



## **SHEFFIELD CITY COUNCIL Planning & Highways Committee Report**

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**Report of:** Head of Planning

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**Date:** 9 August 2016

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**Subject:** Enforcement Report  
126 Birley Spa Lane S12

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**Author of Report:** Fiona Sinclair

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**Summary:** To inform committee members of a breach of Planning Control and to make recommendations on any further action required.

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### **Reasons for Recommendations:**

To remedy the breach of Planning Control

### **Recommendations:**

That the Head of Planning be authorised to take any appropriate action including, if necessary, enforcement action and the institution of legal proceedings to secure the removal the unauthorised flue and shipping container; and to prevent the use of the premises as an A5 fast food takeaway.

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

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### **Background Papers:**

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**Category of Report:** OPEN

## **ENFORCEMENT REPORT**

### **UNAUTHORISED CHANGE OF USE TO AN A5 FAST FOOD TAKEAWAY AT 126 BIRLEY SPA LANE S12 4EJ**

#### **1. PURPOSE OF REPORT**

- 1.1 To inform committee members of a breach of Planning Control and to make recommendations on any further action required.

#### **2. BACKGROUND**

- 2.1 On 5 April 2016 an application for planning permission to change 126 Birley Spa Lane from a retail shop (Use Class A1) into a hot food takeaway (Use Class A5) with ancillary seating area was received by the Local Planning Authority (reference 16/01299/FUL), and was a resubmission of a previously refused application (15/00705/FUL) for the same proposal.
- 2.2 The property is located in a terrace of mixed use commercial properties which form part of an established 'Local Shopping Area' as defined in the Sheffield Unitary Development Plan (UDP).
- 2.3 On 27 May 2016 a complaint was received, from a member of the public, concerning the erection of a stainless steel flue on the rear of the property (Photograph 1).
- 2.4 Planning permission was refused on 2 June 2016, because the proposed change of use was considered to result in an unacceptable concentration of hot food takeaways in the shopping area as well as being detrimental to the amenities and living conditions of occupiers of neighbouring properties.
- 2.5 Correspondence was entered into with the owner, on 14 June 2016 explaining that because his application, for planning permission (which included the siting of the flue) had been refused this extraction system would have to be removed.
- 2.6 On 15 June 2016, a further complaint was received, from a member of the public concerning a sign that had been fixed to the shop front that advertised it would be opening in the near future.

2.7 On 8 July 2016 an additional complaint was received concerning the placement of a large shipping container on the hard-standing at the rear of this property.

### 3 ASSESSMENT OF BREACH OF CONTROL

3.1 The property is located within a shopping area, as defined within the UDP.

3.2 The area referred to in this case comprises of the Birley Spa Local Shopping Centre as defined on the UDP proposals map. Appendix 1 within the UDP defines dominance as usually meaning that non-preferred uses do not occupy more than half (50%) of the area. Following an assessment of uses within the Local Shopping area 8 (inclusive of the application site) of the existing 16 available units are currently in preferred retail (A1) use. As such 50% of the units currently remain in the preferred retail use in accordance with the requirements of policy S10 (a). The application site was formerly used as a motor spares sales (A1-retail) which is a preferred use. Although the unit is currently vacant the proposed change of use to a hot food takeaway would decrease the concentration of A1 units below 50% of units and subsequently increase concentration of A5 units contrary to policy S10(a).

3.3 The proposal would result in hot food takeaways occupying 6 of the available 16 units which is considered an over concentration of Hot food takeaway uses in this local centre where there is already a particular cluster of A5 uses in the immediate vicinity of the application site. The addition of a further hot food takeaway use is considered to harm the vitality and viability of the centre. Hot food takeaways predominantly operate in the evening time. It is highly likely that the unit would have its roller shutter pulled down during the day and would contribute little to the vitality and viability of the local centre in terms of daytime activity.

3.4 Although the unit is currently vacant the proposed change of use to a hot food takeaway would lead to the loss of a retail unit which could contribute to the vitality and viability of the district centre to a greater extent than an additional hot food takeaway.

3.5 The design of the flue extraction system is not considered acceptable. The flue is sited so that it is required to be taken internally through the building terminating through a section of flat roof and projecting a further 4 metres externally immediately adjacent to the windows and rear elevation of the residential flat above; and is therefore contrary to policy S10

3.6 The upper floors of the building are occupied as a residential flat which has a number of windows on the rear elevation. The flue is considered

to be located in to close proximity to the rear window of this residential property and due to its proximity the operation of the flue is considered to give rise to unacceptable odour, noise and disturbance issues which would detrimentally affect the amenity of residents. The proposal is therefore contrary to policy part (b) of policy S10.

- 3.7 The proposed change of use is considered to affect the vitality and viability of the shopping area and is contrary to Policy S10 (a).
- 3.8 The design and location of the fume extraction system is considered unacceptable and will detrimentally affect the amenity of residents of the first floor flat.
- 3.9 In light of the above the proposal is considered contrary to policy S10, and because of this planning permission 16/01299/FUL was refused on 2 June 2016.
- 3.10 The property can be used temporarily as a restaurant for a period of two years, providing the Local Planning Service is notified of this in writing prior to the use commencing (under the terms of the General Permitted Development Order). However, to date, no such notification has been received. In any event the flue and the shipping container would still require planning permission.
- 3.11 The shipping container is unsightly, and considered as being out of character, and to have a detrimental effect on the amenities of the neighbourhood and is, therefore contrary to UDP Policy BE5.
- 3.12 Photograph 1, shown below illustrates the unsuitability of the flue in its current location, and also that of the shipping container. Photograph 2 shows the intended use of the ground floor commercial premise.

Photograph 1



Photograph 2



4. REPRESENTATIONS.

- 4.1 Three complaints were received from members of the public, the first on 27 May 2016, the second on 15 June 2015, and the third on 8 July 2016, concerning flue, the intended use of the property and the shipping container.

## 5. ASSESSMENT OF ENFORCEMENT OPTIONS

- 5.1 Section 171C of the Town and Country Planning Act provides for the service of a Planning Contravention Notice. The notice requires information about the breach of planning control and property ownership. It also gives an opportunity for the recipient to meet with officers to make representations. Such a meeting could be used to encourage regularisation by retrospective application and/or discussions about possible remedies where harm has resulted from the breach. In this case it is clear that both the use, of the premises, the siting of the shipping container and the installation of the flue are breach of planning control and as such it is not considered that the serving of a PCN would be of any value.
- 5.2 Section 172 of the Act provides for the service of an enforcement notice (EN). In this case such a notice would require the removal of the flue, and shipping container; and require the unauthorised use to cease.
- 5.3 The service of an enforcement notice will also allow for a stop notice to be served, under Section 183, of the Act, to prevent the continuation of the current use of the property.
- 5.4 There is a right to appeal to the Planning Inspectorate, against the service of an Enforcement Notice. However, it is considered that the Council would be able to successfully defend any such appeal.

## 6 EQUAL OPPORTUNITIES

- 6.1 There are no equal opportunity issues arising from the recommendations in this report.

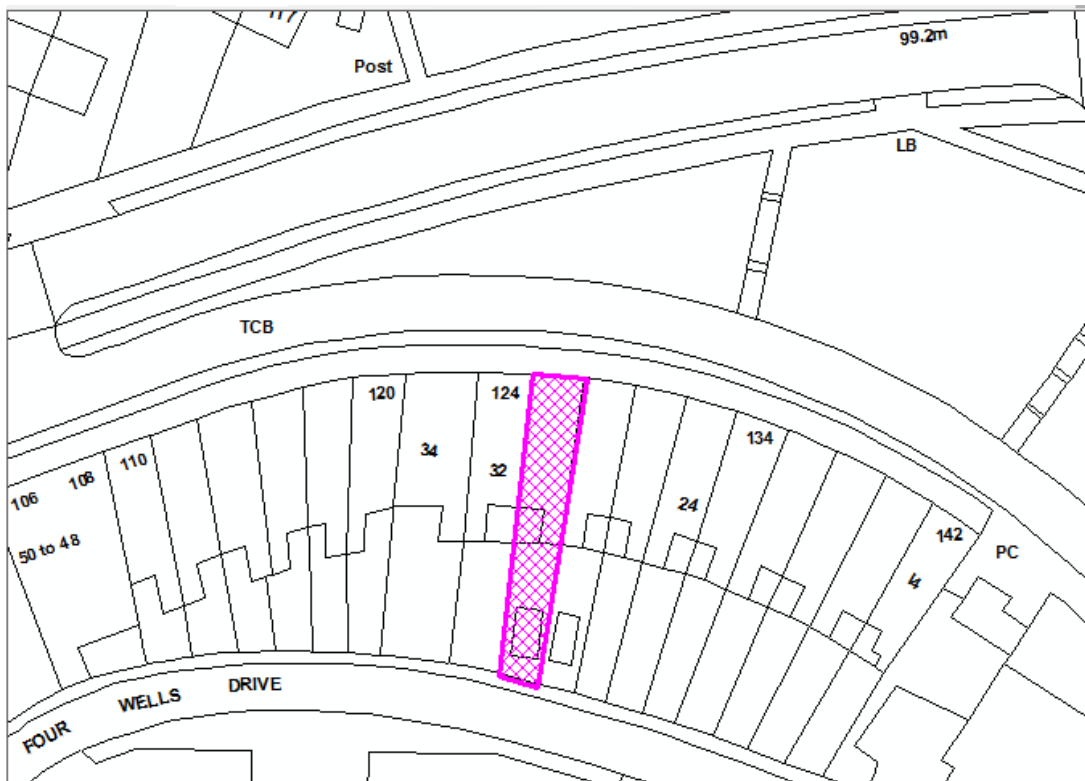
## 7 FINANCIAL IMPLICATIONS

- 7.1 There are no additional financial implications expected as a result of this report. If an appeal is made against the enforcement notice, costs can be awarded against the Council if it is shown that they have behaved “unreasonably” in the appeal process, it is uncommon that this will happen. However, in the unlikely event compensation is paid, it would be met from the planning revenue budget.

## 8.0 RECOMMENDATIONS

- 8.1 That the Head of Planning be authorised to take any appropriate action including, if necessary, enforcement action and the institution of legal proceedings to secure the removal of the unauthorised flue, and shipping container; and prevent the unauthorised use of 126 Birley Spa Lane as an A5 fast food takeaway.
- 8.2 The Head of Planning is delegated to vary the action authorised in order to achieve the objectives hereby confirmed, including taking action to resolve any associated breaches of planning control.

### Site Plan



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