

PLANNING COMMITTEE – 17 AUGUST 2005

Report of the Chief Solicitor

Enforcement Item

Breach of Condition - Out of the Blue, Galmington Road, Taunton (38/2002/286)

Background

In September 2002 permission was granted (Application No. 38/2002/286) for the change of use of shop premises at 193 Galmington Road, Taunton to an A3 use (takeaway). As a consequence of concerns raised by Environmental Health and local residents about potential odour problems two conditions were imposed.

The first required the installation of filtered air extraction equipment to vent the premises prior to commencement of the use. The second required that "Odours arising from the cooking shall not be detectable at the façade of any residential or other odour sensitive premises".

The premises subsequently opened as a fish and chip shop under the name "Out of the Blue". Details of the filtration system were submitted for approval with the proprietor of the business stating that the system installed "was powerful enough to ensure that no frying odours could possibly contaminate the adjacent area". He did however acknowledge that if complaints were received "further improvements.....would likely have to be made".

However, the system installed does not appear to have been adequate and complaints of odour which were first received in June 2003 have continued since. Negotiations were entered into with the owner and further improvements made to the system, but these did not resolve the problem.

In June 2004 a breach of condition notice was served alleging breach of both the odour conditions, following which further improvements were made to the system. Environmental Health also investigated the odour as a possible statutory nuisance and although they had difficulty in witnessing the odour, in December 2004 the Environmental Health Officer was satisfied that nuisance did exist and an Abatement Notice was served under Environmental Health legislation, requiring the nuisance to be abated.

The proprietor appealed against the notice and the appeal was heard in the Magistrates Court in May 2005. The proprietor won the appeal on the grounds that although the Court accepted that there was a nuisance arising from odour, as a commercial premises, best practicable means had been used to abate the nuisance and therefore it was not reasonable to expect any further steps to abate the nuisance. Therefore, whilst the Court was not requiring the proprietor to take further steps to abate the nuisance, it acknowledged that there was an odour problem.

During the course of the Court proceedings evidence was given by the Environmental Health Officer that an increase in the height of the existing vent combined with a robust cleaning programme, should prevent the problem.

Following the hearing, the proprietor indicated that he would be prepared to discuss and implement such measures. A meeting was arranged but the owner failed to attend. He has subsequently received written confirmation of the steps the Council believes are required to resolve the problem and an indication that a planning application to increase the height of the vent would, subject to the details of the application, be likely to receive support from the Development Control Manager.

As complaints continue to be received, the proprietor was asked to submit an application for the raising of the height of the vent by the 8 August 2005, failing which the matter would be reported to this Committee for consideration of further action. No response has been received to that letter.

Although the Council is no longer able to deal with this odour problem as a statutory nuisance, the Council can still take action for failure to comply with the breach of condition notice served in June 2004. The local residents continue to complain of odour nuisance.

RECOMMENDATION

It is therefore RECOMMENDED that the Solicitor to the Council be authorised to issue proceedings against the proprietor of Out of the Blue, Galmington Road, Taunton under S187 A of the Town and Country Planning Act 1990 for failure to comply with the breach of condition notice served in respect of the premises known as Out of the Blue on the 18 June 2004.

Chief Solicitor

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