
APPLICATION DETAILS

Application No:	19/0574/COU
Location:	61 Parliament Road Middlesbrough TS1 4JW
Proposal:	Change of use from shop (A1) to hot food takeaway (A5) and installation of extraction flue to side

SUMMARY

The application is an end terrace, two storey property located on the corner of Parliament Road and Harford Road, it lies within the Parliament Road Local Centre.

Planning permission is sought for the change of use of the ground floor from retail unit (A1) to hot food takeaway with installation of a fume extraction flue to the side. The main issues for consideration are the level of hot food takeaways within the local centre, the loss of a retail unit, the impact of this on the vitality and viability of the Local Centre, the appearance of the fume extraction equipment and its impact on the street scene and character of the area, the impact of the proposed use and its extended opening hours on the amenity of nearby residents.

The report concludes that the proposed use would result in an excessive number of hot food take-aways in the local centre which will have an adverse impact on the vitality and viability of the Local Centre contrary to Policies CS13, REG29 and the Interim Hot Food Takeaway Policy. This is further exacerbated by other existing hot food takeaways within the surrounding area out-with the designated centre. It is also considered that the proposal will, as a result of being closed during the day, have an unacceptable impact on the character of the area in terms of appearance contrary to Policy CS5 and would, as a result of being open until 2am all days of the week, be likely to have an adverse impact on the residential amenity associated with surrounding residential properties contrary to Policy DC1(test c).

DESCRIPTION OF SITE AND PROPOSAL

The application property is located on a corner site at the junction of Parliament Road and Harford Street and is within the Parliament Road Local Centre. The centre is surrounded by a residential area that is interspersed with a mix of retail and commercial uses. Properties in the area are typically two storey, terraced properties laid out in a grid iron pattern.

The application property is a two storey end terrace that has planning permission for use as a retail unit (Class A1) with residential above and to the rear. Part of the ground floor was previously used as a Nail bar (Sui Generis) without the benefit of planning permission and is currently vacant. The proposal subject of this application is to change the use to hot food take away and install an extraction flue to the side

Officer Site visit:
18th December 2019

PLANNING HISTORY

M/FP/2328/06/P - 2 STOREY REAR EXT TO FORM APARTMENT, FRONT & REAR DORMERS TO FORM APARTMENT, BAY WINDOW AT FRONT

Approved with Conditions
20th February 2007

M/FP/1149/04/P - CHANGE OF USE TO HOT FOOD AND NEW SHOP FRONT

Refused 21st July 2004

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).

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
CS5 - Design
CS13 - Town Centres etc Strategy
REG29 - Local Centres
HFTA

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

Middlesbrough Council Environmental Health

No objection subject to an odour impact assessment and noise assessment report being submitted before the use commences and a condition restricting the collection of refuse to the hours of 8.00am to 6.00pm Monday to Saturday and 9.30am to 6.00pm Sunday being imposed on any approval.

Middlesbrough Council Highways

Given the buildings default use, which could continue without the need for further planning consent, the proposed change of use will not have a material impact on the operation of the highway network. As a result, we do not have any objections.

Middlesbrough Council Waste policy

No objections.

Middlesbrough Council Strategic policy

Parliament Road local centre is within a residential area, and includes a good mixture of units that serve the day to day needs of the local community. There is also a somewhat sporadic offer of commercial/retail units along the road that are not within the local centre

designation, yet in themselves reflect a local centre offer, with a number of these units offering hot food takeaway facilities.

An annual survey conducted most recently in March 2019 identified a 6% proportion of hot food takeaways uses within the Parliament Road Local centre boundary, with the additional approval of a further hot food takeaway within the centre at 140 Parliament Road (18/0581/COU) potentially increasing the proportion of uses to 9%. Approval of this further application would see the centres hot food takeaway concentration increase to 12%.

This proposal would result in the proportion of A5 hot food takeaways exceeding the identified 10% threshold for the local centre, thus detracting from its vitality and viability. Therefore, it is considered to be contrary to both Policy REG29 and the Interim Hot Food Takeaway Policy.

Public comment

Nearby Neighbours were notified of the proposal, no comments were received.

Public Responses

Number of original neighbour consultations	25
Total numbers of comments received	0
Total number of objections	0
Total number of support	0
Total number of representations	0

PLANNING CONSIDERATION AND ASSESSMENT

Policy Context

1. The National Planning Policy Framework (NPPF) was most recently revised and published by the Government in February 2019, and is a material consideration. The NPPF states that, where a planning application conflicts with an up-to-date development plan, permission should not usually be granted (para. 12). In determining planning applications, due weight should be given to local planning policies in accordance with their consistency with the revised Framework, with greater weight given to those policies which are closer to those in the Framework (para 213).
2. As a starting point, the proposal should be assessed against policies set out in the Development Plan. Policies DC1 and CS5 in essence seek to ensure high quality sustainable development; ensure the amenity of nearby residents; character of the area and highway safety are not adversely affected by the development. Furthermore, as the site is located in a local centre, Policies CS13 and REG29 also apply. These policies seek to protect and enhance a hierarchy of centres and the associated principle uses and ensure development within them does not undermine their vitality and viability. Policy REG29 advises that planning permission will be granted for retail uses (A1) and that other complimentary uses will be permitted provided that they contribute to the vitality and viability of the centre. Under national planning policy, hot food takeaways are classified as a main town centre use that should be located within the hierarchy of centres.
4. The Council approved an interim Hot Food Takeaway Policy in July 2019 to guide planning decisions on applications for Hot Food Takeaways. Whilst not an adopted policy in the Local Plan, it is a policy of the Council and should be afforded weight in the decision making process, albeit limited. The policy recognises that such uses

can not only have a detrimental impact upon health, but that they can also have negative impacts as a result of noise, odours, traffic, parking, and litter. As such it seeks to restrict hot food takeaways to within defined centres, and away from secondary schools. Such uses also have a tendency to provide closed frontages during the day, and that high proportions and concentrations can have a negative impact on the primary function, vitality and viability of centres. For these reasons, the policy seeks to carefully manage hot food takeaway applications.

Principle of Use

5. As outlined in the Strategic Planning Policy consultation response, hot food take-aways (A5) are considered to be an appropriate use in local centres providing they do not impact on the vitality and viability of the centre. An excess of hot food takeaways can lead to a reduction of footfall during the day as they tend to be open later in the evening thereby having a negative impact on the vitality and viability of the centre as well as impacting on the character of the area. This application is proposed to be open from 5pm to 2am all days of the week, thereby resulting in an unused frontage during daytime hours. The interim hot food takeaway Policy identifies a 10% threshold for the number of takeaways in the centre to avoid this situation. Currently, 6% of uses are in A5 Use classification within the centre, with an extant planning permission at 140 Parliament Road which would increase this to 9%. If this current application was to be approved the number of hot food takeaways within the centre would rise to 12% thereby exceeding the 10% threshold. It is considered that this level of A5 uses, taking into account their limited opening hours would detract from the centres vitality and therefore its long term viability to serve the local areas as a local centre and to serve the communities general needs, thereby being contrary to Polices CS13, REG29 and the Interim Hot food Takeaway Policy.
6. The issue of excessive numbers of A5 uses within a small area is further exacerbated due to their being (at the time of making the site visit) six other take-away's located just outside of the local centre but within the Parliament Road corridor.
7. There are a number of vacant premises within the centre and surrounding area although no information has been submitted in respect to these to demonstrate long term vacancy. Notwithstanding any long term vacant uses, the occupation of which would be beneficial to the character of the area, other local / town centre uses would be acceptable in such locations as would residential use. As such, the presence of vacant uses within the centre is considered to not have any significant weight in considering this proposal.

Considerations of Appearance

8. As outlined above, hot food take-aways are usually open in the evening and the introduction of another hot food takeaway has the potential to result in the unit to be closed up during the day and thereby detract from the appearance of the centre and be detrimental to the overall character of the area.
9. Plans submitted with the application indicate that an extraction flue will be installed to the side of the property. The flue will project from the side wall and extend upwards by 4.2m giving it a maximum height of 6.1m from ground level and it will have a diameter of almost 400mm. It will sit above the ridge level of the rear part of the property but will sit below the roof level of the main body of the building to the front. Because the flue will be located in a yard that sits in a recess to the side of the property it will be partially screened from view from the wider area. It will however be visible from Hartford Street and to occupants of the dwelling at the rear of the application site as they enter and exit the premises and those immediately across

Hartford Street. Given its scale, appearance and projection above the roof it is considered that it will have an unacceptable adverse impact on the immediate character.

10. In view of the above it is considered that the proposed flue will have an adverse impact in terms of appearance and a closed unit during daytime hours will have an unacceptable impact on the character of the area contrary to policies CS5 (test c) and DC1 (test b).

Impact of Proposed Use

11. The interim policy also requires the submission of a health impact assessment (HIA) alongside any planning applications for hot food takeaways. No such document was submitted with the application however, it is recognised that the granting of such uses cannot be controlled to a specific business, nor can the menu be controlled, meaning that the overall potential health impacts of A5 uses need to be considered. The lack of a HIA is, therefore, immaterial to the outcome of this proposal.
12. Use as a hot food take away has the potential to impact on the amenity of nearby neighbours in terms of noise and odour. A fume extraction flue is shown on the submitted drawing, the equipment is manufactured to ensure odours from the proposed use are dispersed in such a way that avoids undue impact on nearby dwellings. The Councils Environmental Health Officer considered the proposal and advised that an odour assessment be submitted to ensure that the equipment installed will mitigate any impact from fumes to a sufficient degree. It was also advised that a noise assessment be submitted to assess noise associated with the proposed use and any mitigation measures required to mitigate it. Suitable conditions can be imposed on any approval.
13. The application form submitted as part of the application indicates opening hours of 17:00 to 0:200hrs. It is considered that the noise associated with the movement of people and vehicles to and from the proposed use in the later hours will result in an unacceptable level of disturbance to nearby residents when they can rightly expect to enjoy peace and quiet. This could be prevented by imposition of a suitable condition restricting the hours of use if the application is approved.
14. The Councils Environmental Health Officer has advised that refuse collection from the site be restricted to the hours of 8.00am to 6.00pm Monday to Saturday and 9.30 to 6.00pm Sundays to avoid undue impact on nearby residents. Again, a suitable condition can be imposed were the application to be approved.
15. In light of the above and providing any measure identified in the relevant reports are implemented, it is considered that the proposed alterations will not have a significant impact on the amenity of nearby residents in accordance with policy DC1 (test c).

Highways Related Matters

16. There is no off street parking associated with the site. It is not anticipated however that the use as a hot food take away will result in a significant increase in demand for off-street parking over and above the approved use for retail. As such it is considered that the proposal will not have an adverse impact on safe operation of the highway. The Councils Highway Officer considered the proposal and raised no objection. As such the proposal is considered to be in accordance with Policy DC1 (test d).

Conclusion

17. The proposal has been assessed against local policy and guidance and it is considered that the proposed use would result in an excessive number of hot food take-aways in the local centre which will have an adverse impact on the vitality and viability of the Local Centre contrary to Policies CS13, REG29 and the Interim Hot Food Takeaway Policy. This is further exacerbated by other existing hot food takeaways within the surrounding area out-with the designated centre. It is also considered that the proposal will, as a result of being closed during the day, have an unacceptable impact on the character of the area contrary to Policy CS5 and would, as a result of being open until 2am all days of the week, be likely to have an adverse impact on the residential amenity associated with surrounding residential properties contrary to Policy DC1(test c).
18. In view of the above, the proposal is considered to be an unacceptable form of development contrary to National and Local policy and is therefore recommended for refusal.

RECOMMENDATIONS AND CONDITIONS

Refuse for the following reasons;

1. **Undue impact on vitality and viability**
In the opinion of the Local Planning Authority, as a result of the proposals loss of a retail unit and the proposed evening / night time opening hours, it is considered that the proposed use would have a detrimental impact on the vitality and viability of the Local Centre, contrary to the guidance contained within Local Plan Policies CS13, REG29 and the Interim Hot food Takeaway Guidance.
2. **Undue impact of use on character and amenity**
In the opinion of the Local Planning Authority, as a result of the proposed opening hours leaving the premises closed during the day, it is considered that the proposed change of use would have a detrimental impact on the appearance and therefore character of the street scene during the daytime, contrary to the guidance contained within Local Plan Policies DC1 and CS5.
3. **Detrimental impact on character of area and residential amenity**
In the opinion of the Local Planning Authority, the proposed flue would by virtue of its scale and appearance and proximity to nearby dwellings, have an adverse impact on the character of the area, specifically on Harford Street and associated residential amenity contrary to Local Plan Policies DC1 & CS5.
4. **Detrimental impact on residential amenity**
In the opinion of the Local Planning Authority the proposed opening hours, until 2am, will result in an unacceptable level of noise and disturbance to nearby residents contrary to Local Plan Policy DC1 (test c).

Case Officer: Maria Froggatt

Committee Date: 7th February 2020

