
APPLICATION DETAILS

Application No:	20/0629/COU
Location:	2 Newport Crescent Middlesbrough TS1 5EP
Proposal:	Change of use from retail A1 [E(a)] to hot food take away A5 (Sui Generis)
Applicant: Company Name:	Asad Shahzad ARISTON PIZZAS
Agent: Company Name:	Mr Ben Wears Pyramid Architectural Designs
Ward:	Central
Recommendation:	Approve with Conditions

SUMMARY

Planning permission is sought to change the use of the premises from retail A1 (E (a)) to an A5 (sui generis) hot food takeaway use and for the installation of a flue on the side elevation of the building. The application site is identified as being within the retail sector of Middlesbrough Town Centre, where there is a mixture of retail, restaurants, drinking establishments and professional services.

The main consideration relating to this proposal are the principle of the development, the impact on the character and appearance of the area, the impact on the amenity of the nearby premises, highway and other matters.

Three objection comments have been received from the local ward councillors to the proposal. In summary the objections relate to the demographics of the Central Ward and the impact of hot food takeaways being bad for health and storing up health problems for the future.

Whilst the concerns raised are acknowledged, it is considered that the principle of the development accords with the local plan policies for this area of the town centre. The proposed use is considered not to be harmful to the vitality and viability of the town centre as the proposal will not result in the proportion of hot food takeaways in the town centre exceeding 10%.

The proposed change of use will not materially alter the external appearance of the building

will only a flue being installed on the side elevation and is therefore considered not to have a detrimental impact on the character of the area or the amenity of the 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.

SITE AND SURROUNDINGS AND PROPOSED WORKS

The application site is 2 Newport Crescent an end of terraced commercial two-storey building located within the town centre. The site is located within the defined retail sector of the town centre as identified within the local plan. The building is currently vacant with the ground floor being a retail use and the upper floor as storage.

The property is located at the southern end of a row of three commercial terraced properties which comprise of a fitness and sports unit and a menswear unit. The rear access to these units being located to the rear of the application site.

To the south of the building is an access pathway between Newport Crescent and Gilkes Street providing access to the rear of the commercial units. Across the access pathway to the south are the rear elevations of 12 and 14 Gilkes Street which are commercial unit being Greggs and Vape shop.

To the front of the building is the pedestrian area of Newport Crescent which provides access from Newport Road through to Captain Cook Square with commercial units opposite at 1 Captain Cooks Square, Poundland and 16-17 Newport Crescent, Waterstones.

The proposal is for the change of use of the ground floor into a hot food takeaway with the upper floor being utilised for storage with the only external alteration proposed being a flue on the side elevation of the building. The opening hours for the unit will be between 10am to 6pm Monday to Saturday with no Sunday or Bank Holiday opening.

PLANNING HISTORY

Previous planning permission for the property include :-

M/FP/2446/01/P – New shop front and two-storey extension at rear, approved with conditions, 5th February 2002

M/FP/1310/01/P – single storey extension at rear to existing shop and use for class A3 purposed, approved with conditions, 18th September 2001

M/ADV/0840/08/P - 1No internally illuminated fascia sign and 1 No non-illuminated banner sign, approved with conditions, 16th June 2008

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
- CS4 – Sustainable Development
- CS5 – Design

CS13- A strategy for the Town, District, Local and Neighbourhood centres.
REG20 - Principal Use Sectors
Interim Hot Food takeaway Policy
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>

CONSULTATION AND PUBLICITY RESPONSES

There have been no comments received following the neighbour consultation with three objection comments having been received from the Councillor Linda Lewis, Councillor Matthew Storey and Councillor Zafar Uddin.

Objection comments can be summarised as follows:-

- Central Ward demographic include poor health through alcohol misuse, drug abuse and poor diet and the latter applies to this objection.
- Residents are dying prematurely with many residents unable to cook and living on sandwiches, pastries and takeaways as they inevitably live alone which is bad for their health and is storing up future health problems.

The following comments have been received from the statutory consultees:-

Middlesbrough Council Strategic Policy (in summary)

Considered a main town centre use, a hot food takeaway should be located within our centres. According to the most recent monitoring data (March 2019), the town centre has 4% HFTA. It has not been possible to update this information in March 2020 using the established methods due to COVID-19 lockdown restrictions; however, a desktop analysis in August 2020 suggests that a maximum of 5.2% of units could be HFTA (based on planning approvals in the meantime). As such, this application would not result in the proportion exceeding 10%, and is therefore appropriate in this location.

Middlesbrough Council Environmental Protection (in summary)

No objections subject to a condition regarding an odour and particle impact assessment to be submitted for approval.

Middlesbrough Council Highway Engineers

No objections

Middlesbrough Council Waste Officer (in summary)

The applicant would be responsible for ensuring the waste receptacles are collected. I would have concerns if there was a domestic element however with it being commercial I have no concerns.

Public Responses

Number of original neighbour consultations	13
Total numbers of comments received	3
Total number of objections	3
Total number of support	0

PLANNING CONSIDERATION AND ASSESSMENT

1. The main considerations with this change of use application are the principles of the development, the impacts on the character and appearance of the street scene, the impacts on the amenity of the occupiers of the neighbouring premises and highway safety.

Policy

2. 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.
3. Policies DC1 and CS5 requires all development to provide a high quality of design in terms of layout and to contribute to the character of an area, whilst considering the impact on amenities of the occupiers of nearby premises.
4. The site is located within the Retail Sector of the town centre and policies CS13 and REG20 apply. These policies aim to encourage retail, commercial, leisure and cultural development within the town centre of an appropriate style and scale commensurate with its current scale and function. Policy REG 20 identifies the Retail Sector as primarily a retail area for (A1- shops , A2-financial and professional services and A3- restaurant and cafe uses) as of September 2020 these uses all fall within the new planning use class E – commercial, business and service use. With planning permission for A (hot food takeaways) being considered suitable where they are complimentary and will not harm the principle function of the sector.
5. The Interim Council’s Hot Food Takeaway Policy was approved by the council in March 2020. The Interim Policy is not an adopted policy within the suite of documents which support the current local plan with work ongoing on the new local plan. As such the Interim policy can only be given limited weight but is nevertheless relevant.
6. The Interim Hot Food Takeaway Policy recognises that hot food takeaways tend to provide closed frontages during the day due to the use forming part of the night-time economy and as such the hot food takeaways can have a negative impact on the primary function, vitality and viability of designated centres. The Interim Policy aims to manage the location of hot food takeaways in certain locations by setting out that hot food takeaways will be permitted where;
 - the total proportion of the A5 uses within the centre would not exceed 10%,
 - the use would result in no more than 2 adjacent hot food takeaways or;
 - be within a primary shopping frontage area; and

- the use should not be located within 400m walking distance of a secondary school.

Principle

7. The application site is located within the Retail Sector of the town centre where policy CS13 encourages retail, commercial, leisure and cultural development within the town centre of an appropriate style and scale commensurate with its current scale and function. National Planning Policy classes A5 – hot food takeaway uses as main town centre uses which should be located within our town centres.
8. The Interim Hot Food Takeaway Policy determines that proposals will be permitted for hot food takeaways where the A5 use will not ;
 - exceed 10% of the total number of A5 units within the centre,
 - result in more than 2 adjacent hot food takeaways or
 - be within a primary shopping frontage area; and
 - should not be located within 400m walking distance of a secondary school.
9. The most recent monitoring data (March 2019) had the town centre as having 4% Hot Food Takeaways. It has not been possible to update this information in March 2020 using the established methods due to the Covid 19 lockdown restrictions however a desktop study completed in August 2020 suggested that a maximum of 5.2 % of units could be hot food takeaways (based on previous planning approvals in the meantime). As such, this application would not result in the proportion of A5 – Hot Food Takeaway uses exceeding 10%.
10. The application site is not located adjacent to existing A5 uses so would not result in more than 2 adjacent A5 uses within the street, is located just outside of the primary shopping front area and is located more than 400 metres from a secondary school. The proposal is therefore considered to be compliant with the Interim hot Food Takeaway Policy.

Health

11. Objections have been received regarding the impact of an additional hot food takeaway on the current and future health and well-being of the community in this area of Middlesbrough.
12. The Council introduced the Interim policy on Hot Food Takeaways to assist in ensuring that hot food takeaways were located in areas identified within the National and Local plans as suitable for the use, namely town centres. The town centres are considered to be locations where hot food takeaways can contribute to the overall mix of provisions within the centres, with the Interim Policy restricting the overall number to 10%. The health implications of hot food takeaways is reflected within the interim policy by restricting the permission of hot food takeaways within 400 metres of a secondary school.
13. The concerns regarding the health of the community are noted, however the application site is located within the defined town centre, there are no hot food takeaways in either side of the premises, the current percentage of hot food outlets within the town centre is less than 10% and the premises is not within 400 metres of a secondary school.

14. Taking these factors into account, the proposed A5 use is considered to be in accordance with the Interim Policy on Hot Food Takeaways and is considered not to have an undue impact on the health and well-being of the community.

Appearance

15. Policies CS5 and DC1 along with the Middlesbrough Urban Design Guide states that all new development should be of a high quality in terms of layout and contribute to the character of the area.
16. The proposal will retain the existing shop front with the only external alteration being the installation of an external flue on the side elevation of the building. The scale of the flue has been kept to a minimum and has been set back from the main front elevation of the building to reduce any impact on the appearance of the building from the main pedestrian area.
17. The opening hours of the proposed use will be between 10am and 6pm Monday to Saturday which will ensure an active frontage to the unit.
18. The building has historically been extended which has resulted in no external yard area to rear of the property to enable bin store provision off the side access pavement. Currently the bins for the application site and each of the commercial units without a rear yard area are stored within this access pavement area to the south of the building. Since the original submission the plans have been amended to include an internal bin store are within the building itself. This is considered to be an improvement to the overall character and appearance of the pedestrian area to the side of the building.
19. Given there will be limited external alterations to the building provided as part of the change of use, the proposal is considered not to have a significant impact on the character of the area and is considered to be in accordance with policies DC1 (b) and CS5 (c).

Impact

20. Core Policy DC1 requires all new development to consider the potential impact on the amenity of the occupants of the adjacent properties both during and after completion of the development.
21. The main concern with hot food takeaways relates to the noise impacts and disturbance from the use and potential odour issues. The application site is located within a predominantly commercial area of the town centre with no residential properties within the immediate vicinity. The hours of operation of the unit will be during the daytime between 10am and 6pm with no Sunday or Bank Holiday opening and this will be secured by condition.
22. The applicant has submitted details of the external flue to be placed on the side of the current building. The Environmental Protection team have no objections to the proposal subject to a condition that an odour and particulate impact assessment be submitted and installed in accordance with the approved details
23. The proposal will remove the existing external bin store on the public footpath with a bin store area proposed within the building itself. The Council's waste officer has

commented that the applicant will be responsible for ensuring the waste receptacles are collected but have no concerns with the proposal.

Highways

24. The application site is located within a pedestrian area of the town centre within a highly sustainable location within close proximity of the main bus station.
25. The existing A1 retail unit operates with no off street parking provision and the default position is that the retail unit could still operate on this basis. The Council's Highway officers have no objections. As such it is considered that the proposal will not have a significant impact on highway safety and accords with the guidance set out in Core Strategy Policy DC1 (d).

Conclusion

26. The proposal has been considered against national and local policy. It is considered that the proposed use is acceptable in this area of the Retail Sector of the town centre and will not undermine the vitality and viability of the town centre in accordance with policies CS13, REG20 and the Interim Hot Food Takeaway Policy. It is considered that the alterations to the building to include the installation of the external flue on the side elevation of the building will, due to its design and scale have no significant impact on the character and appearance of the area or the amenity of the neighbouring properties and accord with the guidance in policies DC1 (c) and CS5 (c).
27. The conditions on the proposal require a noise and odour assessment which will ensure there are to be no significant impact on the amenity of neighbour premises in terms of noise and odour which accords with policies DC1 (c).
28. The proposed change of use is considered to be acceptable for the site and is in keeping with the relevant policies. It is the Development Control view that the proposal will not have a detrimental impact on the amenity of the occupiers of the surrounding properties and will support the vitality and viability of the area whilst having minimal impact on the visual amenity of the street scene.
29. Whilst the comment regarding the potential impact on the health of the community are noted, the proposal is located within the Town Centre which accords with National and Local guidance and accords with the Council's Interim Policy on hot Food Takeaways.

RECOMMENDATIONS AND CONDITIONS

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 :-

- a. Site Location plan drawing dated 17th October 2020
- b. Block site plan dated 17th October 2020
- c. Block plan showing location of the flue dated 17th October 2020
- d. Existing plans / elevation drawing 01 dated 17th October 2020
- e. Proposed plans / elevation drawing 02 REV 1 dated 22nd December 2020

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

3. 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.

REASON FOR APPROVAL

This application is satisfactory in that the change of use from a retail unit to an A5 (sui generis) 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 REG20 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 (sui generis) hot food takeaway use and external flue to the side elevation of the building will not prejudice the character and function of the area and does not significantly affect the amenity of nearby premises, any landscaping or prevent adequate and safe access to the site. The change of use from an A1 retail unit to an A5 (sui generis) 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.

INFORMATIVES

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

Case Officer: Debbie Moody

Committee Date: 15 January 2021

SITE LOCATION PLAN

AREA 2 HA

SCALE: 1:1250 on A4

CENTRE COORDINATES: 449367 , 520324

