

COMMITTEE REPORT

Item No 2

APPLICATION DETAILS

Application No:	19/0254/COU
Location:	197 Linthorpe Road, Middlesbrough, TS1 4AG
Proposal:	Change of use from retail shop (A1) to hot food takeaway (A5)
Applicant:	Maria Cocker
Company Name:	Right Price Properties
Agent:	Mr G Phillipson
Company Name:	
Ward:	Newport
Recommendation:	Approve with Conditions

SUMMARY

Planning permission is sought to change the use of the premises from a retail use (A1) to a hot food takeaway use (A5). The application site is identified as being within the Linthorpe Road South area of the wider town centre, where a mix of retail, professional services, restaurants, drinking establishments and hot food takeaway uses operate.

Objections have been received regarding the harmful increase of hot food outlets in this location, that the use would damage the daytime economy and would have a detrimental impact on public health.

Whilst the concerns raised are acknowledged, it is the officer view that the proposed change of use would not be harmful to vitality and viability of this part of Linthorpe Road, and would contribute to its role as a bar and café quarter. The concerns of a closed frontage would be lessened by the proposed opening times during the day.

Overall, it is concluded in this report that the proposed change of use is in accordance with both local and national planning policies, the issues raised have been considered and, on balance, it is the officer recommendation to approve subject to conditions.

SITE AND SURROUNDINGS, PROPOSED WORKS & BACKGROUND INFORMATION

The application site is a mid-terrace unit situated on the western side of Linthorpe Road within the Linthorpe Road South area of the town centre, as identified in the Local Plan.

Planning permission is sought for a change of use of the unit from retail (A1) to a hot food takeaway (A5). The upper floors of the unit would be for ancillary storage and space for the hot food takeaway.

As part of the change of use, a flue would be positioned on the rear elevation of the building. The exact details for the flue and ventilation system have not been provided.

As part of the Gresham Student Village proposed development (committed on the land behind The Crown), three properties along Linthorpe Road have been acquired by the Council to enable a link between the proposed Student Village and the main university campus on the other side of Linthorpe Road. The applicant has advised that one of the three properties acquired by the council is a Pizza Hut Delivery (A5 Use Class) at 151 Linthorpe Road and that this application defines the way the applicant is looking to relocate this existing A5 use to another nearby premises.

PLANNING HISTORY

There is no relevant planning history for this application.

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 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:

- The provisions of the Development Plan, so far as material to the application
- Any local finance considerations, so far as material to the application, and
- Any other material considerations.

Middlesbrough Local Plan

The following documents comprise the *Middlesbrough Local Plan*, which is the Development Plan for Middlesbrough:

- 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).

In addition the Council has produced its Middlesbrough Local Plan Publication Draft 2018. Whilst not yet adopted is a material consideration in the assessment of planning applications.

National Planning Policy Framework

National planning guidance, which is a material planning consideration, is largely detailed within the *National Planning Policy Framework* (NPPF). At the heart of the NPPF is a presumption in favour of sustainable development (paragraph 11). The NPPF defines the role

of planning in achieving economically, socially and environmentally sustainable development although recognises that they are not criteria against which every application can or should be judged and highlights the need for local circumstances to be taken into account to reflect the character, needs and opportunities of each area.

For decision making, the NPPF advises that local planning authorities should approach decisions on proposed development in a positive and creative way, working pro-actively with applicants to secure developments that will improve the economic, social and environmental conditions of the area and that at every level should seek to approve applications for sustainable development (paragraph 38). The NPPF gives further overarching guidance in relation to:

- The delivery of housing,
- Supporting economic growth,
- Ensuring the vitality of town centres,
- Promoting healthy and safe communities,
- Promoting sustainable transport,
- Supporting the expansion of electronic communications networks,
- Making effective use of land,
- Achieving well designed buildings and places,
- Protecting the essential characteristics of Green Belt land
- Dealing with climate change and flooding, and supporting the transition to a low carbon future,
- Conserving and enhancing the natural and historic environment, and
- Facilitating the sustainable use of minerals.

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

DC1 – General Development
CS4 – Sustainable Development
CS5 – Design
CS13 – A Strategy for the Town, District, Local and Neighbourhood Centres
REG20 – Principal Use Sectors
REG24 – The Southern Sector
EG6 – Town, District and Local Centres
EG7 – Hot Food Takeaways

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

The application was subject to the standard notification of neighbouring properties, as well as internal technical consultees and ward councillors.

Three objections have been received from the Councillors of the adjacent Central ward (Linda Lewis, Matthew Storey and Zafar Uddin). The issues raised can be summarised as follows:

- There are too many hot food outlets in this location.

- Potentially add to existing anti-social behaviour, noise and litter issues.
- Proposed A5 would be harmful to the daytime economy.
- Detrimental impacts on public health due to the number of takeaways, and the knock-on effects in terms of pressure on health services and other public services delivered by the Council.

Internal Technical Consultees

MBC Waste Policy – No objections.

MBC Environmental Health – No objections subject to various conditions relating to noise, odours and hours of use.

Public Responses

Number of original neighbour consultations	30
Total numbers of comments received	3
Total number of objections	3
Total number of support	0
Total number of representations	0

PLANNING CONSIDERATION AND ASSESSMENT

1. The main considerations with this proposal are the principle of the change of use in this location, the impacts on the vitality and viability of the Linthorpe Road South area of the Town Centre, the potential impacts of the proposed flue on the surrounding built environment, and the implications on public health associated with the proposed use. These and other material planning considerations are discussed below.

Planning Policy Context

2. The application site is located within an area defined as 'Linthorpe Road South' as detailed on the Middlesbrough Local Plan Proposals Map (adopted 2014) and is specifically covered by Local Plan Policies CS13 of the Core Strategy (adopted February 2008), and REG20 and REG24 of the Regeneration DPD (adopted February 2009). Other general Policies to be considered are DC1, CS4 and CS5 of the Core Strategy.
3. In addition to these current policies, it is noted that the Council has an emerging local plan, which was published in October 2018. As the emerging plan is not formally adopted, only limited weight can be given to its policies at this stage; the relevant ones are EG6 and EG7.
4. Policy CS13 (A Strategy for the Town, District, Local and Neighbourhood Centres) aims to protect and enhance the identified hierarchy of centres, their vitality and viability, advising that development within the town centre will only be considered acceptable providing it meets local needs, is of an appropriate scale and will not adversely impact on the vitality and viability of other nearby centres.
5. Policy REG20 (Principal Use Sectors) aims to support the role of the town centre, and direct appropriate uses to the principal use sectors (including The Southern Sector). Specifically for The Southern Sector, the policy states that A1, A2, A3 and A4 uses

would be considered appropriate, although other uses may be acceptable provided they are complementary and will not harm the principal function of the sector.

6. Within the Linthorpe Road South defined area, Policy REG24 (The Southern Sector) states that retail uses are considered appropriate, whilst other uses including A4 and A5 may be acceptable, where they support the role of Linthorpe Road as a bar and café quarter, and contribute to the vitality and viability of the area.
7. Policy CS4 (Sustainable Development) states that the proposal will be required to contribute to sustainable development, making the most use of efficient land and being located so that services are accessible on foot, bicycle and public transport. Policy CS5 (Design) comments that any new development requires a high quality design in terms of layout and appearance whilst Policy DC1 (General Development) supports development that is of a high quality that minimises the impacts on the surrounding area.
8. Emerging Policy EG6 has a similar requirement to current Policies CS13 and REG24 and seeks to protect and enhance the hierarchy of centres. The Policy states that development proposals need to be of a scale that is appropriate to the centre in which they are located.
9. Emerging Policy EG7 sets out that hot food takeaways should be located within defined centres with the number of hot food takeaway uses being limited to not exceed a total of 10% of the total uses within the centre, not result in more than two adjacent hot food takeaway units and to not be within a designated shopping frontage. In addition, the emerging Policy states that consideration should be given to the proximity of the hot food takeaway unit to a secondary school and submissions of the application should be supported with a Health Impact Assessment. In this case, the proposal is not within 400 metres of a secondary school.

Assessment of the Proposed Development

10. The application site fronts Linthorpe Road, which forms part of a principal route through the town centre, and is within walking distance of the main bus and rail stations and other services within the town centre. The proposal is for the premises to be open during the day time from 11am and during the evening which will provide an active frontage to the premises which will assist in ensuring the vitality and viability of the area.
11. Within this section of Linthorpe Road, there is currently a mixture of uses, including retail, bars, restaurants and takeaways. It is noted, however, that within the seven units between Psyche and Housams (Nos. 189 and 207 Linthorpe Road) there are three existing hot food takeaway uses (A5), as well as two restaurant uses (A3). The proposed development would therefore create a fourth hot food takeaway use in this micro-area. Despite this seemingly high concentration of A3 and A5 uses in this particular area, it is considered that all existing units promote the role of Linthorpe Road as a café and bar quarter, which it is defined as within the existing Local Plan. The additional use would contribute to the role of this area and is therefore considered to satisfy the relevant criteria of Policy REG24.
12. With regard to the emerging policies, it is accepted that this development would result in two hot food takeaway uses being situated adjacent to one another, and would bring the total percentage of hot food takeaway uses to approximately 17% within this section of the Linthorpe Road South Area. This exceeds the 10% guidance set out in emerging Policy EG7. It must be emphasised that this is emerging Policy only and at this stage cannot be given the same weight as the existing policy.
13. In addition to Local Policy, Section 7 of the National Planning Policy Framework (NPPF) advises that decisions should *'promote the long-term vitality and viability of town centres by allowing them to diversify in a way that can respond to rapid changes in the retail*

industry, allows a suitable mix of uses'. Mindful of this guidance from central government as well as the continuous challenges to town centre retail, it is considered that the proposed non-A1 use would be acceptable and not harmful to local vitality.

14. In view of the above, as Linthorpe Road is acknowledged in current local plan policy as a bar and café quarter, being important for the night-time economy, it is considered that the loss of an A1 retail unit in this location and its change to an A5 use would not have a significant impact on the vitality and viability of the area.

Additional Supporting Evidence

15. Following the receipt of the three objections to the application, supporting documentation has been submitted by the applicant which notes five properties in the local area that no longer operate as a hot food takeaway use (Nos. 149, 165, 167, 169-171 and 173), having being changed to retail uses. Two other properties with existing hot food takeaway use (Nos. 147 and 151) are noted as being sold to the Council and are intended to be closed as part of major development plans in the area. A letter has been received from the operator of one of these premises (Pizza Hut Franchise operator) who has advised that they intend to move their business to this premises subject of this application. Whilst the operator of a unit is not normally a material planning consideration, the operator has indicated that this move of premises will assist in retaining 15 local jobs which is considered to support the local economy, in broad accordance with guidance contained within the National Planning Policy Framework.

Proposed Flue

16. Along with the hot food takeaway use, the proposals also include ducting that would be positioned on the rear elevation of the building. Despite not being visible from Linthorpe Road, the arrangement of this ducting (up to roof level) would be visible to nearby properties and potentially detrimental to general amenities of the area. Moreover, the arrangement of this ducting sought to prevent future occupiers of the upper floor residential use being subjected to odours associated with the ground floor hot food takeaway use. After discussions with officers, however, it is now proposed that the upper floors would be ancillary space and storage for the hot food takeaway use, and the ducting would no longer be required to vent at roof level. At the time of writing, a revised scheme had not been agreed for the new ducting. A suitably-worded condition is recommended to achieve necessary provision.

Health Implications

17. Concern has been raised by objectors in relation to the health implications for the proposed use. Emerging Policy seeks to restrict the number and concentration of takeaways, as well as to prevent their proximity to secondary schools. As mentioned earlier within this report, the site is not within the defined distance of a secondary school as referred to within the policy and is within a town centre area where such uses can be compliant with policy. Although there is a concentration of such uses in the immediate vicinity, evidence suggests a reasonable turnover of units between A5 and A1 uses and this part of the town centre area is defined as the Café and Bar quarter.

Hours of Opening and Deliveries

18. The applicant has requested hours of opening between 1100 and 0300. The Council's Environmental Health service would, however, object to the opening until 0300, and has instead advised that the hours of opening be no later than 0200. Opening later would be considered to be harmful to the residential amenities of nearby properties.

Upper Floor Residential Accommodation

19. The original application sought to introduce a self-contained flat on the upper floors, with the proposed access by way of a new opening from Linthorpe Road. Owing to the concerns of officers to the proposed arrangement of a residential use above the proposed hot food takeaway, the self-contained flat was removed from the proposals.

To further restrict the use of the upper floors, a condition is recommended to control the use of the upper floors to storage space only.

Conclusions

20. Overall, the proposed change of use at this location is considered to represent acceptable development. Although the use may not necessarily adhere to all the criteria of the emerging Policy EG7, only limited weight can be apportioned to this given the emerging plan is yet to be adopted. With regard to current policy, the development is considered to support the café/bar quarter associated with Linthorpe Road south and the wider University sector. It is also considered that the proposed change of this unit to a hot food takeaway use would not be detrimental to the vitality and viability of the Linthorpe Road centre.
21. In line with current government guidance with regards to allowing diversity in town centres it is considered that the non-A1 use would be appropriate and would, on balance, accord with local policy.

RECOMMENDATIONS AND CONDITIONS

1. Time Limit

The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.

Reason: The time limit condition is imposed in order to comply with the requirements of Section 91 of the Town and Country Planning Act 1990.

2. Approved Plans

The development hereby approved shall be carried out in accordance with the following approved plans:

- Site Location Plan (Drawing Number 01) (received 23rd April 2019)
- Proposed Plans (Drawing Number 03 Rev A) (received 26th June 2019)
- Proposed Elevations (Drawing Number 04 Rev A) (received 26th June 2019)

Reason: To ensure a satisfactory form of development and for the avoidance of doubt.

3. Ventilation and Fume Extraction

Notwithstanding the information provided on the approved drawings, details of a ventilation and fume extraction system suitable for uses within class A5, including a full technical specification by a suitably qualified person, specifying the position of ventilation fume or flue outlet points and the type of filtration or other fume treatment to be installed and used at the premises in pursuance of this permission shall be submitted to and approved in writing by the local planning authority. Any approved scheme shall then be installed before the development hereby permitted commences and thereafter shall be retained in perpetuity and in full accordance with the approved details. The ventilation and extraction system referred to in this condition shall be operated and maintained in accordance with the manufacturers recommendations including the frequency of replacement filters.

Reason: In the interests of the amenity of the neighbouring premises and to accord with Core Strategy Policy DC1.

4. Hours of Opening

The hours of opening shall be restricted to between the hours of 11:00 and 02:00 Monday to Sunday.

Reason: To ensure the amenity of the nearby residential premises and to accord with local Policy DC1.

5. Delivery/Collection Hours

The deliveries and collections to the rear of the premises shall be kept between the hours of 08:00 and 19:00 Monday to Saturday, and between the hours of 09:30 and 18:30 Sunday.

Reason: To ensure the amenity of the neighbouring residential premises and to accord with Policy DC1.

6. No Residential Accommodation

The upper floors of the application site shall only be used for purposes incidental to the operations of the hot food takeaway, including ancillary storage space, and shall at no time provide residential accommodation.

Reason: The upper floors of the application site are not considered appropriate for residential accommodation whilst the ground floor is in use as a hot food takeaway.

REASON FOR APPROVAL

This application is satisfactory in that the change of use from retail (A1) to hot food takeaway (A5) accords with the principles of the National Planning Policy Framework (NPPF) and the local policy requirements (Policy DC1, CS4, CS5, CS13 and REG24 of the Council's Local Development Framework). Where appropriate, the Council has worked with the applicant in a positive and proactive way in line with paragraph 38 of the NPPF (2018).

In particular, the change of use from retail to hot food takeaway will not prejudice the character and function of the area and does not significantly affect any landscaping or prevent adequate and safe access to the site. The change of use from retail to hot food takeaway will be consistent with the existing commercial uses of this location and it will not be detrimental to any adjoining or surrounding properties. The traffic generated, car parking and noise associated with the change of use will not be of a level likely to result in an unacceptable impact on nearby premises.

The application is therefore considered to be an acceptable form of development, fully in accordance with the relevant policy guidance and there are no material considerations, which would indicate that the development should be refused.

INFORMATIVES

Under the Town & Country Planning (Fees for Applications and Deemed Applications)(Amendment)(England) Regulations 2018, the Council must charge a fee for the discharge of conditions. Information relating to current fees is available on the Planning Portal website

(<http://www.planningportal.gov.uk/england/public/planning/applications/feecalc>. Please be aware that where there is more than one condition a multiple fee may apply.

Case Officer: Peter Wilson

Committee Date: 5th July 2019

