

ENFORCEMENT REPORT

UNAUTHORISED USE OF PROPERTY FOR THE SALE OF TAKE AWAY HOT FOOD AND ERECTION OF AN EXTERNAL FUME EXTRACTION FLUE, 492 BARNSLEY ROAD & SKINNERTHORPE ROAD.

1. PURPOSE OF THE REPORT

The purpose of this report is to inform committee Members of a breach of planning control and to make recommendations on any further action required.

2. LOCATION

- 2.1 The property stands at the southern edge of the busy Fir Vale shopping centre at the corner of Skinnerthorpe Road and opposite the Tesco Express store. The Northern General Hospital Site lies 55m to the north.

3. BACKGROUND

- 3.1 A complaint was received from a local business owner concerned that the property, no.492-494 Barnsley Road, had been converted from an estate agents office into 2 self contained shop units, one used as a barbers shop, (494) and the other used for selling takeaway food, (492), without planning permission. The initial investigation found that that the changes described had taken place but it was permitted development, not requiring a planning application.
- 3.2 The barbers shop falls into the Class A1 category in the Town and Country Planning Use Classes Order. The supposed takeaway at no.492 was found to be only baking and selling breads on the premises for takeaway, either for immediate or later consumption, much like a bakers shop within Class A1, (examples of which are some of the Greggs shops, Cooplands, etc). It was not selling takeaway hot meals as defined by Class A5.
- 3.3 That change from estate agency, which is within Class A2, (professional services) to a barbers and a bread shop did not require planning permission, being a change from Class A2 to A1, which is permitted by the Town & Country Planning General Permitted Development Order, (GPDO).

- 3.4 The subdivision from one unit into two units, also does not amount to development requiring planning permission under these circumstances. The shop front has not been altered. The estate agency had two entrance doors which now form the two separate entrances for each new class A1 unit. Both of the new units, the barbers shop and the bread shop have shop front fascia that signs were present on the former estate agents and have been adapted to the new business details. These fall within prescribed 'deemed consent' limits set out in the Town and Country Planning (Control of Advertisement Regulations), which means they do not require an application to the Council.
- 3.5 A large metal fume extraction flue has since been added to the side elevation of no.492, overlooking Skinnerthorpe Road and the shop is now selling kebabs and whole cooked chickens in addition to the nan bread sales. The flue is believed to have been erected sometime between January and August 2012.
- 3.6 The owner has been notified by letter that the use and the flue are considered to be unauthorised development and that enforcement action is being considered. No contact has been made by either the owner or the tenant to discuss but an information notice served was complied with and returned.
- 3.7 The bread shop, since opening and operating within Class A1, has since developed its menu and it now caters for whole cooked chickens, and takeaway kebabs, which is a change to Class A5, which does require a planning application.

4. ASSESSMENT

- 4.1 The relevant policies of the Unitary Development Plan are S10, BE5.
- 4.2 Policy S10 'Conditions on development in Shopping Areas' states that new development should, amongst other things:
- Not cause residents to suffer from unacceptable living conditions, including air pollution, noise or other risk to health or safety.
 - Provide, where appropriate, an environmental buffer to shield sensitive land uses.
 - Be well designed and of a scale and nature appropriate to the site.
- 4.3 The flue is a large stainless steel tube that exits the side elevation wall of the shop at ground floor level. It projects approximately 1m from the wall and then it turns upwards and runs up the wall, held in position by projecting brackets terminating at a height about 1m above the eaves. The flue faces Skinnerthorpe Road, overhanging the public footway, (pavement), there.
- 4.4 The flue is visually, too prominent. It is out of character with the host building. The ideal solution would be to run the flue internally, to emerge through the roof, or to route a new, more discrete system up

the rear elevation to reduce its prominence. However there are two flats above, at first floor level and these might restrict such a solution, with the outlook of the residents from the flats windows, above the shop, also being taken into consideration.

- 4.5 Officers are willing to work with the shop operators to try and establish an acceptable solution. This would need to be combined with a re-design and re-location of the flue to one of slimmer proportions and ideally to one that is finished in matt black, rather than the stark stainless steel structure that is currently in place and that is likely to require the cooperation of the building owners due to the residential uses taking up the first floor space and could take some time to achieve.
- 4.6 The flue is considered unacceptable from a visual point of view and would need to be relocated even if the Class A5 use were to be regularised. Advice will be sought on possible alternative systems from the Council's Environmental Protection Service. No complaints have been received about noise or odours harming the living conditions of neighbours.
- 4.7 The A5 take-away use is considered to be acceptable in principle in this location. The threshold of no more than 50% of the existing shop units being non-A1 use has not been reached. The noise and odours issues will need to be assessed to prevent harm to living conditions of occupiers of neighbouring property including the first floor flats.
- 4.8 The building may contain constraints externally and internally that make an acceptable solution for fume extraction unworkable. Under those circumstances it would not be appropriate for a hot food takeaway to operate here. A reasonable period of time could be given to the owners of the business / building so that a satisfactory solution can be found without causing environmental harm, from both a visual point of view and odour and noise nuisance. This would be in the interests of protecting the amenity of occupiers of property in the area. Noise nuisance can occur in complicated flue designs that have multiple bends in them. Each turn in flue reduces the performance of the extraction fan making it necessary to increase the power of the fan, which can lead to increased noise and vibration. These issues need to be carefully considered. If a workable solution cannot be found it is recommended that the hot food takeaway use is stopped. This report recommends that enforcement action is also authorised to cease the use of the hot food takeaway use in the event that a satisfactory fume extract solution cannot be found.

5. REPRESENTATIONS

- 5.1 One complaint has been received from a local takeaway owner, mainly concerned about competition rather than environmental issues.

6. ASSESSMENT OF ENFORCEMENT OPTIONS

- 6.1 Section 171C of the Town and Country Planning Act 1990 provides for the service of a Planning Contravention Notice. The notice requires information about the suspected breaches of planning control and about property ownership. It also gives an opportunity for the recipient to meet with officers to make representations. Such a meeting can encourage discussion about an application for an alternative fume extraction system and the removal of the system.
- 6.2 Section 172 of the Act provides for the service of an Enforcement Notice (EN). In this case such a notice would require the remedial measures to make good the harm caused by the unauthorised development. This would mean the removal of the unauthorised apparatus / flue. This is the recommended course in this case. In Planning Law an enforcement notice takes 28 days from the date of issue, (commonly referred to as service), to come into effect, (this initial 28 day period allows for an appeal to be lodged). After this, the notice must give a minimum of 28 days to the recipient to comply with its requirements. If the Notice is appealed it will not come into effect at all, until the appeal is determined. If the appeal fails the notice will come back into effect immediately on the day of the Inspectors decision. The compliance period will then start from that point.
- 6.3 Section 183 of the Act provides for the service of a Stop Notice in conjunction with an enforcement notice (S172). In this case the stop notice could prohibit the use of the fume extraction equipment but this isn't recommended in this case. The fume extract isn't running through the night and no specific complaint has been received from neighbours about any particular immediate problems of odour or noise emanating from the equipment so a Stop Notice is considered appropriate at this time.

7. EQUAL OPPORTUNITIES

- 7.1 There are no equal opportunity implications arising from the recommendation in this report.

8. FINANCIAL IMPLICATIONS

- 8.1 There are no financial implications arising from the recommendation in this report.

9. RECOMMENDATION

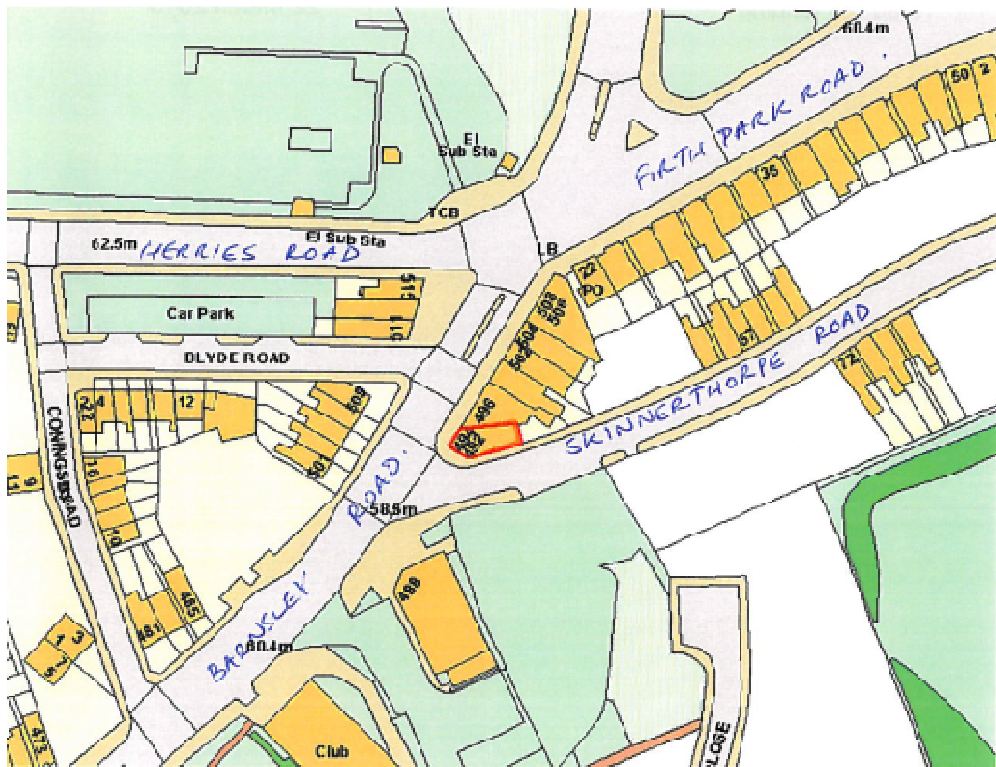
- 9.1 That the Director of Regeneration and Development Services or Head of Planning be authorised to take any appropriate action including if necessary, enforcement action and the institution of legal proceedings to secure:

- (i) the removal of the unauthorised externally mounted fume extraction apparatus / flue duct.
- (ii) the cessation of the use of the ground floor of the property at 492 Barnsley Road for the sale of take away hot food, in the event that an acceptable solution for fume extraction is not found by the owner or occupier of the property, within four months of this committee resolution.
- (iii) the regularisation of the use of the ground floor of the property for the sale of takeaway hot food in the event that an acceptable solution is found for the fume extraction.

9.2 The Head of Planning is designated to vary the action authorised in order to achieve the objectives hereby confirmed, including taking action to resolve any associated breaches of planning control.

PLAN & PHOTOS





Maria Duffy
Head of Planning

10 February 2014