

CAMBRIDGE CITY COUNCIL

REPORT OF: Head of Planning Services

TO: East Area Committee 21/06/12

WARDS: Petersfield

PLANNING ENFORCEMENT CONTROL Failure to comply with an Enforcement Notice

Zi's Piri Piri, 36a Mill Road, Cambridge.

1 INTRODUCTION

1.1 This report concerns the failure to comply with the requirements of an Enforcement Notice served following development undertaken without the benefit of planning permission at Zi's Piri Piri, 36a Mill Road, Cambridge. The report asks members to approve the next course of action following failure to comply with the Enforcement Notice.

A copy of the Enforcement Notice can be found in Appendix A.

1.2 Summary of investigation:

15 Sept 10	Complaint received regarding change to shop front
25 Jan 11	Retrospective planning application 10/1215/FUL refused
20 Oct 11	Enforcement Notice served
21 Nov 11	Enforcement Notice came into effect
1 Feb 12	Retrospective planning application 11/1337/FUL refused
21 April 12	Deadline for compliance with Enforcement Notice
31 May 12	Planning application 12/0707/FUL for shop front received

2 PLANNING HISTORY

- 2.1 C/63/0170 New Shop Front
APPROVED SUBJECT TO CONDITIONS
- C/91/4085 Erection of illuminated fascia sign (retrospective)
REFUSED
- C/91/4086 Erection of illuminated projecting sign (retrospective)
REFUSED
- C/92/4139 Illuminated fascia sign (retrospective)
REFUSED
- C/92/4140 Projecting illuminated box sign (retrospective)
REFUSED
- C/94/4288 Externally illuminated fascia sign (4.2m wide x 0.8m
high) reading 'Sinbads'
REFUSED
- C/94/4289 Internally illuminates fascia sign (4.2m wide x 0.8m
high) reading 'Sinbads'
REFUSED
- 08/1451/ADV Installation of one fascia sign (internally illuminated)
PERMITTED
- 10/1215/FUL Retrospective application for shopfront
REFUSED
- 11/1337/FUL New shopfront (Retrospective)
REFUSED
- 11/1446/ADV New internally illuminated fascia sign and projecting
sign. New flag/banner.
PART APPROVED. PART REFUSED
- 12/0707/FUL New shopfront.
PENDING CONSIDERATION by 26.07.12

2.2 ENFORCEMENT NOTICE

Under Cambridge City Council's scheme of delegations (part 4A), the Planning Enforcement Service has delegated authority to serve an Enforcement Notice in relation to development which has failed to gain approval by means of a retrospective application for Planning Permission.

On 20th October 2011 an Enforcement Notice was served for the alleged breach of:

'Unauthorised alteration to a shop front' at 36a Mill Road, Cambridge.

The steps required to remedy the breach were to:

- i. Remove the recess which has been created at the shop front and restore the frontage to that shown in the attached photograph reference DJ1
- ii. Remove the 'steps' which have been created in the shop front area
- iii. Remove the unauthorised shutters and any associated fixings in their entirety from the shop front
- iv. Reinstate the stall riser shown in the photograph dated 10/10/11 (attached) to the previous design as shown in the attached photograph reference DJ1
- v. Reduce the fascia to the size shown in the attached photograph reference DJ1.

The Notice gave a period of 28 days for an appeal to be lodged with the Planning Inspectorate. No appeal was made within the necessary period and the Notice came into effect on 21st November 2011.

The period for compliance given on the Notice was six months.

3 BACKGROUND

- 3.1 36a Mill Road, Cambridge is located in a Conservation Area. The 2011 Mill Road Conservation Area Appraisal lists the premises as a 'positive unlisted building'.
- 3.2 In September 2010 the Planning Enforcement Service received an allegation that there had been an unauthorised change to the shop front design and that shutters had also been installed.
- 3.2 A site visit confirmed that unauthorised development had taken place. Officers requested that an application for planning permission for the

development was submitted.. On 30th November 2010 planning application reference 10/1215/FUL for 'Retrospective application for shop front' was received. On 20th January 2011 the application 10/1215/FUL was refused for the following reason:

The shop front and shutters by virtue of their design, materials, relationship with the street frontage and lack of justification for the shutters have an adverse impact on the visual amenity of the building and the streetscene which forms part of a Conservation Area. In so doing the development fails to respond positively to the site context and constraints or to preserve or enhance the Conservation Area. The development is contrary to East of England Plan 2008 policies ENV6 and ENV7, Cambridge Local Plan 2006 policies 3/4, 3/15 and 4/11 and advice provided by PPS1 (Delivering Sustainable Development) and PPS5 (Planning for the Historic Environment).

- 3.3 A number of attempts were made to negotiate and secure the reinstatement of the original shop front design or a design more appropriate to the Conservation Area. On 20th October 2011 when the Notice was served (and to date) the unauthorised works to the shop front and shutters remain in place. This is considered to have a negative impact on the character and appearance of the conservation area.
- 3.4 On 9th December 2011 a revised retrospective planning application for a new shop front (reference 11/1337/FUL) was submitted. On 27th January 2012 the application was refused for the following reason:

The glazing, shutters and recess from the footpath, proposed in this application would have an adverse impact on the visual amenity of the building and the streetscene which forms part of a Conservation Area. In so doing the development fails to respond positively to the to the site context and constraints or to preserve or enhance the Conservation Area. The development is contrary to East of England Plan 2008 policies ENV6 and ENV7, Cambridge Local Plan 2006 policies 3/4, 3/15 and 4/11 and advice provided by PPS1 (Delivering Sustainable Development) and PPS5 (Planning for the Historic Environment).

- 3.5 A site visit on 22nd March 2012 (one month before compliance with the Enforcement Notice was required) established that no work to alter the shop front and comply with the Enforcement Notice had begun. The Planning Enforcement Officer contacted the owner of the property, Mr Hussein to remind him of the timescale for compliance with the

Enforcement Notice and to advise him that failure to comply with an Enforcement Notice is an offence. Appendix B contains a copy of the letter sent to Mr Hussein on 3rd April 2012 and photographs of the unauthorised shop front dated 23rd April 2012.

- 3.5 On 4th April 2012 Mr Hussein called the Planning Enforcement Officer to advise that he intended to submit a new planning application and this was confirmed by email from his agent on 11th April 2012 . On 24th April 2012 the Senior Conservation Officer met with Mr Hussein to provide advice on what shop front designs would be likely to gain approval.
- 3.6 On 31st May 2012 a planning application reference 12/0707/FUL was received for 'New Shopfront', the application is due to be determined by 26th July 2012.
- 3.7 If application reference 12/0707/FUL is granted approval, it is the developer's decision whether to implement the permission.
- 3.8 The unauthorised shop front design at 36a Mill Road remains in place.

4 LEGAL, POLICY AND OTHER MATERIAL CONSIDERATIONS

4.1 National Planning Policy Framework states:

'Para 207. Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.'

- 4.2 It is considered that the owner of the property has been given adequate time to restore the shop front to its original design. Although an application for an alternative, more appropriate design has been submitted, the application is pending determination and if it is granted approval there is no guarantee that the new design will be implemented.

- 4.3 The local planning authority consider that the development is contrary to East of England Plan 2008 policies ENV6 and ENV7, Cambridge Local Plan 2006 policies 3/4, 3/15 and 4/11.
- 4.4 Failure to comply with an Enforcement Notice which has been served under Section 172 of the Town and Country Planning Act 1990 (as amended) is an offence contrary to Section 179 of the Town and Country Planning Act 1990 (as amended).

5 OPTIONS AND RECOMMENDATION

- 5.1 Enforcement is a discretionary power. The Committee should take into account the planning history, the location of the site within a Conservation Area and the other relevant facts set out in this report. Officers only recommend the service of an Enforcement Notice when all attempts at negotiating a resolution to remedy the breach of planning control have failed.
- 5.2 If the Committee is minded to authorise enforcement action there are four options available to the Council:
- 5.2.1 Prosecution
This option would require members to give delegated authority to the Head of Planning and the Head of Legal Services take action on behalf of the Council.
- 5.2.2 Caution
This option would require the owner of 36a Mill Road to admit to the offence of failing to comply with the Enforcement Notice and to agree to accept a caution but it would not remedy the breach of planning control.
- 5.2.3 Injunction
Section 222 of the Local Government Act 1992 provides that the Local Authority can institute proceedings in the High Court to secure an injunction to restore the original shop front. Procedurally this is a very costly option and is not recommended in these circumstances.
- 5.2.4 Direct action
This option would require the Council to carry out the required works and seek to recover the costs from the owner.

5.3 RECOMMENDATION

Officers only recommend prosecution when all other attempts at resolving the breach of planning control have failed. As the owner has not taken the necessary steps to comply with the Enforcement Notice, officers are of the opinion that prosecuting the owner for the offence of failing to comply with the Enforcement Notice is in the public interest in order to protect the character and appearance of the Conservation Area.

The Committee is therefore asked to authorise the Head of Planning to instruct the Head of Legal to commence legal proceedings against the owner, Mr Hussein, because the end of the period for compliance with the Enforcement Notice has expired and the steps required to be taken by the Notice have not been taken which is an offence contrary to section 179 (2) Town and Country Planning Act 1990.

6 IMPLICATIONS

- (a) **Financial Implications** - None
- (b) **Staffing Implications** - None
- (c) **Equal Opportunities Implications** - None
- (d) **Environmental Implications**- None
- (e) **Community Safety** - None
- (f) **Human Rights Considerations:** Consideration has been given to Human Rights including Article 1 Protocol 1 (protection of property), Article 6 (a right to a fair hearing within a reasonable time), Article 8 (right to respect for private family life) and Article 14 (prohibition of discrimination). It is considered that taking necessary and appropriate action would be lawful, fair, non-discriminatory, and necessary in the general public interest to achieve the objective of upholding local planning policies.

BACKGROUND PAPERS: No background papers were used in the preparation of this report.

APPENDICES:

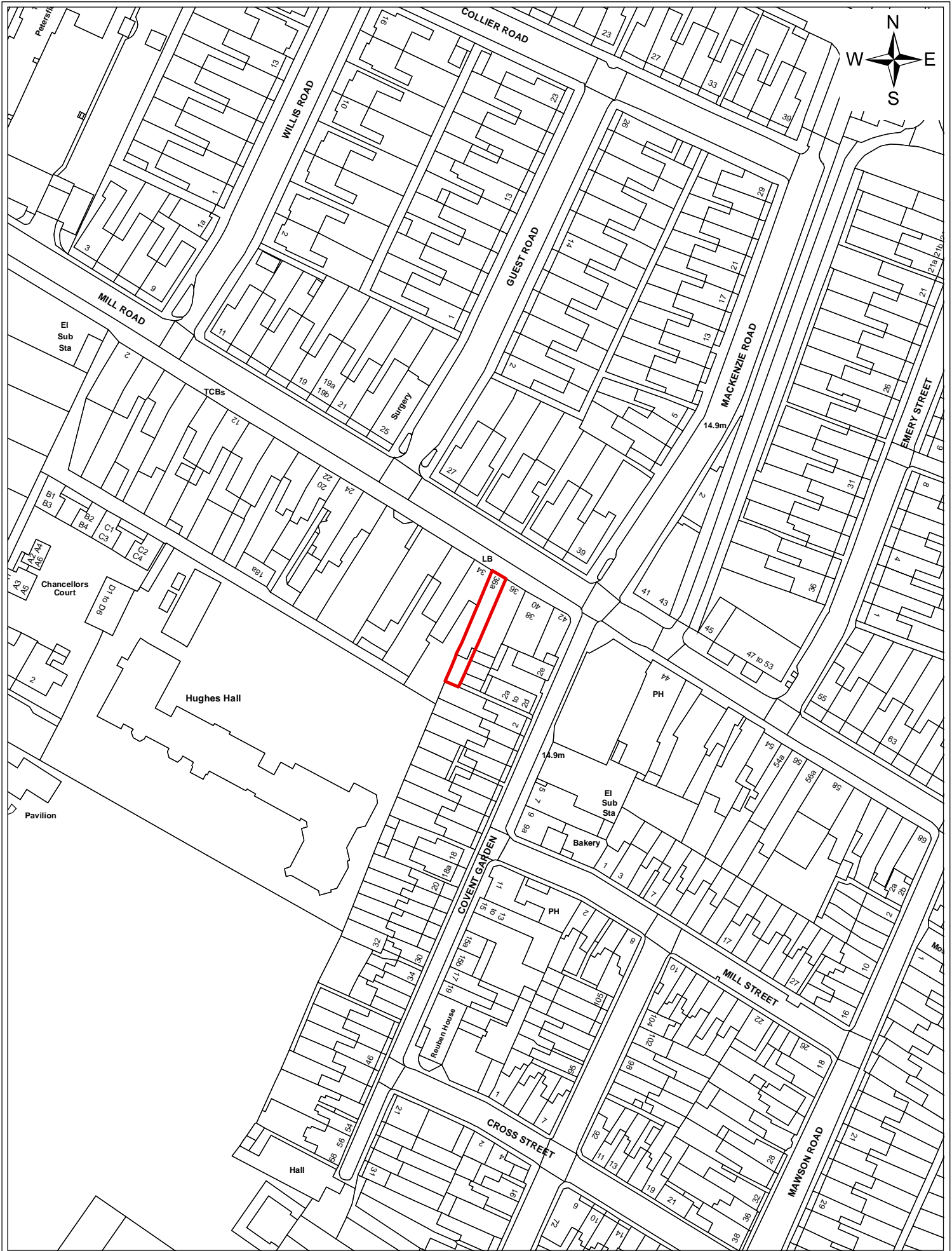
Appendix A Copy of Enforcement Notice served on 20th October 2011

Appendix B Copy of letter to Mr Hussein dated 3rd April 2012 and photographs of existing unauthorised shop front

The contact officer for this report is Deborah Jeakins on 01223 457163.

Report file: N:\Development Control\Planning\Enforcement\Committee reports\36a Mill Road Report 2012.doc

Date originated: 30 April 2012 Date of last revision: 12 June 2012



36A Mill Road, Cambridge

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Date:	01 June 2012
Produced by:	Timothy Cliff
Section/Department:	Information Systems, Environment Dept
Scale:	1:1,250 @ A4

ENFORCEMENT NOTICE - OPERATIONAL DEVELOPMENT

(Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991)

1. THIS IS A FORMAL NOTICE which is issued by the Council because it appears to them that there has been a breach of planning control, under Section 171A(1)(a) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

2. THE LAND TO WHICH THIS NOTICE RELATES

36a Mill Road, Cambridge CB1 1AP

(shown edged red on the attached plan)

3. THE BREACH OF PLANNING CONTROL ALLEGED

Unauthorised alteration to a shop front in a conservation area

4. REASONS FOR ISSUING THIS NOTICE

To preserve the character of the Conservation Area. The shopfront and shutters by virtue of their design, materials, relationship with the street frontage and lack of justification for the shutters have an adverse impact on the visual amenity of the building and the streetscene which forms part of a Conservation Area. In so doing the development fails to respond positively to the site context and constraints or to preserve or enhance the Conservation Area. The development is contrary to East of England Plan 2008 polices ENV6 and ENV7, Cambridge Local Plan 2006 policies 3/4, 3/15 and 4/11 and advice provided by PPS1 (Delivering Sustainable Development) and PPS5 (Planning for the Historic Environment).

5. WHAT YOU ARE REQUIRED TO DO

- i.Remove the recess which has been created at the shop front and restore the frontage to that shown in the attached photograph reference DJ1
- ii.Remove the 'steps' which have been created in the shop front area
- iii.Remove the unauthorised shutters and any associated fixings in their entirety from the shop front
- iv.Reinstate the stall riser shown in the photograph dated 10/10/11 (attached) to the previous design as shown in the attached photograph reference DJ1
- v.Reduce the fascia to the size shown in the attached photograph refernce DJ1

6. PERIOD FOR COMPLIANCE

6 Months after this notice takes effect

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on the **21 November 2011** unless an appeal is made against it beforehand.

Signed
Council's Authorised Officer

Dated: **20 October 2011**

Cambridge City Council
The Guildhall
Cambridge
CB2 3QJ

Annex

YOUR RIGHT OF APPEAL

There is a right of appeal to the Secretary of State (at the Planning Inspectorate) against this notice. Please see the enclosed information sheet from the Planning Inspectorate which tells you how to make an appeal. If you decide to make an appeal, you must ensure you send your appeal so that it will be received or posted/emailed in time to be received by the Secretary of State (at the Planning Inspectorate) before the effective date specified in paragraph 7 of this notice.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this Enforcement Notice, it will take effect on the date specified in paragraph 7 above. You must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in paragraph 6 above. Failure to comply with an enforcement notice, which has taken effect, can result in prosecution and/or remedial action by the Council.

In case of enquiry contact:	Debs Jeakins
Direct Dial:	01223 457163
Fax:	01223 457109
E Mail:	Debs.Jeakins@cambridge.gov.uk

Mr M Hussein
8 Guernsey Road
Leytonstone
London
E11 4 BJ



CAMBRIDGE
CITY COUNCIL

Development
Control

03 April 2012

Our Ref P700/C/ 5039

Your Ref

Dear Mr Hussein

Change to shop front design and Electric shutters installed in a Conservation Area

**36a Mill Road
Cambridge**

On 21st November 2011 an Enforcement Notice concerning the unauthorised alteration of the shopfront at 36a Mill Road, Cambridge came into effect.

The Notice listed the steps you were required to take to address the breach of planning control at the property and gave you six months to comply.

I visited the property on 22nd March 2012 and could not see any evidence of work being undertaken to comply with the Enforcement Notice by the 21st April deadline.

I sent you an email on 23rd March 2012 to remind you that failure to comply with an Enforcement Notice is an offence for which you may be prosecuted and requested that if you have a timetable of works which you intend to undertake prior to the 21st April deadline that you forward it for my attention.

I have not received any response to my email and so now write to advise that I will be visiting the property on 23rd April 2012 to see if the Enforcement Notice has been complied with and if no works to restore the shopfront to the previous design have been undertaken I will prepare seek authorisation to pursue a prosecution.

Please advise me of your intentions within 14 days.

Yours sincerely,

Debs Jeakins
Planning Investigation Officer

66a
Zi's piri piri... food to enjoy • food to share • food to go

STAFF
REQUIRED

OPEN

DRIVER
WANTED

HUNGRY?
HAWAIIAN CHICKEN PIZZA £4.99
NEW YORK PIZZA £3.99

FREE AND HUNGRY?
THEN
BY ANY PIZZA
FREE PINEAPPLE
Free

Zi's piri piri
specialising in
Hawaiian Chicken Food
Deli, Friendly Service
Smoke Aloud or Eat In
VISIT OR ENJOY
Tel: 01722 366777

**JUST
EAT
OUT**

23.04.2012 12:01



JUST EAT

FEELING HUNGRY?
Buy Any Pizza
Free

23.04.2012 12:01

CLEANING
WHEN POSSIBLE



DRY CLEANERS



36a

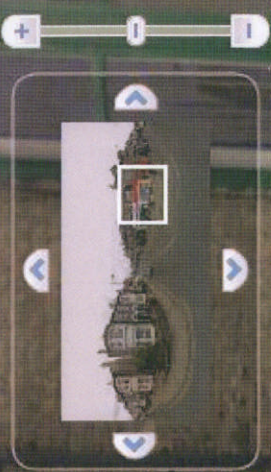
Zi's piri piri •••••

36a

food to enjoy • food to share • food to go



23.04.2012 12:01



DRY CLEANING
WHEN POSSIBLE

DRY CLEANERS

kyumoy
noodle bar fully licenced

