there is no precise information as to the opening hours of the adjoining premises. It is clear that the appellant wishes to stay open until at least 3.00am. As such, it would not be reasonable for me to impose a much earlier closing time which I consider would be necessary to protect the living conditions of the nearby residents. Moreover, this would not fully overcome my concerns about noise and disturbance.
- 5.2.10 I recognise that the National Planning Policy Framework promotes sustainable development and supports economic growth. The provision of another A5 use in the area may widen choice for customers, depending on the offer. Nonetheless, having identified significant harm to the living conditions of residential occupiers, I consider

that the proposal cannot be said to be sustainable in social and environmental terms. It would also be contrary to one of the core principles of the Framework which is to always seek a good standard of amenity for all existing and future occupants of land and buildings.

5.2.11 I conclude that the proposed development would not accord with saved policies BH3 and BH4 of the Blackpool Local Plan 2001-2016 (2006) and Policy CS7 of the Blackpool Local Plan: Part 1 – Core Strategy (submission version) (June 2014) which, among other things, seek to ensure that the amenities of nearby residents and potential occupiers are not adversely affected. It would also not accord with saved Local Plan policy BH17 which states that proposals for the development of hot food takeaway shops will not be permitted where they would have adverse effects on the amenities of residents in the surrounding vicinity, or with the Framework. For the reasons given above I conclude that the appeal should be dismissed.

5.3 **16 CARLIN GATE, BLACKPOOL, FY2 9QX (15/0595)**

5.3.1 An Appeal by Mr Mervyn Beevers against the Council's refusal to grant planning permission for a 1.85 metre garden wall with brick piers and timber infill panels. **Appeal dismissed.**

5.3.2 The Inspector considered the main issue to be the effect of the proposal on the character of the area.

5.3.3 The Inspector acknowledged that the proposal would be of a comparable height to an existing hedge at the property. However, in contrast to the soft appearance of the hedge, the proposed solid timber inserts and substantial brick wall sited in a prominent corner location would introduce a hard defensive feature into the street scene. Combined with the new wall's overall scale wrapping around the whole corner of the plot it would represent an incongruous feature that would be harmful to the character and appearance of the area.

5.4 **181 CLIFTON DRIVE, BLACKPOOL (14/0896)**

5.4.1 An appeal by Mr and Mrs Dunning against the refusal of planning permission for alterations to a front dormer and installation of a balcony. **Appeal dismissed.**

5.4.2 This application was refused under delegated powers on the basis that the proposed dormer extension would be significantly detrimental to the appearance of the property and the streetscene as it would be out of keeping due to its scale, bulk, the proportion of roof it would take up and on the basis of its prominent location at the junction of Clifton Drive, Squires Gate Lane and New South Promenade.

5.4.3 The Inspector visited the site and surrounding area. He noted that the increase in

the front face of the dormer and the presence of a balcony enclosure would result in a prominent feature that would dominate the host roof. Whilst the balcony would be enclosed with glass panels, he felt that the overall effect would be unduly prominent.

5.4.4 He noted other balconies within the area, however, they were integral parts of a design and were modest and in proportion with the property on which they were positioned.

5.4.5 He concluded that for the above reasons, the appeal be **dismissed**.

5.5 Does the information submitted include any exempt information? No

List of Appendices:

None

6.0 Legal considerations:

6.1 None

7.0 Human Resources considerations:

7.1 None

8.0 Equalities considerations:

8.1 None

9.0 Financial considerations:

9.1 None

10.0 Risk management considerations:

10.1 None

11.0 Ethical considerations:

11.1 None

12.0 Internal/ External Consultation undertaken:

12.1 None

13.0 Background papers:

13.1 None