



# Appeal Decisions

Hearing held on 25 July 2006

by Alan Upward BA(Hons) MCD MRTPI

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

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Date

17 Aug 2006

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## Appeal A: Ref. APP/C2741/C/062010833 58 Green Lane, Acomb, York YO24 4PS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr H Dag against an enforcement notice issued by York City Council.
- The Council's reference is 04/02707/FUL.
- The notice was issued on 15 February 2006.
- The breach of planning control as alleged in the notice is **without planning permission, the change of use of the Land to include use of the Land for the sale of hot food for consumption off the premises.**
- The requirements of the notice are to:
  - (1) **Stop using any part of the Land for the sale of hot food for consumption off the premises.**
  - (2) **Remove from the Land the ducting and extraction flue used in connection with the unauthorised use referred to in Paragraph 3 above.**
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and time limited planning permission is granted in the terms set out below in the Formal Decision.**

## Appeal B: Ref. APP/C2741/A05/1178994 58 Green Lane, Acomb, York YO24 4PS

- 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 Dag against the decision of York City Council.
- The application Ref 04/02707/FUL, dated 17 July 2004, was refused by notice dated 4 January 2005.
- The development proposed is **conversion of retail shop (Class A1) to hot food takeaway (Class A3).**

**Summary of Decision: The appeal is allowed, and temporary planning permission granted subject to conditions set out below in the Formal Decision.**

1. The appeals relate to the same development. The reference at the time of the application to a proposed use within Class A3 should now read Class A5 following amendment of the Use Classes Order.
  2. The plan attached to the enforcement notice identifies the whole of the combined residential/retail unit at number 58, being a 2 storey semi-detached building located within a local shopping group around one edge of a roundabout junction of 5 roads within a predominantly residential area to the south-west of the city centre. The appeal against refusal of planning permission relates to the established ground floor retail unit. Part of the ground floor and the upper floor were residential accommodation occupied at the date of the hearing by the Appellant. Although sharing the same curtilage, the residential and commercial uses were *individually self-contained and capable of separate occupation.*
  3. The appeal against refusal of planning permission had not been accompanied by all drawings included in the application decided by the Council. Copies of all those drawings were provided to me at the hearing. These were numbered 04/13/02, 04/13/03, 04/13/04, 04/13/05, 04/13/06A and 04/13/07, and will form the basis of my decision in that case.
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**Ground (a) appeal, the deemed application and appeal against refusal of planning permission**

4. I was told that the appeal premises had begun trading as a hot food takeaway on 17 December 2005. Although various trading hours had been quoted in the planning application and subsequent representations, the takeaway use was now open to customers between mid-day and 2300 hours on 7 days a week, and these were the hours which the Appellant wished to have the appeals judged upon.
5. Policy S6 of the unadopted Draft Local Plan allows for the development of food and drink uses within local shopping parades such as this location subject to meeting criteria which include a requirement for no unacceptable impact on the amenities of surrounding occupiers as a result of traffic, noise, smell or litter. Other criteria specify restrictions, as appropriate to a locality, on opening hours, the provision of car and cycle parking and the ability to provide acceptable external flues.
6. These policy factors recognise the sorts of issues commonly faced when considering proposals of this kind, particularly within surroundings containing residential properties. Land along the southern sides of the roundabout junction – the meeting points of 3 of the roads – is used to provide local retailing and commercial services for an extensive suburban area of housing. These premises are set back some way from the roundabout carriageway with forecourt areas adjacent to the junction serving individual commercial uses. The suburban layout of the semi-detached and terraced housing along the roads leading away from the junction provides a measure of separation for residential occupiers from the effects of activity at these commercial sites, although it would be reasonable to characterise the overall area as primarily residential.
7. The direct impact of hot food takeaway trading at the appeal site would clearly be alleviated by the above factors of layout and density. The houses in Green Lane (South) would be the most susceptible, and particularly the nearest semi-detached house at number 60. However, this property is orientated somewhat away from the appeal premises and its forecourt. Noise associated with the arrivals and departures of customers to the premises, as well as delivery drivers employed by the Appellant, would be expected to be concentrated around the frontage forecourt area where ample vehicular and cycle parking facilities already exist. Arrivals and departures of customers on foot would be relatively widely dispersed around nearby roads, and on the evidence, a fairly small proportion of hot food trade. The Appellant indicated that between 70 – 80% of his trade involved 'home deliveries'.
8. It was apparent that the roundabout junction is a relatively busy thoroughfare through the evenings until about 2300 hours. Motor vehicle noise associated with operation of the site would be unlikely to represent a source of material disturbance to residential neighbours at these times, including those at number 60. The exception to this conclusion would be the flat above the premises, now occupied by the Appellant as proprietor of the business. Although it should not be assumed that this form of occupation would continue permanently, the living environment which occupants of such a unit could reasonably expect would be likely to be affected to some degree by 'comings and goings' through evening hours when retail premises, other than a hot food takeaway, were operating.
9. After 2300 hours the evidence suggested that the locality becomes much quieter, and trading activity would result in disturbance to residents at times when they would be likely to be seeking to sleep. This potential for harm would be reasonably capable of control by condition on opening hours.
10. Concerns about harm to amenity through cooking smells appear capable of being resolved by the employment of modern technical solutions, including flue ducting. A large metal flue was at the date of the hearing attached to the rear of the building to a height 1.2 metres above roof eaves level. The Appellant indicated that he had installed the most up to date ducting and filtering systems, and ensured that they were fully maintained and cleaned to ensure that there were no cooking smells perceived outside the premises. This equipment was said to have been installed following discussions with the Council's environmental health staff, although there was no formal approval for the system now being operated. Mr Arrowsmith, as a local resident, was unaware of any complaints relating to cooking smells over the period since the premises had opened. The



Council's representative accepted that there was currently no problem for people living in the nearest premises.

11. In the circumstances of the case the risk of harm to amenity through cooking smells should not weigh against permission for the development, including any impact upon the occupiers of the flat, so long as the standards currently being applied remained in place.
12. On the separate matter of the appearance of the external extract ducting, this had not been detailed at the time when planning permission had been refused. That now installed was a relatively large metal flue, but its impact upon the appearance of the locality, including views from neighbouring back gardens, was very limited. It could not be readily seen from adjoining streets, and its position centrally along the rear wall of the building resulted in it not being intrusive in views from neighbouring properties.
13. In relation to the above factors my conclusion would be that the immediate impact of the use upon residential and visual amenity would fall within acceptable limits, subject to conditions controlling various matters.
14. The concerns of local residents and the Council focused, however, on a broader problem associated with a history of serious anti-social behaviour in the neighbourhood related to the use of shop forecourts (and particularly the spaces in front of these premises and the attached unit and that of Martin's 'Early to Late' convenience store alongside) as congregating points for young people throughout the evenings. This was extensively documented in reports prepared by the police and accounts and lists of incidents recorded by local residents. Various initiatives had been put in place in recent times to counter the disturbance, vandalism and various criminal incidents recorded in and around the site as a consequence of this antisocial behaviour. The Appellant argued that his use of the site, allied to various specific operational measures, would serve to alleviate these conditions. The police regarded the use as creating a 'honeypot' effect likely to add to the attractiveness of the location as a congregating point, and thereby exacerbate conditions.

***The main issue is therefore***

- whether the hot food takeaway use is likely to add to established problems in the neighbourhood arising from anti-social behaviour, and thereby increase the harm to residential amenity experienced by occupants of properties in the vicinity of the roundabout junction.

***Appraisal***

15. Police data on the scale of recorded general incidents and crime in terms of assaults, burglaries, thefts and criminal damage around the site up to June 2005 were clear evidence of the existence of a significant problem affecting the quality of living environment for people in the vicinity. If operation of a takeaway business at the appeals site is likely to add materially to the scale of problems associated with antisocial behaviour around the local shopping group, that would in my view be a powerful consideration opposing the grant of planning permission.
  16. The difficulties being experienced locally appear to have originated from the confluence of the 5 roads being a natural meeting point for young people living over a relatively wide area on this side of the city. This was allied to attractions for young people in the range of goods sold in the Martin's store open each day until 2300 hours, and the relatively unsupervised frontage spaces alongside the roundabout on the parking forecourts. There was general agreement among participants at the hearing that the 'Early to Late' store had been a principal cause of the area's problems over recent years, allied to the presence of the payphone box. The period of vacancy of the retail premises at the appeals site, allied to the trading times of the attached 'dry cleaning shop' seem likely to have contributed to the process. On the face of it the establishment of a takeaway food use would be bound to provide another reason why young people might choose to congregate in the area.
  17. It was the Appellant's claim that his use would actually be of benefit in countering anti-social behaviour as there would be an illuminated frontage during evening hours in place of a 'dead' shop front, visual supervision of the forecourt from the shop counter's position, CCTV cameras installed to enhance this measure of control allied to recording of events, and rigorous management measures by the operator of the takeaway use.
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18. I accept that it would be very much in the Appellant's commercial interest to secure better management of activity on the forecourt as well strict control over customers inside the shop premises. The forecourt control measures were now in place, including 2 CCTV cameras placed on the building, and could be expected to assist in restraining anti-social behaviour to some degree in the immediate environs of the property. It would be fair to say that any form of occupation of the property, as opposed to continued vacancy, might achieve benefits by bringing a measure of supervision over activity along the frontage. Occupation by the Appellant would not accordingly form a clear basis for permission for a hot food takeaway use if on a broader assessment the use had negative consequences flowing from the 'honeypot' effect feared by the police.
  19. The Appellant's description of the various components of his trade suggested that relatively few customers visited the premises on foot separately from making use of the 'Early to Late' store. The large proportion of car borne and 'home delivery' trade would limit the scale of problems associated with customers lingering around the premises. The current trading pattern of the appeal premises would not necessarily apply to all hot food takeaway businesses capable of using the site. The Appellant would have an interest in discouraging people from lingering around the immediate illuminated frontage, whether eating takeaway food or standing and drinking alcohol bought at the 'Early to Late' store, but that would not of course prevent such people from moving a short distance away out of direct sight from the shop and the cameras.
  20. In assessment of the balance of the respective arguments there was relatively limited information on changes occurring over the period since the shop began trading. More up to date statistics on incidents and crime in the area were not available at the hearing, although the police representative thought that the situation in terms of the type and volume of incidents remained broadly the same as recorded in the schedules for 2005. Mr Arrowsmith, as a longstanding local resident, had a similar impression that the type and volume of incidents in the area was the same. An application for a Dispersal Order under the 2003 Anti-Social Behaviour Act was still being considered by the police.
  21. My conclusion is that the various measures taken arising from the Appellant's use of the site are likely to have helped to some extent in the management of its frontage space, but without a more comprehensive approach to the land around the junction, would not have actually deterred young people from using the wider area in the ways which have caused problems hitherto. At the same time there was little basis to conclude that, over the 8 months of operation, the use had made matters in the area worse to the detriment of residential amenity by adding to its attractiveness as an evening congregating point. In the absence of clear cut harm conflicting with Draft Policy S6 up to this point justifying rejection of the appeals, I consider that it would be appropriate to grant planning permission for the use to continue for a trial period of 1 year to enable a proper assessment of the impact of the use on the anti-social behaviour problems of the locality to be made. The ground (a) appeal and appeal against refusal of planning permission will be allowed on this basis.

### ***Conditions***

22. In addition to the time limiting condition, a condition restricting the opening of the premises to customers outside specified hours is needed to ensure that undue disturbance, particularly in late evening hours, does not occur. My earlier conclusions suggested that activity up to 2300 hours would be reasonable in its noise impact. There were complaints that the 2300 hours closing time, said to be applied, was not being strictly observed. The Appellant saw a need for modest flexibility because of the practical implications of customers leaving the premises at closing time. This suggests that there would be some potentially disturbing noise after the specified hour of closing. Delivery drivers, who were allowed to take food home with them, would also be leaving the site in cars after the specified time. For these reasons I consider it necessary to apply an evening closing time of 2230 hours. The evidence did not suggest that different times should be applied on Sundays or Bank Holidays. The suggestion made by Mr Arrowsmith that evening closing should be at 1800 hours would be unjustified on the basis of my conclusions and arguably negating the benefit of a permission.
  23. Various forms of condition were discussed at the hearing relating to the ventilation, extraction and filtering systems to deal with cooking odours. The current installation appeared to be performing satisfactorily. There were no details of what this constituted. The external flue was an
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item of operational development requiring planning permission in its own right, and for which no planning permission existed. Bearing in mind these matters and the trial nature of the permission being granted, I consider that a condition requiring retention of the extraction and filtering units, as currently installed, their operation at all times when food was being prepared and their regular inspection and maintenance in accordance with manufacturers recommendations would be appropriate, sufficient and necessary. The technical matters associated with a system for the longer term could be considered at a later stage if the temporary permission were renewed, and/or a separate application was made for the external ducting.

### **Formal Decisions**

#### **Appeal A: Ref. APP/C2741/C/062010833**

24. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the change of use of the Land to include use of the Land for the sale of hot food for consumption off the premises at 58 Green Lane, Acomb, York, as shown on the plan attached to the notice, subject to the following conditions:

- 1) The use hereby permitted shall be discontinued and the land restored to its former condition on or before the expiry of 1 year from the date of this permission.
- 2) The use hereby permitted shall not be open to customers outside the times between 1200 hours (noon) and 2230 hours on any day.
- 3) Unless otherwise agreed in writing by the local planning authority, the system for the extraction and filtering of air from around the cooking equipment as installed at the premises at the date of this permission shall be retained and operated at all times when food is being prepared. It shall be inspected and maintained regularly in accordance with the manufacturer's recommendations.

#### **Appeal B: Ref. APP/C2741/A05/1178994**

25. I allow the appeal, and grant planning permission for the conversion of a retail shop (Class A1) to hot food takeaway (Class A5) at 58 Green Lane, Acomb, York in accordance with the terms of the application, Ref 04/02707/FUL, dated 17 July 2004, and the plans submitted therewith, subject to the same conditions as are attached to the permission above in respect of Appeal A.

*Alan Upward*

INSPECTOR

**PERSONS SPEAKING AT THE HEARING**

FOR THE APPELLANT:

Mr H Dag	Appellant
Ms Dag	Appellant's daughter
Mr M Hardy	Planning and Development Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Mowat	Development Control Officer, York City Council
Sergeant J Manuel	North Yorkshire Police Community Safety Dept

INTERESTED PERSON:

Mr R J Arrowsmith	Of 125 Green Lane, Acomb, York YO24 4PS
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**PLANS**

Plan	A	Copy of plans 04/13/02, 04/13/03, 04/13/04, 04/13/05, 04/13/06A & 04/13/06
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