

DARLINGTON BOROUGH COUNCIL
PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 17 February 2021

APPLICATION REF. NO:	20/00963/FUL
STATUTORY DECISION DATE:	14 December 2020 (Extension of time agreed until 19 February 2021)
WARD/PARISH:	BANK TOP AND LASCELLES
LOCATION:	K & S Peacock, 55 Neasham Road
DESCRIPTION:	Change of use from off-licence (Use Class E) to a hot food takeaway (Sui Generis) with installation of extraction equipment including external flue to north elevation
APPLICANT:	Mr Kuldip Singh

RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS (see details below)

Application documents including application forms, submitted plans, supporting technical information, consultations responses and representations received, and other background papers are available on the Darlington Borough Council website via the following link: <https://publicaccess.darlington.gov.uk/online-applications/applicationDetails.do?keyVal=QIFU75FPGZB00&activeTab=summary>

APPLICATION AND SITE DESCRIPTION

1. The application site relates to a two storey terraced property that sits in an end-terrace position fronting onto Neasham Road to the west. The side elevation of the application property faces onto Brunton Street to the north. The property has previously been in use as an Off-Licence (Use Class E) at ground floor level with residential accommodation above. The surrounding area is predominantly residential in nature and the property is bound by residential properties on its adjoining southern side, on Brunton Street to the rear, and on Neasham Road to the north and west.
2. Neasham Road Local Centre is located on the opposite side of Neasham Road approximately 65m away to the south west of the site. There are a small number of

retail premises located within the vicinity of the application site along Neasham Road, many of which occupy end of terrace properties. Uses include a hairdresser, boutique clothing shop and a takeaway.

3. Access to the rear yard of the application property is via an entrance off Brunton Street. There is a pedestrian door also located off Brunton Street which leads to a first floor living space.
4. This application seeks permission for a change of use of the ground floor of the premises from an off-licence (Use Class E) to a hot food takeaway (Sui Generis) with the installation of extraction equipment including an external flue to the north elevation. No other external alterations are proposed. The hot food takeaway would operate between the hours of 11:00 to 21:00 Monday to Sunday, including Bank Holidays.
5. The first floor living accommodation would remain and some internal alterations are proposed to the ground floor including the addition of a serving counter and internal extraction equipment to facilitate the proposed use.

MAIN PLANNING ISSUES

6. Site History:
 - 83/00720/DM – Change of Use and Alterations to the Rear to Provide a Dinette/ Kitchen, Store, Preparation room and Toilet. Granted.
 - 88/00783/Misc. – Erection of an Extension to the Shop. Granted.
 - 16/00207/PA – Prior Approval of a change of use of part of a building from a mixed retail and residential use to a use falling within use class C3 (Dwellings). Application Withdrawn.
 - 19/00371/FUL – Installation of Replacement Shop Front including retention of existing shutters. Granted 2019.
7. The main planning issues to be considered are:
 - a) Visual Amenity
 - b) Residential Amenity
 - c) Highway Safety
 - d) Disabled Access
 - e) Other Matters

PLANNING POLICIES

8. The relevant Local Plan policies include those seeking to ensure the proposed development:

- a) Is located within development limits as set out within Policy E2 of the Saved Local Plan 1997
- b) Accords with Darlington's sub- regional role and locational Strategy set out within Policy CS1 of Darlington's Core Strategy (2011)
- c) Makes efficient use of land and existing buildings and reflect Darlington's distinctive, natural, and built characteristics that contribute to the character of the local area and its sense of place (CS2 of the Core Strategy).
- d) Provides vehicular access and parking suitable for its use and location (CS2 of the Core Strategy).
- e) Ensures safe, convenient, and attractive access for pedestrians, cyclists, public transport users and for disabled people (CS2 of the Core Strategy)
- f) Promotes individual shops, leisure uses and services and small neighbourhood clusters of them which meet day to day needs of nearby residents without the need to use a car will be protected (CS9 of the Core Strategy)
- g) Protects the general amenity and health and safety of the local community (CS16 of the Core Strategy)

RESULTS OF TECHNICAL CONSULTATION

9. The Council's Highway Engineer and Environmental Health Officer raise no objection, subject to conditions.
10. The Architectural Liaison Officer has been consulted on the application and has raised no objections.
11. Darlington Association on Disability advise that the provision of a temporary ramp is acceptable as a minimum form of provision.

RESULTS OF PUBLICITY AND NOTIFICATION

12. The application has been publicised by way of site notice and neighbour letters in accordance with Article 15(5)(a) of The Town and Country Planning (Development Management Procedure) (England) Order 2015.
- 13.4 Letters of objection have been received with the following concerns (Summarised):
 - *Town is overrun by takeaway shops*
 - *Don't need another place selling unhealthy food*
 - *The visual approach into Darlington Town Centre from most routes except the West end is becoming an eyesore of takeaway shops*
 - *The takeaway would lead to an increase in traffic and noise problems and raise concerns over possible smells coming from the takeaway*
 - *Would lead to an increase in litter*

- *Already a large number of fast food businesses nearby*
- *So much competition already in the area which leads to a struggle in business*
- *Not in favour of another hot food takeaway nearby to own fish shop*
- *There should not be so many hot food takeaways close to each other*

PLANNING ISSUES/ANALYSIS

(a) Visual Amenity

14. There are no external alterations to the premises other than the erection of an external flue on the gable wall fronting Brunton Street. While the proposed flue would be visible from this aspect, on this occasion it is modest in scale and height and will sit approximately mid-way between the eaves and ridge height of the property. It is not considered therefore that this would have an unacceptable impact upon the character and appearance of the application property or that of the surrounding area.

(b) Residential Amenity

15. Policy CS16 of the Core Strategy states that new development (which includes proposals to change the usage of a building) should ensure that there is no detrimental impact on the environment, general amenity and the health and safety of the community. Paragraph 180 of the National Planning Policy Framework, 2019 states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment. In particular, decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and quality of life.

16. The surrounding area is predominantly residential in character, including the first floor flat above, the adjoining property and other residential properties close by on Neasham Road and Brunton Street, interspersed with some commercial and retail units. Hot food takeaways have the potential to cause disturbance to neighbours due to noise generated by the comings and goings of customers and the operation of equipment to deal with fumes and smells. This can be particularly so at times when neighbours might have a reasonable expectation of a quieter environment.

17. These activities would not however be too dissimilar to the existing off-licence use. It should be noted that the premises are not currently subject to an hours of operation condition and so activities associated with the retail use of the premises could continue later into the evening than currently proposed. Following discussions with officers the hours of operation for the proposed hot food takeaway have been reduced to 11:00 to 21:00 Monday to Sundays, including Bank Holidays. A closing time of 23:00 was originally proposed.

18. These opening hours are consistent with other hot food takeaways elsewhere within the town, in close proximity to residential properties and in most instances on the end of a terrace of residential dwellings, including 87 Grainger Street (13/00958/CU),

15 Belvedere Road (19/00002/FUL), 155 Corporation Road (14/01163/FUL), 366 Yarm Road (16/00896/FUL) and 303 – 303A North Road (18/01166/CU). It is considered that the proposed hours are not at anti-social times, or when residents would reasonably expect a certain degree of peace and quiet. A condition restricting the opening hours to 11:00 to 21:00 Monday to Sundays, including Bank Holidays is therefore proposed.

19. The Council's Environmental Health Officer has raised no objection to the proposal subject to conditions to secure controls over methods of controlling fumes and odours, the storage of waste and refuse, the fitting of internal grease traps and the control of delivery hours to ensure the neighbouring properties are not unduly disturbed by the ground floor usage.
20. There is an existing waste bin in the forecourt of the premises which can be used by patrons of the premises and the bin is considered to be appropriate.
21. Durham Constabulary Architectural Liaison Officer has been consulted and has no objections to the proposal.
22. It is considered that by limiting the proposed hours of use and imposing appropriate planning conditions to control noise, fumes and odours which might be generated by the use, the proposed change of use would not materially harm the amenities of the neighbouring dwellings. The proposal, subject to appropriate conditions, would accord with Policy CS16 of the Core Strategy.

(d) Highway Safety

23. The property occupies an end-terrace location with a side elevation on Brunton Street. Parking is restricted in the nearby vicinity of the site, with "no parking" restrictions in place around the junction radii. Limited unrestricted parking is available on Brunton Street, although demand from residents is high as properties are reliant upon on street parking. Further parking is available after 6pm within areas otherwise restricted to resident permit holders during the hours of 8am-6pm. This would be available for both customer and residential use during evening opening times subject to availability on a first come first served basis.
24. Takeaway businesses typically operate with a higher turnover of short duration parking rather than requiring a significant amount of total parking at any one time. Customers may arrive to collect orders and be parked for 5 - 10minutes, however this may attract several trips per hour.
25. Many customers are likely to be pass by trips i.e. vehicles already travelling on Neasham Road or be visiting on foot from the nearby residential area. Most takeaways also offer a delivery service further reducing vehicle movements and parking demands over customer collection only. Whilst Neasham Road carries higher volumes of traffic during the daytime, this volume is vastly reduced in the evening (7pm onwards).

26. The Council's Highways Officer has confirmed that there is no pattern of accident history, or particular road safety concern at this location, as no incidents are associated within near proximity of the Brunton Street/Neasham Road junction. Servicing and public access/parking at the premises would be required to take place from the public highway, however the highway impact to residents should be minimal over the extant permission, especially as this would potentially serve a large walking catchment area of customers.
27. Whilst the availability of parking in the nearby vicinity is limited, it is not considered that this application is likely to generate additional traffic over the current permitted use class and hence warrant grounds for refusal under NPPF guidance which requires that 'Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.' No highway objection is raised on this basis.

(e) Disabled Access

28. Policy CS2 of the Core Strategy states that all developments should provide safe, convenient, and attractive access for disabled people.
29. Darlington Association on Disability (DAD) have advised that disabled access to the premises should be provided not only to comply with Policy CS2 of the Core Strategy but to meet the standards of the Equality Act 2010.
30. DAD recommended that a permanent solution be found to provide full disabled access to the property which would involve relocating the entrance to the front elevation to allow a permanent ramp to be constructed across the forecourt. The applicant confirmed that with opening a new business they were not currently in a position to finance the external alterations and details of a portable ramp have been provided as an alternative, which will be available for customer use on request and assistance provided. The ramp would be removed when it was not in use.
31. In the circumstances, while this is not a permanent solution, it does provide a means for disabled customers to access the shop and DAD have advised they would expect the temporary portable ramp to be provided as a minimum to address the step up at the entrance of the takeaway.
32. As the entrance to the shop is located on a corner, any ramp would extend out over the highway to the front. Therefore, a condition is proposed to ensure the ramp is provided on request and assistance is provided, with the ramp to be removed immediately after use to ensure that the ramp does not result in a tripping hazard within the highway. Darlington Association on Disability have confirmed they would be satisfied with this.
33. The Council's Highways Engineer is also supportive of the use of a condition controlling the operation of the ramp but have also advised that the business should have 3rd party liability insurance to ensure responsibility over any tripping claims.

This is the subject of an informative, but lies outside of the remit of this planning application.

34. Overall, as the applicant has agreed to provide a temporary portable ramp which the operation of would be ensured by condition, it is considered the proposal will accord with Policy CS2 of the Core Strategy.

Other Matters

35. Some of the concerns raised by objectors relate to possible effects on business competition. However, members are advised that this is not a material planning consideration and cannot carry any weight in the determination of the planning application.
36. A number of objections have included concerns over the number of takeaways in the area. Concern is also expressed regarding the sale of 'unhealthy food' from the premises. There is currently no development plan policy which seeks to limit the number or location of takeaways within the Borough, rather each application is considered on its merits having regard to its impact on residential and visual amenity and highway safety. Obesity in an area has however been found to be a material consideration when deciding on applications for fast food outlets. There is not currently sufficient evidence to suggest that obesity is a significant issue in this part of the Borough such that the application could be refused on this basis.

PUBLIC SECTOR EQUALITY DUTY

37. In considering this application the Local Planning Authority has complied with Section 149 of the Equality Act 2010 which places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
38. Within paragraphs 28 – 34 of this report the measures taken to provide disabled access have been described in accordance with having regard to Section 149 of the Equality Act 2010.

CONCLUSION AND RECOMMENDATION

39. The application property has an existing use as an off-licence which is not currently subject to an hours of operation condition. It is not considered that activity levels associated with the proposed hot food takeaway would be too dissimilar from the existing off-license use and as a result the proposed use would not adversely impact upon the nearby living conditions of nearby residents subject to appropriate controls. As such it is considered appropriate to restrict opening hours to between 11-21:00 Monday to Sunday including bank holidays, to ensure that activity levels do not extend into the later evening which is consistent with other hot food takeaways in similar locations around the town. The Architectural Liaison Officer has not raised objection to the application and therefore there are no significant concerns relating to anti-social behaviour resulting from the proposed change of use. Neither the

Environmental Health Officer nor the Highways Engineer raise objection to the application and subject to appropriate conditions the proposal is considered to comply with Policy CS16 (Protecting Environmental Resources, Human Health and Safety) and Paragraph 180 of the NPPF 2019. The proposed flue is not considered to raise issues in terms of visual amenity in accordance with Policy CS2 (Achieving High Quality, Sustainable Design). A temporary portable ramp is to be provided on request providing disabled access to the premises in accordance with Policy CS2 of the Core Strategy.

THAT PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. A3 Implementation Limit (Three Years)
2. The use hereby approved shall not operate outside the hours 11:00 – 21:00 Monday to Sunday including Bank Holidays only unless otherwise agreed in writing by the Local Planning Authority.

REASON: In the interests of residential amenity.

3. No noise emitting fans, louvres, ducts, or other external plant associated with this permission shall be installed until a scheme to reduce noise and vibration has been submitted and approved by the Local Planning Authority.

Reason: In the interests of residential amenity.

4. Prior to the installation of any air extraction equipment (including the external flue) exact details of the proposed installation including the manufacturers specified noise levels of the extraction system shall be submitted to and approved by the Local Planning Authority. The noise levels of the proposed extraction system shall meet the noise limits in the njd noise assessment dated October 2020 submitted in support of the application. The agreed extraction system shall be retained and maintained thereafter for the duration of the development.

No modifications to the approved scheme shall be undertaken without the prior approval of the Local Planning authority.

REASON: In the interests of residential amenity.

5. Prior to the hot food takeaway hereby permitted first being brought into use, details of fume extraction, including a full technical specification by a suitably qualified person, shall be submitted to, and agreed in writing to the Local Planning Authority. The scheme should specify the position of ventilation, fume, or flue outlet points; the type of filtration or fume treatment to be installed. The proposed fume extraction system shall meet the recommendations in the njd odour assessment dated October 2020, submitted in support of this application. The agreed fume extraction system shall be retained and maintained thereafter for the duration of the development.

No modifications to the approved scheme shall be undertaken without the prior approval of the Local Planning authority.

REASON: In the interests of residential amenity.

6. Drainage serving kitchens in commercial hot food premises should be fitted with a grease separator complying with BS EN 1825-1 and designed in accordance with BS EN 1825-2 or other effective means of grease removal.

REASON: In order to prevent flooding and pollution.

7. Details of refuse storage facilities shall be submitted to and approved in writing by the Local Planning Authority before the use hereby permitted commences and thereafter shall be retained for the lifetime of the development.

REASON: In the interests of amenity.

8. Deliveries to and collections from the site, including the loading and unloading associated with the use, shall take place between the hours of 8am to 6pm Monday to Saturday, with no deliveries on Sundays/Public Holidays.

REASON: In the interests of residential amenity.

9. For the duration of the approved use, a temporary portable ramp shall be provided and operated in accordance with the details submitted in email correspondence dated 9th December 2020.

REASON: To ensure that a disabled person can use the services that are provided within the building in accordance with Policy CS2 (Achieving High Quality Sustainable Design) of the Darlington Core Strategy Development Plan and to discourage hazards that could be caused by a ramp in the highway.

10. Prior to the commencement of the use, a sign shall be erected at the entrance of the premises informing any persons unable to enter the premises that a temporary portable ramp is available on request. This sign shall remain in situ unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure that a disabled person can use the services that are provided within the building in accordance with Policy CS2 (Achieving High Quality Sustainable Design) of the Darlington Core Strategy Development Plan 2011.

11. PL (Approved plans condition)

- NDS20/CP1 - Plans as Proposed
- NDS20/CP2 – Elevations as Proposed
- NDS20/SL1 – Site Location Plan

- Agent Email detailing temporary portable ramp and its operation dated 9th December 2020

Informatives

Environmental Health

The Environmental Health Team enforces food safety and health and safety legislation at this premises and the applicant is advised to contact this department prior to the undertaking of any work to ensure that all legislative requirements are met.

You must register your food premises with your local authority. Please use the following link to do this: <https://register.food.gov.uk/new/darlington>

It is unclear from the information provided if there will be an adequate number of wash hand basins. The number of wash basins will depend upon the number of employees, size and layout of the premises and the activities being carried. You must ensure that wash basins are provided where high-risk or ready to eat foods are handled, at entrances to food handling areas etc. For further information please refer to the following link <https://www.food.gov.uk/business-guidance/setting-up-a-food-business>.

Licensing

The premises may require a Premises Licence under Licensing Act 2003 if alcohol is to be served or is to open after 23.00 and if this is the case the applicant should contact the Licensing Department for further advice.

Third Party Insurance

The Council's Highways department has advised that the business should have 3rd party liability insurance in respect of the portable access ramp that will extend over the public highway.

Signage

The applicant is advised that any new signage on the building may require the submission of a separate planning application for advertisement consent.