

<b>DECISION DATE</b> 12 September 2008	<b>APPLICATION NO.</b> 08/00861/CU A10	<b>PLANNING COMMITTEE:</b> 6 October 2008
<b>DEVELOPMENT PROPOSED</b>  RETROSPECTIVE APPLICATION FOR CHANGE OF USE FROM RESTAURANT (A3) TO HOT FOOD TAKEAWAY (A5) WITH OPENING HOURS OF 11.00 TO 03.00 MONDAY TO SATURDAY AND 16.00 TO 03.00 SUNDAY AND BANK HOLIDAYS		<b>SITE ADDRESS</b>  66 PENNY STREET LANCASTER LANCASHIRE LA1 1XF
<b>APPLICANT:</b>  Mr S Patel 17 Dallas Road Lancaster Lancashire LA1 1TP		<b>AGENT:</b>

#### REASON FOR DELAY

Committee cycle.

#### PARISH NOTIFICATION

None.

#### LAND USE ALLOCATION/DEPARTURE

The property is situated within Penny Street, Lancaster which is identified as Other Key Retail Frontage in the Lancaster District Local Plan 1996-2006. The site is also within the City Conservation Area.

#### STATUTORY CONSULTATIONS

**County Highways** - No objections.

**Police** - No objections.

**Environmental Health** - No objections.

**Licensing** - No comments received within statutory timescale.

#### OTHER OBSERVATIONS RECEIVED

The management of CityBlock (77-81 Penny Street) - Strongly object due detrimental impact of the proposal on the amenities of the occupiers of CityBlock caused by late night disturbance. They state that the use would not accord with Policy S7 of the Lancaster District Local Plan.

**62 Penny Street** (Take-away owner and resident) - Objects due to concerns over increased traffic/parking problems and late night disturbance.

**78 Penny Street** (Take-away owner) - Objects due to concerns over increased traffic/parking problems and late night disturbance.

**55 Penny Street** (Retail shop owner) - Objects due to loss of retail outlet in this area of the city and increase in litter due to take away use.

## **REPORT**

### **Site and Surroundings**

The property is situated in the southern part of Penny Street on the edge of the pedestrianised zone which is demarked by its junction with George Street/Spring Garden Street. This section of Penny Street is predominantly in retail use, but the section to the south of the application site is typified by a concentration of take-aways and drinking establishments. However the building diagonally opposite the subject premises is purpose-built student accommodation and there are several 'over the shop' residential units in the vicinity.

### **Planning History**

The site is currently operating as a hot food take-away and has a licence to operate until 3am. The last permitted planning use of the site was retail (Class A1) with an ancillary tearoom. However the premises have more recently been in use as a restaurant. The site is currently the subject of an enforcement investigation regarding the installation of an unauthorised shop front.

### **Related Planning History**

Earlier this year 78 Penny Street was the subject of a public inquiry following the refusal of planning permission for a take-away and restaurant. The appeal was upheld and in his decision notice of 7th August 2007 the Inspector stated that he did not consider that the local planning authority had demonstrated that an A5 use of the premises would lead to an increase in noise and disturbance which would be detrimental to the living conditions of nearby residents. He also stated that if a statutory nuisance were to arise from the use of the site the local planning authority should use its powers under the licensing regime to remedy the situation.

### **The Proposal**

The application seeks retrospective planning permission for the change of use from restaurant to a hot food takeaway with opening hours of 11.00 to 03.00 Monday to Saturday and 16.00 to 03.00 Sunday and Bank Holidays.

### **Relevant National Planning Guidance**

Planning Policy Statement 1 – Delivering Sustainable Development - promotes communities which are inclusive, healthy, safe and free from crime.

Planning Policy Statement 6 - Planning for Town Centres - sets out the Government's objectives to manage change and promote the vitality and viability of Town Centres. Paragraph 2.22 acknowledges that different but complementary uses, during the day and in the evening, can reinforce each other making town centres more attractive to local residents, shoppers and visitors.

## **Relevant District Local Plan Policy**

The Lancaster District Local Plan 1996-2006 was adopted in April 2004. Policy S4 identifies Penny Street as a Key Retail Frontage. Policy S7 is concerned with the change of use of ground floor premises to food and drink uses and states that;

*“Within other key retail frontages identified on the local plan proposals map such uses will only be permitted where an adjoining frontage is in A1 Retail Use, and the proposal does not have a significant adverse effect on the character of the street or the amenities of the neighbouring residents or businesses”.*

## **Assessment**

The use clearly accords with the first requirement of Policy S7 as the neighbouring property is in A1 retail use. Given the proximity of the premises to the southernmost part of Penny Street where a number of properties have a similar use, it is unlikely that the proposal will have a significant adverse effect on the character of the street.

When considering the impact of a proposal on the amenities of neighbouring residents and businesses the local planning authority relies considerably upon the comments of the Police and the Environmental Health Officer. Although both initially submitted objections to the application these comments were amended following the planning appeal outcome at 78 Penny Street. Given the previous appeal decision and the absence of objections there are no substantial planning grounds to refuse this application.

## **Conclusion**

Despite initial concerns regarding impact upon residential amenity, it would be difficult to sustain a refusal given the town centre location of the site, the other similar uses on this street, the recent appeal decision and the absence of any justifiable objection from statutory consultees.

Therefore on balance Members are advised that this application can be supported.

Any grant of planning permission does not affect the separate enforcement action for the installation of the unauthorised shopfront.

## **HUMAN RIGHTS IMPLICATIONS**

This application has to be considered in relation to the provisions of the Human Rights Act, in particular Article 8 (privacy/family life) and Article 1 of the First Protocol (protection of property). Having regard to the principles of proportionality, it has been concluded that there are no issues arising from the proposal which appear to override the responsibility of the City Council to regulate land use for the benefit of the community as a whole, in accordance with national law.

## **RECOMMENDATIONS**

That **PLANNING PERMISSION BE GRANTED** subject to the following conditions: -

1. Use as per approved plans.
2. Hours of opening to be restricted to 1100-0300 Monday-Saturday and 1600-0300 Sundays and Bank Holidays
3. Details of extraction flues to be agreed
4. Storage of refuse to be agreed
5. Installation of CCTV to be agreed