
APPLICATION DETAILS

Application No:	16/5269/COU
Location:	2A Woodrow Avenue Middlesbrough TS7 8EZ
Proposal:	Change of use from shop (A1) to hot food takeaway (A5)
Applicant:	Mr Mosam Ali
Agent:	Mr Stephen Chambers
Ward:	Marton West
Recommendation:	Refused

SUMMARY

This application seeks permission to change the use of an existing detached, single storey retail premises located in a residential area, to a hot food takeaway.

Following a consultation exercise 62 objections were received from local residents.

It is considered that the development will result in a detrimental impact on the amenities of nearby residents and the streetscene contrary to Local Plan Policies DC1 and CS4 and is not appropriate in a residential location when there is a vacant unit located within nearby allocated local centres, thereby being contrary to both Local Plan Policies CS13 and REG29 and the guidance contained within the National Planning Policy Framework.

It is recommended that the application is refused.

SITE AND SURROUNDINGS AND PROPOSED WORKS

The application site is a detached single storey building located on the east side of Woodrow Avenue approximately 40m north of the junction with Canberra Road.

The application site was previously a detached residential garage that was converted to retail use in 1967.

This application seeks permission to change the use of the premises from A1 (retail) to A5 (hot food takeaway). There are no proposed alterations to the external elevations although extraction equipment would be required for a hot food takeaway use.

During the application process the applicant was asked to submit a Noise Assessment, Odour Assessment and a Sequential test. Subsequently a supporting statement was submitted that refers to each of the documents requested and details the waste collection information for the scheme.

PLANNING HISTORY

There is no relevant planning history for the application premises. The premises has an established A1 use class.

PLANNING POLICY

In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, Local Planning Authorities must determine applications for planning permission in accordance with the Development Plan(s) for the area, unless material considerations indicate otherwise. Section 143 of the Localism Act requires the Local Planning Authority to take local finance considerations into account. Section 70(2) of the Town and Country Planning Act 1990 (as amended) requires Local Planning Authorities, in dealing with an application for planning permission, to have regard to:

- a) *The provisions of the development plan, so far as material to the application;*
- b) *Any local finance considerations, so far as material to the application; and*
- c) *Any other material considerations.*

The following documents together comprise the Development Plan for Middlesbrough;

Middlesbrough Local Plan;

- *Housing Local Plan (2014);*
- *Core Strategy DPD (2008, policies which have not been superseded/deleted only);*
- *Regeneration DPD (2009, policies which have not been superseded/deleted only);*
- *Tees Valley Joint Minerals and Waste Core Strategy DPD (2011);*
- *Tees Valley Joint Minerals and Waste Policies & Sites DPD (2011);*
- *Middlesbrough Local Plan (1999, Saved Policies only); and*
- *Marton West Neighbourhood Plan (2016, applicable in Marton West Ward only).*

The overarching principle of the National Planning Policy Framework (NPPF) is to support sustainable development, and that it should go ahead without delay. It defines the role of planning in achieving economically, socially and environmentally sustainable development and recognises that each are mutually dependent. The NPPF requires local planning authorities to approach development management decisions positively, utilising twelve 'core planning principles', which can be summarised as follows:

- *Being plan led;*
- *Enhancing and improving areas;*

- *Proactively drive and support sustainable economic development to deliver homes, business, industry and infrastructure and a thriving local economy;*
- *Always seek a high quality of design and good standard of amenity for existing and future occupants;*
- *Take account the different roles of areas, promoting the vitality of the main urban areas whilst recognising the intrinsic character of the countryside;*
- *Support the transition to a low carbon future, taking full account of flood risk, resources and renewables;*
- *Contribute to conserving and enhancing the natural environment;*
- *Encourage the effective use of land;*
- *Promote mixed use developments;*
- *Conserve heritage assets in a manner appropriate to their significance;*
- *Actively manage patterns of growth making fullest use public transport, walking and cycling and focus significant development in sustainable locations; and*
- *Take account of local strategies to support health, social and cultural well-being and deliver community and cultural facilities to meet local needs.*

The planning policies and key areas of guidance that are relevant to the consideration of the application are:

DC1 - General Development
 CS4 - Sustainable Development
 CS13 - Town Centres etc Strategy
 REG29 - Local Centres

The detailed policy context and guidance for each policy is viewable within the relevant Local Plan documents, which can be accessed at the following web address.
<https://www.middlesbrough.gov.uk/planning-and-housing/planning/planning-policy>

CONSULTATION AND PUBLICITY RESPONSES

Consultations have been sent to statutory consultees, local residents, Ward Councillors, and the Community Councils. Consultee responses are as follows;

MBC - Environmental Health - no objection subject to conditions relating to a noise assessment, ventilation and extraction systems, hours of opening and hours of deliveries.

MBC - Highways - no objection

MBC - Planning Policy - concerns raised regarding appropriateness of site due to the proximity to residential dwellings and there is a vacant unit at the nearby Local Centre.

MBC - Refuse - object, at the time of commenting no details of waste storage had been submitted.

Councillor Chris Hobson - objects

This is certainly not the area for a hot food takeaway, a lot of the residents are elderly. We have enough takeaways in the surrounding area.

Marton West Community Council - objects

- a) There is no need for yet another take-away in this area. It would be sited mid-way between the Parkway Centre and Marton/Stokesley Road shops which both have an abundance of takeaways, already including an Indian one.

- b) The Woodrow Avenue area is mainly bungalows with elderly residents. This application would change the ambience from a quiet residential area to one which would have opening hours up to 11pm so encouraging groups of people to congregate, no doubt creating noise and nuisance to the area.
- c) We query the facilities which this premise offers taking regard of Food Hygiene and Environmental Heath legislation and regulations.

Following a consultation exercise comments were received from 62 local properties, these are summarised below:

- a) Noise
- b) Odours
- c) Youths loitering
- d) Anti-social behaviour
- e) Out of keeping with residential area of elderly residents
- f) Quiet residential area
- g) Litter
- h) Vermin
- i) Enough takeaways in area
- j) Inadequate parking
- k) Increase in traffic
- l) Increase in pollution
- m) Premises are too small
- n) Hazardous roads
- o) Close to adjoining premises
- p) Loss of privacy
- q) No information regarding waste collection
- r) Application form not completed fully
- s) No details about the interior
- t) Does not promote healthy living
- u) General dislike of proposal

A full list of properties which objected is in appendix 1 at the end of this report.

Public Responses

Number of original neighbour consultations	21
Total numbers of comments received	74
Total number of objections	74
Total number of support	0
Total number of representations	0

PLANNING CONSIDERATION AND ASSESSMENT

1. This planning application is for a change of use from A1 retail to A5 hot food takeaway. The principle issues to be considered in the analysis of this application are the appropriateness of the use in the proposed location, the impact on the amenity of local residents and the impact on the amenity of the area.
2. Concerns were raised about the schemes impact on the health of local residents, vermin, and anti-social behaviour. These are matters addressed under other legislation and are not specifically material to the consideration of this application.

Policy considerations

3. Concerns have been raised regarding the appropriateness of the location due to the proximity to local residential dwellings and the location of the site outside the allocated local centres. Policy CS13 lists the allocated town, district, local and neighbourhood centres where a use of this type would be guided towards. The application site is not located within an allocated shopping centre, being approximately 300m from the Marton Road/Gypsy Lane local centre.
4. Policy REG29 further defines Local Centres and details what developments are appropriate for the centres which include A1 retail uses and other complementary uses. The aim of the policies CS13 and REG29 is to identify, protect and enhance the hierarchy of vital and viable, town, district, local and neighbourhood centres in the town. These are areas where local residents are provided with day to day services which assists in supporting sustainable living within local areas and where parking and impacts on amenity etc. are grouped.
5. In line with the requirements of the National Planning Policy Framework (NPPF), the applicant was asked to submit a sequential test to determine if there are more appropriate locations for the proposed use within existing established centres defined within the Local Plan.
6. The sequential test submitted by the applicant revealed a vacant unit at the nearby Marton Local Centre. As a result the applicant was informed that in accordance with policy guidance, the vacant unit at the nearby local centre would be a more suitable location for the use. Subsequently, correspondence from the agent for the vacant unit was submitted to demonstrate that the property could not be used as a hot food takeaway, and therefore was not available for the proposed use. However, after examining the information submitted it is clear that the correspondence from the representative of the vacant unit states that the current use of the premises is A1 retail and it is being marketed as such. It does not confirm that the owner will not let the premises for hot food purposes, simply that it does not have the appropriate use class. Below is an extract from an email on behalf of the leaseholder, for the vacant unit that confirms this stance:

"Although the unit is currently vacant, the unit is held under a current lease and North East Commercial are marketing the property on behalf of the leaseholder not the Landlord. The existing lease has A1 use only and is being marketed on that basis."
7. Hot food takeaways are often associated with antisocial behaviour, noise from people visiting the premises, litter etc. all of which can have a significant impact in a residential area. The use proposed would be more appropriately located in a local centre where the level of activity and associated noise and disturbance from such a use can be more easily assimilated, without unduly harming the predominantly residential nature of the area.
8. In this instance it is considered that the proposed use in this location would be contrary to both local and national planning policy guidance with in that there has been insufficient justification for it to be located in a position away from a defined centre and there is no policy of support which would outweigh this consideration. The proposed use would adversely affect the vitality and viability of the nearby local centre in conflict with policies CS13 and REG29.

Amenity and Streetscene

9. The application site is a detached, single storey building. It is one of four retail premises located on Woodrow Avenue which are surrounded by residential

properties. The four retail units consist of the application site (previously used as a hairdressers), a hairdressers, a newsagents and a hair and beauty salon. There are residential flats above two of the retail premises which are immediately adjacent to the application site. The building is located adjacent to the boundary of 1 Canberra Road whose rear elevation is located approximately 3m from the application site at its closest point. 1 Woodrow Avenue is located opposite the application site at a distance of approximately 20m.

10. Objections have been received regarding noise and odours generated from the use. Information was submitted in support of the application which relates to the type of extraction unit that will be used at the premises. Although the full details of the extraction system were not submitted, the council's Environmental Health team have confirmed that following the submission of the additional information, they are satisfied that any noise and odour from the unit can be controlled through the use of conditions relating to a noise assessment, ventilation and extraction systems, hours of opening and hours of deliveries. Objections raised in relation to litter are not directly material to a planning decision although with any scheme of this nature consideration could be given to provision of a bin within the vicinity of the premises were it deemed necessary to support the use. Litter further from the site would be less likely to be addressed by any such requirement and is arguably a matter which would not reasonably be addressed through the grant of any planning application.
11. The application form states that the opening hours of the premises will be from 4pm to 11pm. The supporting information states that there was previously an off licence in one of the four units on Woodrow Avenue which opened to 11pm and therefore the late opening time for the takeaway will have no more impact than this.
12. As the property is located in a predominantly residential area it is reasonable to conclude that the intention is to cater for local customers. However, there can be no control over the comings and goings of vehicular-borne customers, with associated noise of engines revving and doors opening and closing in the late evening hours. Such customers will tend to park where convenient, even if it is outside neighbouring dwellings. Given the likelihood of such impacts within the late hours, within a residential area, as stated in paragraph 7 above, it is considered that the proposed use would be more appropriately located within a local centre where the level of activity can be more easily assimilated, without unduly harming the predominantly residential nature of the area.
13. Given the very close proximity of dwellings to the premises, it is considered that the proposed hot food takeaway use in this location would give rise to an unacceptable reduction in the living conditions of neighbouring residents due to noise and disturbance, without a reasonable opportunity to attenuate or mitigate this impact, and it being at a time when occupiers of the property should be able to reasonably expect a greater degree of peace and quiet, being contrary to the aims of policy CS5(e) and policy DC1(c) of the Local Development Framework.
14. As the proposed use would not be open until 4pm this will result in the building being closed and potentially with a shuttered frontage during the normal working day which is undesirable in a residential area as it will result in an unattractive appearance in the streetscene during the day in conflict with policy DC1(b) and CS5(e).
15. Although it is acknowledged that if refused, the unit will sit empty whilst an alternative use is found, it is considered that this does not outweigh the negative impacts of a hot food take away in this location as detailed above.

Highways

16. There is a small parking area located to the front of the four retail units for approximately 7 cars which can be utilised by persons visiting the premises. There are no parking restrictions along Woodrow Avenue and the use of the premises for a hot food takeaway will not alter the existing parking arrangements.
17. The hot food use will be open from 4pm to 11pm, as a result the use will not result in increased use of the parking area during the day. The units main trade will be likely to when other units are more likely to be closed and therefore will benefit from the available space for parking. The Local Highway Authority have not raised any objection to the application and this is considered to be an appropriate stance given the small scale nature of the premises and it being likely to serve a localised area.

Conclusion

18. For the reasons set out in this report it is the planning view that the use of the premises as a hot food takeaway will result in significant harm to the amenities of the nearby residential occupiers and would have a detrimental impact on the streetscene and the character of the area in conflict with policies DC1(c and b) and CS5(e). In addition, the proposed use has not passed the necessary sequential test and is also therefore in conflict with policies CS13 and REG29 as there is a vacant unit located within the nearby local centre.

RECOMMENDATIONS AND CONDITIONS

Refused

1. Failure to pass sequential test.

In the opinion of the Local Planning Authority, the proposed use fails the sequential test which has demonstrated that there is a unit available within a nearby local centre thereby being contrary to the guidance of Local Plan Policies CS13 and REG29 and the guidance within the National Planning Policy Framework (paras 23 to 27).

2. Undue impact on character and amenity

In the opinion of the Local Planning Authority, the proposed change of use would be detrimental to the street scene character of the area and the amenity of nearby residential occupiers in view of the nature of the use and associated impacts into the late evening contrary to the guidance contained within Local Plan Policies DC1 and CS5 and the guidance of the National Planning Policy Framework (para 17).

INFORMATIVES

Case Officer: Shelly Pearman

Committee Date: 31st March 2017

Site Location Plan



Appendix 1

Location of properties which generated responses.

44 Gunnergate Lane	15 Canberra Road
40 Gunnergate Lane	17 Canberra Road
20 Newham Crescent	18 Canberra Road
1 Newham Crescent	25 Canberra Road
2 Newham Crescent	30 Canberra Road
5 Newham Crescent	40 Canberra Road
15 Newham Crescent	42 Canberra Road
19 Newham Crescent	47 Canberra Road
21 Newham Crescent	57 Canberra road
24 Newham Crescent	82 Canberra Road
28 Newham Crescent	14 Albany Road
32 Newham Crescent	28 Albany Road
34 Newham Crescent	1 Woodrow Avenue
36 Newham Crescent	3 Woodrow Avenue
38 Newham Crescent	12 Woodrow Avenue
32 The Gables	13 Woodrow Avenue
2 The Gables	14 Woodrow Avenue
21 The Gables	15 Woodrow Avenue
27 The Gables	5 Woodrow Avenue
28 The Gables	27 Woodrow Avenue
29 The Gables	32 Woodrow Avenue
34 The Gables	37 Woodrow Avenue
36 The Gables	47 Woodrow Avenue
1 Canberra Road	7 Perth Crescent
20 Canberra Road	3 Sydney Road
2 Canberra Road	13 Sydney Road
3 Canberra Road	4 Topcroft Close
4 Canberra Road	70 Shevington Grove
10 Canberra Road	68 Cambridge Avenue
11 Canberra Road	16 Brookdale Road
12 Canberra Road	8 Tanberra Road