

**DARLINGTON BOROUGH COUNCIL**  
**PLANNING APPLICATIONS COMMITTEE**

**COMMITTEE DATE: 7th July 2021**

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<b>APPLICATION REF. NO:</b>	21/00247/FUL
<b>STATUTORY DECISION DATE:</b>	5 <sup>th</sup> May 2021
<b>WARD/PARISH:</b>	NORTH ROAD
<b>LOCATION:</b>	169 North Road
<b>DESCRIPTION:</b>	Change of use from Estate Agents (Use Class E) to Hot Food Takeaway (Sui Generis) with the installation of extraction flue to rear elevation and associated internal works (Amended Plans showing removal of shop front alterations submitted 23rd March 2021)
<b>APPLICANT:</b>	Mr Mohamed Irshad Mohamed Shafee

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**RECOMMENDATION: REFUSE PLANNING PERMISSION (see details below)**

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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=QPR2LUFPH3S00&activeTab=summary>

#### **APPLICATION AND SITE DESCRIPTION**

1. This application was deferred from the last Planning Committee meeting to allow for reconsultation with Environmental Health on amended plans showing a repositioned flue. Apart from the additional comments provided by Environmental Health at paragraph 11 this report remains unchanged.
2. This application site relates to a two storey mid terraced property on the west side of North Road where the ground floor is currently in use as an estate agent with a first Floor Flat, 169A North Road located above. Lansdowne Street is located to the north of the site with Eldon Street located to the south. There is an alleyway to the rear of the application site separating the site from dwellings located within Mellor

Court to the rear. There is a convenience shop with a residential flat above located on the corner of North Road and Lansdowne Street which adjoins the application premises to the north. No. 165 North Road, a residential property, adjoins the application property to the south and there are further residential properties located along this street to the south. The area is predominantly residential in character with commercial uses interspersed within the locality.

3. Planning permission is sought for the change of use of the ground floor of the property to a takeaway (sui generis) with the installation of an extraction flue to the rear elevation and associated internal works.
4. The proposed opening hours for the takeaway are Monday to Saturday 11:00am – 9:00pm, Closed Sundays and Bank Holidays 11:00am – 7:00pm. The applicant has advised the opening hours are not final and there is willingness to alter times to suit the Local Planning Authority.
5. The type of food planned to be served by the takeaway consists of unprocessed grilled food which will be freshly made, it is explained as being a healthier alternative to the usual types of takeaway e.g. Pizza/Chinese/Kebabs.

## **MAIN PLANNING ISSUES**

6. Site History:

15/00665/CU - Change of use from Launderette (Sui Generis) to Estate Agency (A2) Financial and professional services, demolition of outbuildings to rear and creation of 5 No. parking spaces and insertion of entrance door to give access to first floor flat. GWC. 13.08.2015.

7. The main planning issues to be considered are:

- a) Visual Amenity
- b) Residential Amenity
- c) Highway Safety
- d) Other Matters

## **PLANNING POLICIES**

8. The relevant Local Plan policies include those seeking to ensure the proposed development:
  - a) Has no material adverse effect on the character and appearance of the building, or the streetscene in which the building is located (E38)
  - b) Will accord 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) Protects and where possible improves environmental resources whilst ensuring there is no detrimental impact on the environment, 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 raises no objection in principle.
- 10. The Council's Environmental Health Department recommends that planning permission be refused based on the noise levels of the proposed extraction equipment and its impact on the amenity of neighbouring properties.
- 11. The applicant has submitted amended plans to show the flue as being at a further distance from the nearest residential dwelling, No. 165 North Road. The Environmental Health Officer has commented on this and has stated that the flue still has the potential to have an impact on residential amenity from noise and vibration as the nearest noise sensitive receptor is in such close proximity to the development when considering the noise impacts on both inside properties and outside spaces such as gardens and courtyards.
- 12. The Police Architectural Liaison Officer has requested that opening hours are capped at 23:00 for closure. If the applicant is wanting to open beyond 23:00 hours they would need to submit a licence application.

## RESULTS OF PUBLICITY AND NOTIFICATION

- 13. The application has been publicised by way of site notice and neighbour letters.
- 14. **13 letters of objection** have been received with the following concerns (summarised):
  - *Parking – blocking access to front and rear of properties, impact on volume of parking nearby, not using parking to rear and parking on front, parking on pavements*
  - *Road Safety concerns*
  - *Volume of fast food outlets/hot food takeaways in area impacting people's health and contributing to obesity issues*
  - *Litter/ vermin increase*
  - *Concerns over increased comings and goings causing disturbance and anti-social behaviour, vandalism*
  - *Noise impacting neighbouring amenity*

- *Odour impacting neighbouring amenity*
- *Previous application 204a North Road rejected*

**15.15 Letters of support** have been received which are summarised below:

- *Creates good opportunities for businesses*
- *Provides more job opportunities*
- *Small businesses are essential to small communities' economy*
- *There are more healthy choices at fast food restaurant*
- *Affordable way to enjoy new food*
- *Support local independent businesses*
- *No harm to local residents*
- *Support new food businesses nearby*
- *Will fill empty shops*
- *Will help people to eat healthy and maintain healthy lifestyle*
- *Will bring benefits to local community*

## **PLANNING ISSUES/ANALYSIS**

### **(a) Visual Amenity**

16. There are no external alterations to the premises other than the erection of an extraction flue to the rear of the property adjacent to No. 165. North Road and to the rear of the first floor flat, 169A North Road, above the proposed takeaway. The proposed flue is a 500mm diameter stainless steel duct that will protrude through the roof of a single storey addition to the rear of the property, terminating approximately 0.4 metres beneath the main ridge line of the property. The flue will be visible to the rear of the site, although will not be visible from North Road to the front of the property. This is considered to be acceptable in respect of its overall visual impact on the appearance of the site and locality. Overall based on the information provided, the proposal would have an acceptable impact on the visual amenities of the locality and does not conflict with Policy CS2 and E38 in this regard.

### **(b) Residential Amenity**

17. 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.
18. The existing ground floor use is an Estate agent (Use Class E) which is commercial in nature was mainly in operation during daylight hours and one that has operated alongside residential properties without causing any known amenity issues.
19. The proposed use typically will do a lot of its trade during less social hours, the suggested proposed hours for the business have been set out as 11:00 am – 21:00pm Monday – Saturday. These would be the opening hours and do not include

preparation and clearing up which tends to take place before the business opens and after closing time, which in themselves could cause some noise and disturbance.

20. The property is attached to No.165 North Road and 173A North Road either side with the flat 196A North Road above, with residential properties located beyond the highway to the front. Residential properties are also located nearby, to the rear within Mellor Court, Lansdowne Street and Eldon Street. The main issues associated with hot food takeaways and their impact on local residents relate to noise, fumes, and anti-social behaviour. The Environmental Health Officer has raised objections to the proposed extraction fan for use with the extraction equipment and flue which is necessary to reduce noise and odour emissions to acceptable levels, provided it is maintained in an appropriate manner. Due to the proximity of the extraction equipment and flue to nearby sensitive receptors, those adjoining properties and the flat above, it is considered that the proposed extraction system will have a detrimental impact on the amenities of these properties in terms of noise, nuisance and disturbance.
21. Information provided with the application has shown that a 45 Maxfan Compac will be used with the extraction equipment and the noise levels would be 56dB(A) at 1.5 metres. The use of a CDA silencer with this product will reduce the noise by 10-13dB(A) however this does not take into account noise from vibration. The extraction and flue equipment proposed is located to the rear of the application property. The rear gardens of neighbouring properties including No.165 North Road as well as the flat above the premises are located in close proximity to the proposed equipment and it is considered that it will create noise and odour impacts on the adjacent residents, including during the summer months when using the gardens and windows are open, which would be unacceptable.
22. It is further considered that the general comings and goings cannot suitably be controlled and would likely cause disturbance at otherwise quieter times. Whilst it is acknowledged that North Road is a busy road, the concerns regarding direct impact of the proposal on more closely related properties still applies.
23. It is further acknowledged that there is a convenience store adjoining the application site to north that opens later into the evening, however it is considered that a takeaway use would have additional sound and odour impacts from the extraction equipment affecting adjoining residential dwellings as well as attracting comings and goings from vehicles to the front and rear.
24. Whilst the proposal does not intend facilities for consumption of food on the premises, some customers may congregate outside the shop which could also cause some annoyance and disturbance to residents. Such facilities tend to generate a high level of car-borne trade with customers aiming to park as closely as possible to the outlet, often regardless of any parking restrictions and may be prepared to park inconsiderately.
25. Delivery drivers may also park outside the store, sometimes with engines running whilst waiting for deliveries to be loaded onto their vehicles. Takeaway businesses

typically operate with a high turnover of short duration parking rather than requiring a significant amount of total parking at any one time. Customers may arrive for collecting orders and be parked for 5 - 10 minutes, however, this may attract several trips per hour. As such the parking and vehicle movements within the opening hours are a residential amenity consideration particularly during evenings. It is expected that there will also be periods before and after opening hours where there will clearly be activity, and this will be apparent for the most closely related properties.

Furthermore, it is acknowledged that there is the intention to have a click and collect system for some customers to arrange to pick up orders from the rear parking area, whilst this may help to provide some control of the comings and goings, customers will still be free to access the front of the shop throughout the full opening hours with the potential to disturb neighbouring properties at less social times.

26. Whilst the most closely related properties are on and adjacent to a busy road, residents enjoy a reasonable level of amenity at present in the evening hours when traffic movements decrease, and the impacts described above will have a materially negative impact on this. There have been instances where the council have approved takeaway uses adjoining residential properties with a closing time of 21:00, however this application has been assessed on its own merits, taking into account the amenity currently enjoyed by closely related residential properties and the degree to which the proposed change of use will adversely impact the living environment of residents.
27. No objections have been raised by Highways, however objections have been raised by Environmental Health regarding impacts on neighbouring amenity therefore it is considered that such a business in such close proximity to residential dwellings would lead to a materially adverse impact on the living environment of neighbouring residents which could not be wholly overcome by planning conditions and so would conflict with the aims of the Core Strategy Policy CS16.

#### **(d) Highway Safety**

28. The premises have most recently operated as an estate agent business with typical daytime opening hours advertised from 9:30am until 5:30pm. The proposed opening hours are from 11:00am until 09:00pm Monday- Saturday.
29. The supporting information refers to 4 in curtilage parking spaces being provided to the rear of the premises. Given that the parking area is located to the rear of the site, it is expected that this is more useful for staff parking as it is not conveniently located for customers, or obvious that off street parking is available.
30. Takeaway businesses typically operate with a high turnover of short duration parking rather than requiring a significant amount of total parking at any one time. Customers may arrive for collecting orders for 5 - 10 mins, however this may attract several trips per hour. The proposal does not clearly demonstrate a severe highways impact over the existing use or other comparable nearby businesses which would generate similar levels of trips and parking demand. Other nearby businesses operate within a typical 9-5 working day such as the signs shop and

barbers. This will generally free up on street parking where customer demand is reduced from 5pm onwards.

31. Many customers are likely to be pass by trips whereby vehicles are already travelling on North Road or to be visiting on foot from the nearby residential area. Most takeaways also offer delivery service further reducing vehicle movements and parking demands over customer collection only. Whilst it is accepted that north road carries high volumes of traffic during the daytime, this volume is vastly reduced in the evening (7pm onwards) to around 500 vehicles per hour from am/pm peaks of 1800 vehicles. A review of police accident records confirms there is no particular pattern of accident history or road safety concern at this location, with recorded incidents being consistent with the urban A167 North Road corridor.
32. The building benefits from having a frontage on North Road with unrestricted parking and is located close to Lansdowne Street which also has uncontrolled parking. The Eldon Street junction has parking restrictions to protect the nearby controlled crossing points and maintain junction visibility. Additional double yellow lines could be placed around the Lansdowne Street junction to address any future parking issues and protect visibility should the need arise. Further parking is available within a dedicated bay on the opposite side of North Road.
33. Whilst residents who are reliant upon on-street parking would mostly prefer to park vehicles outside of their homes for reasons of surveillance and convenience, this is not a right and all parking within the highway is on a first come first served basis. Further parking is available directly opposite and within a dedicated parking bay. As such the highways Engineer is satisfied that enough parking is available within the highway within a reasonable distance of the premises and raises no objections on highways grounds, subject to a planning condition to require submission and agreement of details of waste storage provision within the site. Accordingly, the proposal is not considered to conflict with Policy CS2 in this regard.

#### **(e) Other Matters**

34. Several objections raise issues in respect of a potential increase in anti-social behaviour. Whilst this is noted, there is no evidence to suggest that the proposed use will lead directly to an increase in anti-social behaviour, and this can be adequately dealt with by other powers and through the management of the premises.
35. Other objections raise the issue of increase in litter and vermin. This is noted, however there is no evidence to suggest that this would be the case and therefore this determination cannot account for the behaviour of individuals, and again this can be dealt with by other powers and through the management of the premises.
36. It is acknowledged there is support for local businesses, however in assessing the proposals it is considered that the adverse impacts on neighbouring amenity outweigh the economic and public benefits of the proposed hot food takeaway in this instance.

37. Several 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, and any other material planning considerations . Obesity in an area has however been found to be a material consideration when deciding on applications for fast food outlets.
38. The Council's Public Health department has been consulted on the application in relation to child obesity levels within the North Road Ward. The most recent figures from 2018 show that obesity levels in primary school children in Reception and Year 6, although not statistically different to national figures for England as a whole, is not the worst in the Borough. North Road is in the 2<sup>nd</sup> Highest quintile for obesity levels for children in Year 6 and is in the middle quintile for obesity levels amongst children in Reception year. The wards with the highest rates of obesity in school children in reception and Year 6 are Bank Top & Lascelles, Eastbourne, and Stephenson.
39. Notwithstanding these figures, in the absence of any development plan policy relating to hot food takeaways within the Borough and their impact on the health and wellbeing of an area, particularly in areas of high obesity, limited weight can be attached to this as a material consideration in the determination of this application.

## **PUBLIC SECTOR EQUALITY DUTY**

40. 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. The impact of the proposed use on childhood obesity levels has been assessed in paragraphs 34 – 36 above.

## **CONCLUSION AND RECOMMENDATION**

41. The proposed use would have a materially adverse impact on the living environment of neighbouring residents which could not be overcome by planning conditions and so would conflict with Policy CS16 (Protecting Environmental Resources, Human Health and Safety) of the Core Strategy 2011 and the National Planning Policy Framework 2019. There are not considered to be any other material planning consideration that would outweigh the concerns raised and therefore, it is considered that planning permission should be refused. In taking this decision the Local Planning Authority has had regard to the benefits of the continued use of the building.
42. Accordingly, it is recommended **THAT PLANNING PERMISSION BE REFUSED FOR THE FOLLOWING REASON:**



1. The proposed use would have a materially adverse impact on the living environment of neighbouring residents as a result of the proposed flue and extraction equipment and the noise levels produced and from the comings and goings of customers later into the evening which could not be overcome by planning conditions. The proposal would therefore conflict with Policy CS16 (Protecting Environmental Resources, Human Health and Safety) of the Core Strategy (2011) and the National Planning Policy Framework (2019).