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### APPLICATION DETAILS

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<b>Application No:</b>	<b>20/0091/COU</b>
<b>Location:</b>	<b>429 Linthorpe Road Middlesbrough TS5 6HH</b>
<b>Proposal:</b>	<b>Change of use from (A1) retail to (A5) hot food takeaway and retrospective planning permission for single storey extension to rear, installation of flue and new shop front</b>
<b>Applicant:</b>	<b>Mr Mark Holt</b>
<b>Agent:</b>	<b>Mr Garry Phillipson</b>
<b>Company Name:</b>	<b>GPDESIGNS ARCHITECTURAL SERVICES</b>
<b>Ward:</b>	<b>Park</b>
<b>Recommendation:</b>	<b>Approve with Conditions</b>

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### SUMMARY

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Planning permission is sought to change the use of the premises from retail (A1 use) to a hot food takeaway (A5 use), construct a single storey extension and install a fume extraction flue to the rear. 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.

The main considerations relating to this proposal are the impact of the proposed use on the vitality and viability of the Local Centre, the impact of the proposed extension on the character and appearance of the area and the impact on amenity of nearby residents. 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 and on the amenity of local residents.

Whilst the concerns raised are acknowledged, it is considered that the proposed change of use would not be harmful to vitality and viability of this part of Linthorpe Road as it will not result in an over provision of hot food takeaways or have an adverse impact on public health. It is also considered that the proposed extension and flue will not have a detrimental impact on the character of the area or on the amenity of nearby residents.

The proposed change of use is in accordance with both local and national planning policies and the officer recommendation is to approve subject to conditions.

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### SITE AND SURROUNDINGS AND PROPOSED WORKS

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4. The application site is 429 Linthorpe Road a commercial unit located within a row of terraced properties towards the southern end of Linthorpe Road and within the Linthorpe Village Local Centre. The building is a mid-terrace property with part two storey and part single storey offshoot to rear. It was previously used as a retail unit and the first floor used as storage space but the whole unit is now vacant. The unit to the north is a restaurant and the unit to the south a hairdresser/beauty salon. Residential properties lie to the rear on Benson Street and Oliver Street and Rudd's Yard although no residential premises immediately adjoin the premises. Properties on the opposing side of Linthorpe Road are a mix of retail and commercial uses. There is one residential property above the commercial units and planning permission has been granted for student accommodation at 420-422 Linthorpe Road but has not yet been completed.
2. The proposal is for the change of use of the retail use to a Hot Food Takeaway, to construct a single storey extension and installation of a flue to the rear. Construction work has already started on site. The arrangement of the shop front will be the same but the door and window renewed. The applicant did not stipulate proposed opening times.

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## PLANNING HISTORY

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There is no relevant planning history associated with this site.

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## PLANNING POLICY

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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  
UDSPD - Urban Design SPD

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>

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **Middlesbrough Council Strategic Policy**

The Linthorpe Village Local Centre is one of Middlesbrough's medium scale local centres which performs reasonably well and offers a mix of uses with a strong retail presence. An annual survey conducted March 2019 shows the centre is currently below the 10% threshold for hot food take away uses and the unit is not adjacent to an existing A5 use, therefore the change of use is this instance in accordance with policy; and, as a main town centre use, is appropriate in this location.

### **Middlesbrough Council Environmental Protection**

No objection subject to conditions relating to flue and ventilation details, odour assessment and noise impact assessment and a restriction of opening hours to between the hours of 10:00am and 23:00pm Monday to Sundays.

## **Middlesbrough Council Waste Policy**

No objection.

## **Middlesbrough Council Highways**

No objection.

## **Secure by Design**

Advisory note relating provision of CCTV and internal measure for protection of staff.

## **Ward Councillors**

Councillor Furness objects for the following reasons:

- Proximity to bus stop and pedestrian crossing
- Noise and disturbance
- Odours
- Appearance of flue
- Over provision of hot food takeaways in area

## **Public Comment**

Nearby neighbours and businesses were notified of the application comments were received from the following:

- Mr Cong (Owner of Kowloon Chinese Take Away) -462 Linthorpe Road
- A resident local to the application site submitted an objection and provided an address but requested that it was not made public. Anonymous objections are not usually considered in the assessment of an application but as an address was provided and the objections relate to impact on the local area, it is the Development Control view that consideration of the objections raised will not unduly compromise the fair assessment of the application.

Objections can be summarised as follows:

- Noise
- Loss of parking
- Anti-social behaviour
- Health Impact Statement was not provided
- Cumulative impact on amenity of the area
- Proposal does not contribute to the health and wellbeing of local residents
- Aim should be to reduce hot food takeaways
- An active retail frontage should be retained in Linthorpe.
- Litter

## **Public Responses**

Number of original neighbour consultations	26
Total numbers of comments received	2
Total number of objections	2
Total number of support	0
Total number of representations	0

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## **PLANNING CONSIDERATION AND ASSESSMENT**

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### **Policy**

3. 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). As a starting point, the proposal should be assessed against policies set out in the Development Plan. 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. 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.
5. The Council also has an Interim Hot Food Takeaway Policy which was approved by the council in March 2020. The policy is not an adopted policy within the suite of documents supporting the current local plan although work on the new plan is ongoing. As such the interim policy can only be given limited weight but is nonetheless relevant. It recognises the associated negative external impact hot food takeaway uses can result in, in terms of noise, odours, traffic/parking and litter and confirms that takeaway uses will not be permitted outside of a defined centre. It further recognises that hot food takeaways tend to provide closed frontages during the day due to them being part of the night-time economy and that high proportions of hot food takeaway uses can have a negative impact on the primary function, vitality and viability of the centres. For these reasons, the Council's Interim Hot Food Takeaway Policy has been introduced to carefully manage hot food takeaway applications in certain locations.
6. Concerns were raised that the application was not accompanied by a Health Impact Assessment. The interim policy approved in July required submission of a health impact assessment (HIA) alongside any planning applications for hot food takeaways, however this has since been removed following a decision from executive in March 2020, based partly on the difficulties around evidencing harm of individual takeaways. The lack of a HIA is therefore immaterial to the consideration of this proposal.

### **Principle**

7. The application site is located within an area defined as 'Linthorpe Village Local Centre' in the Local Development Plan where uses such as hot food takeaways are considered to be appropriate providing they do not detract from the vitality and viability of the centre. The interim hot food takeaway policy determines proposals will be permitted for hot food takeaways where the use would not result in the proportion of total units in a centre exceeding 10%, result in more than two adjacent hot food takeaways, or be located within designated primary shopping frontage. The most current local centre survey carried out in 2019 shows that the centre currently has a 7% proportion of hot food take-away's and a 4% vacancy rate. Planning records show that there is one further extant approval for a hot food take-away within in the Linthorpe Road Village Centre that has not yet been implemented (462 Linthorpe Road Ref:19/0706/COU). Even when taking into account the previously approved A5 use and the current proposal, the percentage would still only be 9.2%. This percentage falls below the 10% which is considered to be the proportion of hot food takeaways that can be accommodated within a centre without overwhelming the

retail function of the centre and without having an undue adverse impact on the vitality and viability of the local centre.

8. Neither of the units adjoining the application site are take-away's (A5 uses) so the proposal will not result in more than two adjacent hot food takeaways in accordance with policy, and will limit its impact on the appearance of the local centre should the premises have limited opening hours.
9. Consideration should also be given to the benefit of bringing into use a vacant premises. The current vacancy rate of 4% demonstrates that whilst there is not a high demand for retail units which would be demonstrated by no vacancies, there is also not a high vacancy rate. Further to this, it is also considered that using the premises as a hot food take away is preferable to having the unit stand empty.
10. In view of the above, the proposal is considered to be in accordance with Policies CS13 and REG29 and the Interim Hot Food Take Away Policy and is therefore acceptable in principle.

### **Health**

11. Concerns were raised that the proposal does not support the health and wellbeing of the local community and that the aim should be to reduce rather than increase the number of hot food takeaways. In introducing the Interim Policy on hot food takeaways the Council is seeking to control their proliferation but hot food takeaways can contribute to the mix of provision within local centres providing they are limited in number. The policy seeks to limit the overall level of takeaway provision across the borough by ensuring they are provided in appropriate locations such as local centres and to limit the proportion of A5 uses within any one centre. The policy recognises the link between take-away food and obesity, in order to promote healthier communities, it determines proposals for hot food takeaways should not be located within 400m walking distance of a secondary school. The proposal is within the defined centre, the proportion of hot food takeaways will not exceed the threshold defined in the policy and the property is not within 400m of a secondary school. As such, the proposed use is considered to be in accordance with the Interim Policy on hot food takeaways and will therefore not unduly undermine the health and wellbeing of the local community.

### **Appearance**

12. In respect of design, the Middlesbrough Urban Design Guide states that extensions should be consistent with the design of the original building, should be subservient to it and development should enhance not detract from the character of the area.
13. The proposed extension will project from the rear elevation by approximately 5m so that it is line with the end elevation of the existing single storey offshoot effectively infilling the return between the offshoot and the shared boundary wall with No. 427 Linthorpe Road. The extension will project above the rear boundary wall by approximately 900mm. The proposed ventilation flue will project 4.5m above the roof of the extension to the rear of the building and 1.4m above the main eaves but not above the ridge of the main roof, it will sit between the rear offshoots at the application property and the adjoining property and so will be shielded from view to a significant degree. The extension and the ventilation flue will be visible from the rear of the property but will be screened from view to a large extent from the wider area by the main body of the building and the two storey offshoots. On balance it is considered that the proposal will not have an undue impact on the character of the area in accordance with policy DC1 (test b) and CS5 (test c).

### **Impact**

14. One of the concerns in relation to hot food takeaways is the potential impact in terms of noise and disturbance to nearby residents. There are no residential premises attached to the building but there are dwellings to the rear on Benson Street, Oliver Street and Rudd's Yard, a flat above the commercial properties on the opposite side of Linthorpe Road and Planning permission for student accommodation has been granted at 420 to 422 Linthorpe Road (Stag House). The Councils Environmental Health Officer advised that a noise assessment should be submitted prior to the use commencing and that the assessment should identify noise from sources such as deliveries being made, noise from fixed plant and machinery at the development as well as any measures necessary to protect neighbouring premises from noise.
15. Disturbance can also occur due to customers arriving at and leaving the site late into the evening and it is recognised that the noise generating activities will largely be at the front of the premises which is located away from residential properties on Benson Street, Oliver Street and Rudd's Yard but will be closer to residential premises above nearby commercial properties on Linthorpe Road and within Stag House. There will be some additional activity in terms of vehicle movements in the adjoining streets, however it is considered that this type of activity is to be expected in local centres, particularly so close to the town centre. No details of opening times were provided with the application however the Councils Environmental Health Officer advised that that operation between the hours of 10:00am and 23.00 pm Mondays to Sundays are appropriate in this town centre location. Subject to a condition restricting opening times as mentioned, it is considered that the proposal will not have a significant detrimental noise impact on nearby premises / uses / residential amenity.
16. Odours are intended to be dealt with via a fume extraction flue which is indicated on the submitted plans, being proposed on the rear elevation. The specific details of odour reduction and fume extraction equipment within the premises have not been provided however and Environmental Health have advised that details of the fume extraction equipment will need to be submitted along with an odour assessment report to ensure the level of fumes associated with the use do not cause a nuisance to neighbours. Providing the equipment accords with the odour assessment and is properly maintained then it is considered that the proposal would not have significant impact on amenity in terms of odours.
17. In terms of the impact of the appearance of the development, the proposed extension and flue will be visible from rear facing windows of properties on Benson Street, Oliver Street and Rudd's Place. The Extension will project above the height of the boundary wall by approximately 900mm. Properties on Oliver Street will have an aspect across the rear of the application site but not a direct view of the extension and flue, and there is a minimum of 15m intervening distance and so it is considered that any impact in terms of appearance will be limited. Properties on Rudd's Place will have a more direct but slightly offset view of both the extension and the flue but there will be more than 24m intervening distance. Windows to the rear of No.1 Benson Street which is the nearest residential property to the development will have an oblique view of the development and there is an intervening distance of over 6m to the extension and over 11m to the flue. In view of the limited projection of the extension above the boundary wall, the limited view of the ventilation flue and the intervening distances to the development it is considered that although the extension and flue will be visible there will be no significant impact on the amenity of local residents in terms of outlook or overbearing appearance in accordance with policy DC1 (test c).

### **Highways**

18. There is no off street parking associated with this premises as it fronts onto Linthorpe Road where there are parking restrictions on the highway to the front of the property. The premises is however, in a local centre, in a highly sustainable location, being on

a main bus route into the town. Being a local centre it is envisaged that uses here are of a scale and nature that serve the local area where it would be expected that the majority of patrons would walk to the local centre / amenities. It would be difficult therefore to justify a reason for refusal of planning permission based on lack of parking provision. The Councils Highway Engineer considered the proposal and raised no objection. As such it is considered that the proposal will not have a significant effect on highway safety in accordance with policy DC1 (test d).

### **Waste Storage**

19. The applicant has indicated that waste storage will be provided in the rear yard area. The Councils Waste Policy Officer considered the proposal and raised no objection.

### **Other matters**

20. Comments have been made regarding litter and anti-social behaviour. These are not material considerations so should not influence assessment of this application.

### **Conclusion**

21. The proposal has been considered against national and local guidance and policy. It is considered that the proposed use is acceptable in principle in this local centre location and will not undermine the vitality and viability of the local centre in accordance with Policies CS13 & REG29 and the Interim Hot Food Takeaway Policy. It is also considered that the proposed extension and ventilation flue will, due to their scale and location to the rear, not have a detrimental impact on the amenity of nearby residents or on the character of the area in accordance with Policies DC1 (test b) and CS5(test c) . Providing any measures identified in the noise impact and odour assessment report are implemented then there will be no significant impact on the amenity of local residents in terms of noise or odour in accordance with policy DC1(test c)).
22. The proposed use is considered to be appropriate for the site. It is in keeping with the relevant policies and no technical objections have been raised. It is the Development Control view that the proposal will not have a detrimental impact on the amenity of occupiers of surrounding premises and will support the vitality and viability of the area whilst having minimal impact on the visual amenity of the street scene.

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## **RECOMMENDATIONS AND CONDITIONS**

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### **Approve with 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 complete accordance with the following plans and specifications received on the 13th February 2020 and shall relate to no other plans:

- a) Location Plan Drawing No.01
- b) Proposed Plans and Elevations Drawing No.02



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

3. **Materials**

The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.  
Reason: To ensure the use of satisfactory materials.

4. **Noise Assessment**

A BS: 4142 noise assessment shall be submitted to and approved in writing by the Local Planning Authority before the use hereby commences. The assessment shall identify noise levels at the site along with the noise which will be generated at the development and its impact upon neighbouring premises. The assessment should identify noise from sources such as deliveries being made and noise from fixed plant and machinery at the development. The assessment should include details of any measures identified to protect neighbouring premises from noise. Any measures identified in the assessment to protect residents from noise generated due to the use of the site should be implemented before the use of the development commences.

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

5. **Ventilation and Fume Extraction**

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 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 and shall be installed before the development hereby permitted commences and thereafter shall be retained 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.

6. **Odour and Particulate Impact Assessment**

An odour and particulate impact assessment shall be provided by a competent and suitably experienced, specialist air quality or odour consultant and approved in writing by the local planning authority before first use of the proposed development. The assessment shall identify the impact of cooking odours and grease released to the air from the premises and detail methods to control them to prevent harm to the amenity. The report shall be carried out in accordance with the EMAQ guidance 'Control of Odour and Noise from Commercial Kitchen Exhaust Systems' 2018 or an alternative appropriate assessment tool agreed in advance with the Local planning Authority. The report should include details of the position of internal ventilation extraction canopies, the position and height of the flue outlet and the type of filtration and or odour control units or other fume treatment to be installed. The systems and filtration and odour control units shall be installed and maintained in accordance with the manufacturer's 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.

7. **Hours of opening**

The hours of opening/use shall be restricted to between the hours of 10:00am and 11:00pm Monday to Sunday unless otherwise agreed with the Local Planning Authority.

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

**7. Delivery/Collection Hours**

The deliveries and collections to the rear of the premises must be kept between the hours of 8:00am and 7:00pm Monday to Saturday, and between the hours of 9:30am and 6:30pm Sunday.

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

**REASONS FOR APPROVAL**

This application is satisfactory in that the change of use from a retail unit to an A5 hot food takeaway use accords with the principles of the National Planning Policy Framework (NPPF) and the local policy requirements (Policy DC1, CS4, CS5, CS13 and REG29 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 a retail unit to an A5 hot food takeaway use, extension and associated flue will not prejudice the character and function of the area and does not significantly affect the amenity of nearby resident, any landscaping or prevent adequate and safe access to the site. The change of use from an A1 retail unit to an A5 Hot food takeaway unit use 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

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**INFORMATIVES**

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**1. Building materials on highway**

The applicant is reminded that building materials shall not be deposited on the highway without the specific consent of the Highway Authority.

**2. Deliveries to site**

It should be ensured that, during construction, deliveries to the site do not obstruct the highway. If deliveries are to be made which may cause an obstruction then early discussion should be had with the Highway Authority on the timing of these deliveries and measures that may be required so as to mitigate the effect of the obstruction to the general public

Case Officer: Maria Froggatt  
Committee Date: 12<sup>th</sup> June 2020

