
APPLICATION DETAILS

Application No:	25/0478/COU
Location:	97A, Ayresome Street, Middlesbrough, TS1 4PF
Proposal:	Retrospective change of use from Retail (Use Class E(a)) to a hot food takeaway (Sui Generis)
Applicant:	Raju Arra, Ayresome Bites LTD Ayresome Bites LTD
Agent:	Bates
Ward:	Newport
Recommendation:	Refuse and Enforce

SUMMARY

Planning permission is sought retrospectively for the change of use from retail (Class E (a)) to a hot food takeaway (sui generis). The application site is identified as being within a largely residential area, comprising an end of terraced two-storey property. Planning history has shown this was a retail unit and a hot food takeaway historically.

The main considerations 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 residents, highway and other matters.

An objection has been received from the ward councillor which in summary relates to concerns over the use being incompatible, harm to neighbouring amenity by way of odour and disturbance and the impact on parking. No public responses were received.

There is concern identified by officers regarding the principle of use and introducing this use within the locality as well as the impact of a hot food takeaway on the amenity of neighbouring residents.

The proposal is considered contrary to both local and national planning policies and the officer recommendation is to refuse.

SITE AND SURROUNDINGS AND PROPOSED WORKS

The application site is 97a Ayresome Street and the change of use relates to the ground floor. This property is the two-storey, end of terrace dwelling within a residential street and there is residential accommodation on the first floor as well as adjacent to the application unit. A single

storey offshoot and enclosed yard lies to the rear. There is no access to the first floor shown which is the same as the 'existing' plans. The proposed use has commenced on site and permission is therefore sought retrospectively.

The proposal is for change of use of the ground floor from a retail unit to a hot food takeaway. The design of the new shop front will be the same as the existing. The opening hours for the unit will be between 2pm and midnight and this is to be all week including bank holidays.

The applicant has not submitted any supporting information with the application or included any technical details such as details of extraction equipment or odour control.

PLANNING HISTORY

Planning application M1128/79 'additional use of café as a hot food takeaway' - Approved in 1979

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).
- 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 A strategy for the Town, District, Local and Neighbourhood Centres

DC1 General Development

Other relevant documents

Interim Policy on Hot food takeaways (2019)

Middlesbrough Publication Local Plan (March 2025)

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

Consultee Responses

MBC Policy – Objection

(in summary)

The 2024 NPPF paragraph 97 states that local planning authorities should refuse applications for hot food takeaways and fast-food outlets that are within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre; or in locations where there is evidence that a concentration of such uses is having an adverse impact on local health, pollution or anti-social behaviour.

The proposed use of hot food takeaway is in an out of centre location and lies within a 150m walking distance of Sacred Heart Primary School.

The proposed development site lies within the Newport Ward. The Index of Multiple Deprivation 2019 identifies Newport Ward as in the top 1% of most deprived wards nationally. Childhood obesity and excess weight are significant health issues in Middlesbrough with national evidence identifying Middlesbrough obesity rates in schools to be higher than the national average.

In addition, the Council has an interim hot food takeaway (HFT) however it is considered this is superseded by Policy EC17 of the Publication Local Plan. Policy EC17 determines that proposals for HFTs will only be permitted where the proposed use would not result in the proportion of commercial units in the defined area exceeding an identified threshold. In addition, the policy states that to promote healthier communities planning permission will not be granted for hot food takeaway uses within 400m walking distance of an entry point to a school unless it is within a defined centre.

With the hot food takeaway located in a predominantly residential area and the associated negative effects of this type of use, the proposal will need to demonstrate that the impact of this would not be detrimental to the surrounding occupiers, as it would be contrary to Policy DC1.

In accordance with the NPPF and Policy CS13, the hot food takeaway, a main town centre use outside of a defined centre requires a sequential assessment. No sequential assessment has been submitted with the application.

Contrary to Paragraph 97 of the NPPF and PLP Policy EC17, the application for the use of hot food takeaway is located in an out of centre location and is within 150m walking distance of Sacred Heart Primary school; and where, as evidence suggests, a concentration of such uses is having an adverse impact on local health; and therefore should be refused.

MBC Highways Officer – No objection

Development proposals seek a retrospective change of use from Retail to a hot food takeaway. When assessing the proposed change of use consideration has to be given to the existing lawful use which could continue without the need for further planning consent, which in this case is retail. This use class would enable a number of occupiers including a local shop which could generate similar levels of traffic and parking demand as the proposed takeaway. On street parking is available on Costa Street and along Ayresome Street and as such no objections are raised.

MBC Environmental Health – No objection subject to conditions

With reference to the above planning application please note the following recommended conditions and informatives (advice) should the application be approved:

Environmental Protection

Conditions

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, noise from fixed plant and machinery at the development and noise from the use of the car park. 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.

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.

Collections from the refuse store must be kept between the hours of 8:00am and 7:00pm Monday to Saturday, and 9:30am to 6:30pm Sunday.

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

MBC Waste Policy – No objection

No comments

Councillor Jill Ewan – Objection (in summary)**Impacts on area character or overall nature of scheme as a result of layout, density, design, visual appearance**

This is a longstanding area of good-sized terraced three, four and five bedroom family houses, rather larger than is typical in the area. National planning policy states that hot food takeaways should be in established shopping areas. The Middlesbrough Local Plan recognises Linthorpe Road and Parliament Road as that kind of area but not Ayresome Street.

The light-up sign and other signage for the new business will add to night time light pollution and make it appear less of a residential housing area.

Highway issues: traffic generation, vehicular access, highway safety

Parking is more limited than is usual for the area. The house at the other end of this short block has been converted into three flats with a total of at least six, maybe seven bedrooms for short-stay adults.

The applicants envisage having five employees, three of whom will be part time. Employees and customers will probably need to arrive, depart and park near the takeaway from 2pm to midnight every day. If they can't park on Ayresome Street, near the business, they might do lengthy detours to park in the blocked and no entry roads, and in the case of the blocked roads would probably have to turn the vehicle round using forward and reverse gears in narrow residential roads without gardens at any time up to midnight. This would increase noise levels from vehicle doors and engines.

A fast food takeaway would need more footfall to make profits than the previous business and many customers and delivery services would arrive in vehicles.

Overlooking and loss of privacy

The illuminated signs, and the large lit-up front window, lit until midnight and unusual in a residential area, with food and soft drinks being available until midnight, may attract groups of youths gathering outside until late at especially as there is a big Council planter across the end of Costa Street on the junction with Ayresome Street where these premises are located. The planter would provide a form of seating. There is potential for loss of privacy for nearby residents on Costa Street, whose windows face onto the street without any gardens.

Capacity of physical infrastructure (roads/drainage)

It is not clear whether the existing drains, which frequently seem to flood on that section of Ayresome Street, would be adequate for the extra water that would be used by a takeaway business, for washing up and cleaning, compared with a shop.

Incompatible or unacceptable uses:

This business is only about twenty terraced houses away from Sacred Heart Primary School; just a one minute walk. It is five minutes' walk from Newport Primary School and nine minutes' walk from Archibald Primary School. This is in Newport Ward which has the highest level of child poverty in the country, and obesity is unfortunately common. As seen from their online menu, the takeaway provides typical fast food which is high in fat, along with desserts that are high in sugar. It should not be so near to schools.

There is a high concentration of fast food businesses generally in Middlesbrough, together with high levels of obesity and child poverty. Levels of antisocial behaviour in Middlesbrough are also high.

Fast food businesses such as this emit fatty cooking smells all the time they are open, which isn't very nice in a residential area.

Public Responses

Number of original neighbour consultations	9
Total numbers of comments received	0
Total number of objections	0
Total number of support	0
Total number of representations	0

No public responses received from the consultation

PLANNING CONSIDERATION AND ASSESSMENT

1. The main considerations with this proposal are the principle of the development, the impact on the character and appearance of the street scene, the impact on the amenity of the neighbouring premises and the impact on highway safety.
2. In terms of the proposed signage, this is being assessed under a separate application for advert consent.

Policy Context

3. Policy H1 identifies locations where significant new employment development will be focused. The Policy requires that outside of these locations proposals should be sited within the urban area and be accessible to the community they serve.
4. Policy CS4 requires all development (among other factors), to make the most use of efficient land, in particular vacant sites and derelict buildings, with priority being given to development on previously developed land.
5. Policy CS13 determines a hierarchy of retail centres based upon strategic importance within the borough, identifying a network of centres that meet day to day shopping and community needs. The policy seeks to safeguard the retail character and function of centres by resisting development that detract from their vitality and viability, with the need to apply the sequential approach when considering proposals for new town centre uses outside of a town centre. Further to this the NPPF, in supporting the vitality and viability of town centres by placing existing town centres foremost in both plan-making and decision-taking, determines main town centre uses should be located in town centres, then in edge of centre locations; with a sequential test applied to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. As a main town centre use in an out of centre location a sequential assessment is required.
6. Policy DC1 requires that all development proposals will be required to take account of, or satisfy, as a minimum the visual appearance and layout of the development and its relationship with the surrounding area in terms of scale, design and materials; with no impact upon highway safety being evident at all through the development process; and have minimal effect upon the surrounding environment and amenities of occupiers of nearby properties both during and after completion.
7. The 2024 NPPF paragraph 97 states that local planning authorities should refuse applications for hot food takeaways and fast-food outlets that are within walking distance of schools and other places where children and young people congregate,

unless the location is within a designated town centre; or in locations where there is evidence that a concentration of such uses is having an adverse impact on local health, pollution or anti-social behaviour.

8. In addition, the Council has an interim hot food takeaway (HFT) however it is considered this is superseded by Policy EC17 of the Publication Local Plan. Policy EC17 determines that proposals for HFTs will only be permitted where the proposed use would not result in the proportion of commercial units in the defined area exceeding an identified threshold. In addition, the policy states that to promote healthier communities planning permission will not be granted for hot food takeaway uses within 400m walking distance of an entry point to a school unless it is within a defined centre. Furthermore, HFTs will not be permitted outside of a defined centre.
9. The Council is currently in the process of reviewing its Local Plan. The Publication Local Plan (PLP) was submitted to the Secretary of State on 30th September 2025, prior to Examination. Paragraph 49 of NPPF sets out that decision-takers may give weight to relevant policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies, and their degree of consistency with policies in the NPPF. It is considered that some weight may be given to PLP policies in the determination of this planning application.
10. PLP Policy ST1 sets out the development strategy for Middlesbrough, and Policy ST2, criterion f, particularly, sets out for commercial development, retail leisure and community uses will be focused within our town, district and local centres. Policy EC8 identifies a hierarchy of centres, which the Local Plan seeks to protect and enhance; development proposals for main town centre uses will be focused within the Town Centre, district and local centres.
11. PLP Policies CR1, CR2 CR3 collectively require all development proposals to be sustainable, well-designed, and of a high quality. PLP Policy CR2 requires all proposals to not have a significant adverse impact on the privacy and amenity of occupiers of existing or proposed nearby properties or unduly affect neighbouring land and uses.
12. PLP Policy IN6 determines the Council will support development in Middlesbrough that provide opportunities for healthy lifestyles, contribute to the creation of healthier communities and help reduce health inequalities. The policy goes on to state that development proposal should ensure they, among other criteria, support a diverse range of uses within our Town, District and Local Centres, and discourage the uses that have a negative health impact.
13. In addition to the aforementioned policies, other policies to take into consideration would be:
 - PLP Policy CR7 Shopfront Design

Principle of Development

14. The application site lies within the Newport Ward of Middlesbrough, not designated for any use in the development plan, as an application for retrospective change of use from retail (Use Class E(a)) to a hot food takeaway (Sui Generis). The above policies will apply in terms of the planning assessment.

15. The proposed use of hot food takeaway is in an out of centre location and lies within a 150m walking distance of Sacred Heart Primary School. The proposed development site also lies within the Newport Ward. The Index of Multiple Deprivation 2019 identifies Newport Ward as in the top 1% of most deprived wards nationally. Childhood obesity and excess weight are significant health issues in Middlesbrough with national evidence identifying Middlesbrough obesity rates in schools to be higher than the national average.
16. This application is outside of a defined centre. In accordance with the NPPF and Policy CS13, the hot food takeaway, a main town centre use outside of a defined centre requires a sequential assessment. No sequential assessment has been submitted with the application.
17. Furthermore, contrary to Paragraph 97 of the NPPF and PLP Policy EC17, the application for the use of hot food takeaway is located in an out of centre location and is within 150m walking distance of Sacred Heart Primary school; and where, as evidence suggests, a concentration of such uses is having an adverse impact on local health; and therefore should be refused.
18. In conclusion, the principle of a HFT use in this location is not supported due to it being outside of a defined centre (with no sequential test having been submitted) and also with it being in close proximity to a school which conflicts with national and local policy aims to promote healthier communities.

Impact on character and appearance of the area

19. Policy DC1 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 with Policy CS5 commenting that new development should 'enhance both the built and natural environment'.
20. There is no additional built form by way of extensions proposed to the unit but it is noted that a flue outlet is installed to the side elevation. Although the plans do not show it in detail, the outlet would be visible in the street scene. As such it is considered that it would have an impact on the visual amenity of the area due to its position and visibility. It is not understood if this flue provides extraction for the unit and no further information or odour report has been submitted with the application. As such the LPA are unable to consider its impact. Given the rear of the property is semi-open and a flue to the side would not be appropriate due to oversailing the footpath, it is considered to be too great of an issue to be dealt with via condition as public consultation would be necessary. Therefore, the application lacks the required detail for a full assessment to be made and this would form an additional reason for refusal.
21. Looking at the wider character of the area, this is predominantly residential but does also include nearby retail. Concern is expressed by the case officer regarding the impact of changing to a HFT due to the nature of this use. In particular, the comings and goings would be very noticeable with servicing vehicles attending and general noise associated with the use. It is considered that as such, a HFT in this location would form an inappropriate addition to this area of predominantly residential

character. In view of the above, the proposal is considered contrary to Policies DC1 and CS5.

Impact on neighbouring privacy and amenity

22. Core Strategy Policy DC1 comments that all new development should consider the effects on the amenities of the occupiers of nearby properties both during and after completion.
23. The hours of operation associated with the proposal indicate the following:
 - Monday to Saturday: 2:00-12:00
 - Sunday/Bank Holidays: 2:00-12:00
24. The hot food takeaway proposal has the potential to increase impacts on these residents in terms of noise and odours which would affect their amenity. The Council's Environmental Health officers have raised no objections to the proposal subject to conditions being placed on the application regarding a restriction on the delivery/waste collection hours, an odour impact assessment and a noise assessment to protect adjacent residents.
25. Notwithstanding the considerations of Environmental Health, Policy DC1 must be carefully considered, specifically the effect upon the surrounding environment and amenities of occupiers of nearby properties which needs to be minimal to comply with the policy. Whilst it appears that the current unit (existing retail use) would have some comings and goings, the proposed use would see increased activity throughout the day and into the night which would result in high levels of disturbance, vehicles coming and going, car doors opening and shutting in the late hours and voices associated with customers, all in very close proximity to the residential streets. This would also be at a time where residents require a greater level of quiet during the evening and night, particularly if children are living nearby.
26. In view of the above, the proposed use is considered to result in notable detrimental impact to neighbours and as such would not accord with the provisions of Policy DC1. Whilst planning conditions would likely control issues of noise and odour from the unit, there would still be outstanding concerns relating to overall disturbance and late-night activity associated with the use.

Highway implications

27. In consultation with the Council's Highway Officer, development proposals seek a retrospective change of use from retail to a hot food takeaway. When assessing the proposed change of use consideration has to be given to the existing lawful use which could continue without the need for further planning consent, which in this case is retail. This use class would enable a number of occupiers including a local shop which could generate similar levels of traffic and parking demand as the proposed takeaway. On street parking is available on Costa Street and along Ayresome Street and as such no objections are raised to the change of use.

28. No issues were raised by the Highways Officer. As such, the proposal is considered in accordance with Policy DC1 with no notable impact on the highway network.

Conclusion

29. The proposed town centre use which would not be within a town-centre location, and without being demonstrated as a suitable location via a sequential test, is considered to fail local and national policy. The proposed use is also close to a school and within a predominantly residential area and also fails policy requirements around not unduly impacting community health. Furthermore, the proposed use is considered to adversely affect residential amenity through increased noise, disturbance and activity.
30. Decisions to approve can be made where they are contrary to the local plan and other planning guidance where there are material planning considerations which indicate otherwise, however, in this instance, there are no material planning considerations which suggest a decision away from established Policy and guidance should be taken, including when taking into account the site character and surrounding character.
31. The application therefore has to be determined against these established policies and in view of the above, the application is therefore recommended for refusal.

RECOMMENDATIONS AND CONDITIONS

1. Failure to pass sequential test

In the opinion of the Local Planning Authority, the proposed town centre use has not been demonstrated as being policy compliant relative to siting of such a use outside of defined centres, contrary to Local Plan Policies DC1 (general development) , CS13 (a Strategy for the Town, District, Local and Neighbourhood Centres), PLP Policy EC17, the National planning Policy Framework and the Council's Interim Hot Food Takeaway Policy.

2. Inappropriate Location

In the opinion of the Local Planning Authority, the proposed change of use would be detrimental to the predominantly residential character of the area and the amenity of nearby residential occupiers in view of likely impacts throughout the day and into the late evening/night. Furthermore, the proximity of the use to a school would negatively impact the health of the community. For these reasons, the proposed development is contrary to the guidance contained within Local Plan Policies DC1 and CS5, PLP Policy EC17 and Paragraph 97 of National Planning Policy Framework.

3. Insufficient Information

The information and planning drawings that have been submitted are insufficient due to a lack of detail regarding the flue and extraction system. Therefore the Local Planning Authority is unable to accurately assess this aspect of the change of use. The development is considered to be in conflict with the requirements of policy DC1 (a).

INFORMATIVES

INFORMATIVE NOTE: Enforcement Action

Please note that as the use has commenced and planning permission has not been granted, failure to cease operations will result in the Local Planning Authority likely considering taking formal enforcement action.

IMPLICATIONS OF THE DECISION

Environmental Implications:

The proposal relates to commercial development and its environmental impacts have been considered within the report above. Such considerations have included amongst others, visual implications, privacy and amenity, noise and disturbance and ecological implications. In view of all those considerations, it is on balance judged that in this instance the associated environmental impacts are considered to be significant and would result in harm to the amenity of nearby residents.

Human Rights Implications:

The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report and the recommendation is made having taken regard of the Local Development Plan Policies relevant to the proposals and all material planning considerations as is required by law. The proposed development raises no implications in relation to people's Human Rights.

Public Sector Equality Duty Implications:

This report has been written having had regard to the need to eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited under the Equality Act 2010 and to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. There are no matters relating to this application which relate to harassment, victimisation, or similar conduct or which would affect equality of opportunity or affect the fostering of good relations between people with and without protected characteristics.

Community Safety Implications:

The provisions of Section 17 of the Crime and Disorder Act 1998 have been taken into account in the preparation of this report. Specifically, considerations around designing out opportunity for crime and disorder have been detailed within the report. Whilst actions of individuals are not typically a material planning consideration in reaching a decision in this regard, designing out the opportunity for crime and disorder is aligned to good quality design and is, in that regard a material planning consideration.

Financial Implications:

None

Background Papers

None

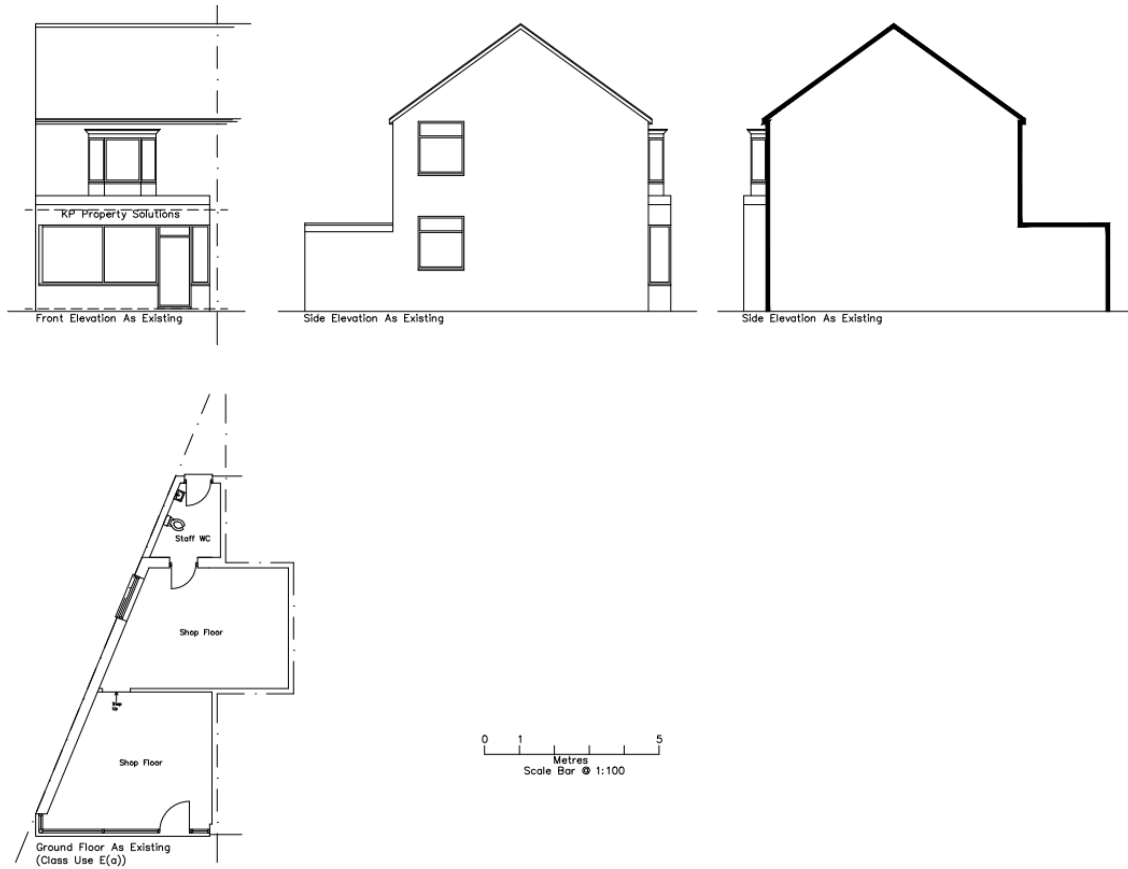
Case Officer: Victoria Noakes

Committee Date: 6th November 2025

Appendix 1 – Location Plan



Appendix 2 – Existing Plans/Elevations



Appendix 3 – Proposed Plans/Elevations

