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**APPLICATION DETAILS**

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<b>Application No:</b>	23/0103/COU
<b>Location:</b>	Units 9-10, Captain Cook's Square, Middlesbrough, TS1 5UB
<b>Proposal:</b>	Change of use from retail (E(a)) to cinema (Sui generis)
<b>Applicant:</b>	Ms Nasreen Yousin
<b>Company Name:</b>	
<b>Agent:</b>	Mr Billy Fisher
<b>Company Name:</b>	
<b>Ward:</b>	Central, Ward buffer = Central, Ward buffer = Newport
<b>Recommendation:</b>	Approve Conditionally

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**SUMMARY**

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Planning permission is sought for the change of use of a vacant retail unit within the Town centres primary shopping area to a boutique cinema (sui generis).

Being a town centre use the principle of the proposed use in this location is considered acceptable. Local Plan Policy REG21 defines this area as being primary shopping frontage which is aimed at retaining retail uses within this location. Policy REG21 sets out that there should be no more than 15% non-retailing uses within the primary shopping front areas of the town centre. The October 2021 survey established 15.7 % non-retail uses within the primary shopping frontage designation with a further slight increase in this figure following the recent approval of the E Gaming centre within this area.

The proposal will result in the loss of a single retail unit but will provide a new leisure use and result in the re-occupation of a vacant unit, providing additional footfall within this section of the town centre and additional employment opportunities that will assist in improving the vitality and viability of Captain Cook Square and the wider town centre.

The proposal will not have a significant impact on the character and appearance of the area, no external alterations are proposed as part of this application. Conditions are proposed requesting a noise report and appropriate mitigation measures which will reduce any potential noise impacts on the occupants of the nearby premises along with appropriate opening hours.

Despite there being no parking provision for the intended use, the application site is considered to be within a sustainable location within the town centre and within close walking distance to good public transport links such as the bus station and train station and there are public car parks in close proximity.

No objections have been received in relation to the proposal and the application is recommended for approval subject to conditions.

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## **SITE AND SURROUNDINGS AND PROPOSED WORKS**

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The application site is Unit 9-10 Captain Cook Square a two-storey building located within Middlesbrough Town Centre. The application site forms one of several similarly designed modern commercial buildings that front the pedestrianised area at Captain Cook Square. To the north of the site is Middlesbrough Bus Station and to the west is a pedestrian footpath link to the main Captain Cook realm and access to its multi-storey car park. There are residential properties in the wider area to the south along Grange Road and beyond.

The proposal is for the change of use of the vacant retail unit to a boutique cinema over the two floors providing three screens. No external alterations are proposed as part of this application.

The applicant has submitted a Design and Access Statement in support of the application.

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## **PLANNING HISTORY**

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No relevant planning history

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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).
- Stainton and Thornton Neighbourhood Plan (2022)

### 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:

#### Housing Local plan (2014)

H1 - Spatial Strategy

#### Core Strategy DPD (2008)

CS4 - Sustainable Development

CS5 - Design

CS13 - Town Centres etc Strategy

CS14 - Leisure Development

CS18 - Demand Management

DC1 - General Development

#### Regeneration DPD (2009)

REG20 - Principal Use Sectors

REG21 - Primary Shopping Frontage

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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### Public Responses

Number of original neighbour consultations	12
Total numbers of comments received	0
Total number of objections	0
Total number of support	0
Total number of representations	0

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## PLANNING CONSIDERATION AND ASSESSMENT

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The main considerations with this proposal are the principle of development, the impact on amenity, impact on the character and appearance and highway safety.

### Policy Context

Planning legislation requires that planning applications should be determined in accordance with the relevant development plan in force unless material considerations indicate otherwise. In addition, the National Planning Policy Framework (NPPF) as revised in 2021, is a relevant material consideration. The NPPF states that applications should be determined giving due weight to local planning policies in accordance with their consistency with the revised Framework, with greater weight given the closer policies are to those in the Framework (para 219) and where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. As such, the Middlesbrough Local Plan and associated policies are the starting point for decision making with those of most relevance listed in the earlier section of this report.

As a matter of principle both the Local Plan and NPPF require development to be sustainable and to make an efficient use of land and buildings.

Policy REG20 (Principle Use Sectors) identifies the retail sector as a primary retail area uses A1, A2 and A3 (now 'E' uses) as being the most suitable with specific reference to the primary shopping frontages as being for retail use. Policy REG20 sets out that other complimentary uses may be acceptable providing they do not harm the principal function and character of the shopping area or impact on the vitality and viability of the town centre.

Policy CS13 seeks to protect and enhance the hierarchy of vital and viable town, district, local and neighbourhood centres in Middlesbrough by seeking to safeguard their retail character and function and resisting developments that will detract from the vitality and viability of the core retailing function of the town centre.

Additionally, to ensure the primary retail function within key areas of the town centre, Policy REG21 sets out that the proportion of non-retailing uses within the primary shopping frontages should not exceed 15% and that concentrations of non-retail uses should be avoided.

The recent town centre survey completed in October 2021 shows the percentage of units being non-A1 use (now E(a) use) for the primary shopping frontage area as 15.7 %. With specific reference to the primary shopping frontages, Policy REG21 identifies use class A1 (retail) as the most appropriate. Other uses within class A2 (financial/professional services), A3 (restaurants and cafes) and other complimentary uses may be acceptable providing they do not harm the function and character of the shopping area, nor impact on the vitality and viability of the town centre. The Use Class order was amended in September 2020 which means A1, A2 and A3 uses now fall within retail E(a), Financial and professional services E(c) and cafes/restaurants E(b).

### **Principle of the change of use**

The application seeks planning approval for a new boutique cinema, which will have three screens, maximising use of the whole building. The site is located in a highly sustainable location, given the building is within the town centre and within walking distance of Middlesbrough bus and train stations. The proposal is therefore considered to be within a highly sustainable location in line with both local and national policies. In addition, the re-use of a vacant building within the town centre is considered to be a positive improvement to the vitality and viability of this area of the town centre and will contribute to the planned and approved leisure uses within Captain Cook Square. In this respect, the proposal is considered to be in accordance with the general principles of Local Plan Policies CS4 and CS5.

The proposed use will be in keeping with the strategic shift from retail to leisure, as part of the Council's regeneration objectives. The proposal would provide a key movement towards the redevelopment of Captain Cook square and would contribute towards the aim of providing a leisure destination within this part of the town centre. The use will provide additional footfall within this section of the centre that will assist in supporting the vitality and viability of the town centre and is considered to be in accordance with the principles set out within Policies REG 20 and REG21.

The percentage of non-retail uses will be slightly above this 15.7 % figure given the recent approvals for the Gaming use within Captain Cook Square (Level X/Epsorts). Therefore, this proposal would be contrary to the guidance set out in Policy REG21 retailing to the protection of the retailing function of the primary shopping area and consideration therefore needs to be given as to whether there are material planning considerations that would promote a decision away from this policy guidance.

The application site is located within the primary shopping frontage. However, the location of the unit is away from the main prominent core shopping centres (Hill Street/ Dundas and Cleveland Centre) and the main through routes in the centre e.g Linthorpe Road/ Corporation Road. The location of the unit is positioned on the outer edge of the primary shopping frontage area where there is a significant proportion of retail uses and as such will not provide a break within the existing primary shop frontages.

The proposed leisure use will attract additional footfall into the town centre and is likely to be open during the day and in the evening, providing further benefits to the vitality and viability of this section of the town centre outside of normal shop hours. The proposed cinema use is considered to be consistent with and complimentary to the other recent planning approvals for leisure uses within the Captain Cook Square area and will contribute further to the vitality of this section of the town centre, assisting with the re-purposing of the Captain Cook Square from a retail location to a leisure destination through the grouping of similar uses and bringing a currently vacant unit back into use.

Policy CS14 established that the Council will work with partner organisations to ensure the provision of a wide and accessible choice of leisure facilities for the community and to reinforce Middlesbrough's role at the heart of the Tees Valley. Policy CS14 (a) sets out this will be achieved through the promotion of the town centre as a sub-regional leisure destination both in the daytime and during the evening. The proposed use of the building as a boutique cinema and the potential operating hours is in line with the aims of Policy CS14.

### **Character and appearance**

Policy CS5 (c & f) comments that new development should secure a high standard of design, should be well integrated to the immediate and wider context and should enhance the built and natural environments.

Policy DC1(b) (General Development) comments that 'the visual appearance and layout of the development and its relationship with the surrounding area in terms of scale, design and materials will be of high quality'.

The existing building provides accommodation over two floors with a total ground floor area of 840 Sq Metres. Externally the building is finished in contrasting facing brickwork, incorporating aluminium shopfronts, external doors and windows, with a traditional wrought iron, glazed canopy. In this instance the application seeks change of use only and no external changes proposed as part of this application. Any changes external to the site frontage that may occur prior to occupation will be subject to a further application and considered on its own merits. However, the Design and Access Statement submitted suggests that any future alterations to the frontage are expected to be minimal. In view of the above the proposal is considered to be in line with the guidance set out within Core Strategy Policies CS5 (c&f) and DC1 (b).

### **Impacts on surrounding amenity**

Both the NPPF (paragraph 130 (f)) and Local Plan Policy DC1(c) require all development proposals to take account of their effects upon the surrounding environment and amenities of occupiers of nearby properties.

The application site is located within an established commercial location within the town centre. The frontage of the building faces towards the pedestrianised area which leads towards the main public realm area of Captain Cook Square. There are also residential uses within the wider area along Grange Road, Monkland Close and St Aiden Drive. There is an existing level of background noise and activity which will be apparent to these residential properties given their proximity to the units with Captain Cook Square.

The proposed use is likely to potentially increase the number of pedestrians and associated traffic within the area, particularly within the nearest street which is Grange Road. The site is considered to be within a highly sustainable location within close proximity to the bus and train stations and town centre car parks. Pedestrian access to the site is provided not only from Grange Road but also from several pedestrianised through routes leading to Captain Cook Square.

The sustainable location of the site will assist in limiting any potential increase in the level of noise from pedestrians and traffic which would result from the proposed use. In addition, gates have been installed on site (by the Council) which will ensure no late-night access onto Grange Road (where the predominant residential uses are) and late night users will be encouraged to leave the site by the side of former House of Fraser, where there is an established taxi location, and many of the late night users already exit. Whilst opening/closing hours have not been specified as part of the application, hours of opening hours can be controlled via condition to ensure that they are consistent with the surrounding uses. In view of the sites location in the town centre, and not directly adjacent to the nearest

housing, it is considered that the proposal will not result in any undue impacts on residential amenity in the area subject to conditions.

### **Highways**

The application site is located within the town centre in close proximity to both private and council car parks. Captain Cook Square itself has a multi-storey car park with a pedestrianised footpath link directly to the application site. The site is also well served by public transport link with Middlesbrough Bus Station within close walking distance and Middlesbrough Train Station. As such, there should be no adverse impacts on highway provision or safety as a result of this proposal.

### **Conclusion**

The proposed use is a town centre use and is appropriate in principle within the town centre, and in keeping with the strategic shift from retail to leisure, as part of the Council's regeneration objectives. The proposal would provide a key movement towards the redevelopment of Captain Cook square, the benefits of the scheme significantly outweigh any negative considerations. The proposal will support the diversification of this area to a leisure destination and without having any notable detrimental impacts to the primary retailing function of the town centre, in accordance with local and national planning policy and guidance. Given the sites location and relationship to surrounding properties it will not have any significant impact on the amenity of nearby residents. In view of the above 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. The application is therefore recommended for approval subject to standard conditions.

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## **RECOMMENDATIONS AND CONDITIONS**

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### **Approve Conditionally**

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: In order to comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).

2. **Proposed Plans**

Proposed layout plans shall be submitted to and approved prior to the use commencing and shall be carried out in complete accordance those approved plans  
Reason: To ensure a satisfactory form of development and to ensure that the development is carried out as approved.

3. **Opening hours**

The use hereby approved shall not be open to visiting members of the public outside the hours of 9am and 2am Monday to Sunday.

Reason: To prevent undue detrimental impact on residential amenity in accordance with the requirements of Local Plan Policy CS5.

4. **Commercial Premises 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 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 and must be retained on site in an operational state for the lifetime of the development.

Reason: To ensure a satisfactory form of development in the interests of the amenities of residents having regard for policies DC1, CS5 of the Local Plan and section 12 of the NPPF.

### **REASON FOR APPROVAL**

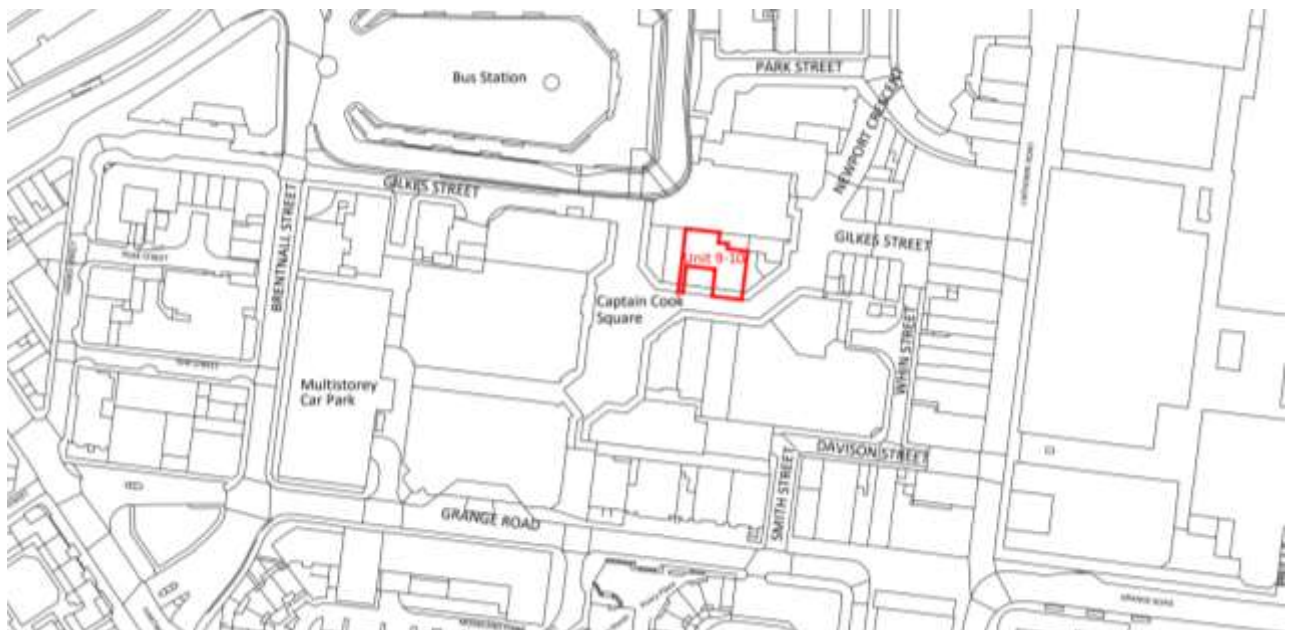
The proposed change of use will introduce an additional leisure use to the town centre, bringing additional footfall, vitality and viability to the town centre without unduly harming the retailing function of the town centre. The proposal is considered to be a sustainable and appropriate location for a use of this type without having undue impacts on surrounding premises or their associated uses including the nearby residential properties or on the character and appearance of the area, in accordance with the guiding principles of both national planning policy guidance and the relevant Local Plan Policies.

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### **INFORMATIVES**

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#### **Appendix 1. Site Location Plan**







COMMITTEE REPORT

Item No: 2

Case Officer: Joanne Lloyd

Committee Date: 14<sup>th</sup> April 2023