

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 27th October 2021

APPLICATION REF. NO: 21/00922/FUL

STATUTORY DECISION DATE: 1st October 2021 (EOT until 29th October 2021)

WARD/PARISH: SADBERGE AND MIDDLETON ST GEORGE

LOCATION: 15 Station Terrace

DESCRIPTION: Change of Use from ground floor shop (Use Class E) with living accommodation above (Use Class C3) to ground and first floor shop/cafe (Use Class E) including new shop front with level access to front elevation, new shop windows with level access door and painted mural to side elevation, alterations and replacement to all other windows and associated internal works (Amended Plans to show parking space received 21st September 2021) (Amended opening times to 8am - 6pm Monday - Saturday, 10am-4pm Sundays and Bank Holidays) (Amended Plans showing alterations to rear windows, sound proofing upgrade to party wall, low odour extraction system and roof insulation received 29th September 2021)

APPLICANT: Mr K B Shalona Kaneen

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/simpleSearchResults.do?action=firstPage>

APPLICATION AND SITE DESCRIPTION

1. The application site relates to a two storey terraced property that sits in an end-terraced position fronting Station Terrace to the south west. The side elevation of the proposed application property fronts on to Heathfield Park to the north west. No.14 Station Terrace adjoins the application property to the south. No.16 Station Terrace is located beyond the rear alley way to the east of the application site. No. 1 Harpers Terrace is located beyond the highway to the north west of the application site with residential properties located beyond the highway to the south west, along Station Road. The area is predominantly residential in nature with some commercial uses interspersed, including the former Platform 1 Public House located to the north.
2. The property has previously been in use as a retail shop (Use Class E) on the ground floor with living space above (Use Class C3).
3. This application seeks permission for a change of use from ground floor shop (Use Class E) with living accommodation above (Use Class C3) to ground and first floor shop/café (Use Class E) including a new shop front with level access to front elevation, new shop windows with level access door and painted mural to side elevation, alterations and replacement to all other windows and associated internal works.
4. The proposals to the ground floor include the installation of a serving counter and shop space to the front with seating space towards the rear. There is a disabled bathroom to the ground floor. The rear yard area includes space to store bins. The proposals to the first floor include a kitchen area to the front with a further seating area towards the centre. There is a cake decorating area to the rear.
5. The external changes proposed include a replacement shop front and first floor window within the front elevation. To the ground floor side elevation (north west) it is proposed to install shop windows and doors. The proposals include replacing the first floor windows within the side gable elevation. To the rear it is proposed to build up the existing ground floor window and remove and fit a high level window on the first floor. To the rear south facing side elevation it is proposed to have a partially obscurely glazed window on the first floor and high level window on the ground floor. The application further includes a stainless steel flue painted matching brick red fixed to a low odour extraction system which is fixed to the existing chimney stack. The proposal also includes british gypsum sound block board along the wall adjoining No.14 Station Terrace.
6. The proposal also includes two car parking spaces and secured bicycle hoops located in the forecourt to the side (north west) of the property.
7. The proposal features a mural to the side (north west) elevation of the application property.
8. The proposed opening times are 8am – 6pm Monday to Saturday and 10am – 4pm Sundays and Bank Holidays.

MAIN PLANNING ISSUES

9. Site History:

None Relevant.

10. The main planning issues to be considered are:

- a) Planning Policy
- b) Visual Amenity
- c) Residential Amenity
- d) Highway Safety
- e) Disabled Access
- f) Other Matters

PLANNING POLICIES

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

- a) Is located inside development limits defined on the proposals map and is in accordance with Policy E2 of the Saved Local Plan.
- b) Will not include alterations to the business premises which would result in material adverse impacts on the character and appearance of the building or streetscene and new shop fronts or alterations to existing shop fronts will respect the scale proportions and character of the building and of neighbouring buildings and shop fronts (Policy E38 of the Saved Local Plan 1997)
- c) Which includes signing, the signing should be coordinated and be an integral part of the overall shop front design (Policy E38 of the Saved Local Plan 1997)
- d) Re-uses the vacant upper floors of commercial properties and is of an appropriate use (E43 of the Saved Local Plan 1997)
- e) Will accord with Darlington's sub- regional role and locational Strategy set out within Policy CS1 of Darlington's Core Strategy (2011)
- f) 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 2011).
- g) Provides vehicular access and parking suitable for its use and location (CS2 of the Core Strategy 2011).

- h) Ensures safe, convenient , attractive access for pedestrians, cyclists, public transport users and for disabled people (CS2 of the Core Strategy 2011)
- i) Is in accordance with the hierarchy of suitable areas for local shops and services (Policy CS9 of the Saved Local Plan)

RESULTS OF TECHNICAL CONSULTATION

- 12. The Council's Highway Engineer has been consulted on the application and has recommended refusal on the grounds of residential amenity.
- 13. The Council's Environmental Health Department has been consulted on the application and have raised no objections.
- 14. The Architectural Liason Officer has not commented
- 15. Darlington Association on Disability has been consulted on the application and has raised no objection.
- 16. The Parish Council have been consulted on the application and have raised no objection to the proposal.

RESULTS OF PUBLICITY AND NOTIFICATION

- 17. The application has been publicised by way of a site notice and neighbour letters.
- 18. 3 letters of objection have been received with the following concerns (Summarised):
 - Residential amenity -noise impacts
 - Opening times
 - Odour impacts
 - Privacy
 - Parking
 - Traffic/parking disrupting back lane
 - Visual amenity as a result of mural
 - Anti social behaviour
 - Litter
 - Vermin
 - Support for application is coming from those who don't live nearby
 - Training classes
 - Motor Cycle parking bay to rear of premises – fire hazard
 - Proposed mural encouraging obesity
 - Lack of need for the use

- 19. 30 letters of support have been received with the following comments (Summarised):

- Would be an asset to village
- Would support local community
- Would benefit local economy
- Positive visual amenity impact
- Would not cause disruption
- Current shop is run down
- Creates jobs
- Ideal location
- Reflects heritage of area
- Benefits new housing development

PLANNING ISSUES/ANALYSIS

(a) Planning Policy

20. The proposed application site is located within development limits in accordance with Policy E2 of the Saved Local Plan and is located in a sustainable location in accordance with Policy CS1 of Darlington's Core Strategy.
21. The application for a change of use from ground floor shop with living accommodation above to ground and first floor shop/café (Use Class E) is considered acceptable in principle in accordance with Policy CS9 of the local plan which sets out that individual local shops, leisure uses and services which meet day to day needs of nearby residents will be protected and promoted where the floor space is limited to 100sqm. The proposed floor space to be used by customers would be less than 100sqm and therefore it is considered that the proposal would be in accordance with Policy CS9. The proposal is also in accordance with Policy E43 of the Saved Local Plan in bringing an upper floor of a commercial property back into use.
22. It is considered that a change of use of the ground floor shop (Use Class E) to a café (Use Class E) could take place under permitted development.
23. Overall it is considered the proposed change of use in the proposed location is considered to be acceptable in principle subject to material considerations.

(a) Visual Amenity

24. Policy E38 of Darlington's Saved Local Plan sets out that alterations to retail and business premises including the installation of shop fronts and signing will be permitted if there would be no material adverse effect on the character and appearance of the building or of the streetscene in which the building is located.
25. The proposal includes a replacement shop front to match the existing shop front. The proposal also includes the installation of two sets of ground floor windows and door in the side elevation which are similar in appearance to the ground floor windows to the

front. It is not considered that the proposed replacement shop front and ground floor windows to the side of the premises would detract from the character and appearance of the existing shop and surrounding streetscene. Overall it is considered the proposal would not have a material adverse effect on the character and appearance of the building or streetscene and is therefore in accordance with Policy E38 of the Saved Local Plan 2011.

26. The proposal includes a painted mural to the north western side elevation, adjacent to Healthfield Park. It is considered that the mural is classed as an advertisement as it would partly be for the purposes of advertisement and attracting people to the premises and therefore is considered to be subject to separate advertisement consent. It is further considered that the proposed mural and its potential size could also be a reason as to why advertisement consent would be required as set out under Class 5 of the advertisement consent guidance. It is understood that the cupcakes represented in the plans may not be the final design of the mural. Therefore it is considered reasonable to apply a condition for details of the mural to be submitted at a later date for the consideration by the local planning authority as well as requiring separate advertisement consent to be submitted if necessary.

(b) Residential Amenity

27. 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.
28. The surrounding area is predominantly residential. Café's 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
29. The main product to be served from the shop would be personalised cakes which would be collected by customers. The shop is also to serve breakfast buns/light lunches/cakes/beverages. The café element will also run alongside the shop offering the opportunity to sit in to eat/drink the above offerings. There are proposed to be 5 tables of 4 people and therefore around 20 covers. Most of the tables are to be located on the ground floor with fewer tables to be available upstairs for a more private setting for small gatherings. The first floor also includes a kitchen area and a cake decorating area.
30. The proposed opening times for sales have been amended to 8am – 6pm Monday to Saturday and 10am – 4pm Sundays and Bank Holidays.
31. It is considered that a change of use from a shop (Use Class E) to a café (Use Class E) could take place on the ground floor under permitted development. Therefore consideration has been given to the impact of the change of use of the first floor above that of the ground floor. It is considered that due to the use closing at 6pm and 4pm in

the evening it is not considered that the proposed opening hours are at anti-social times or when nearby residents would reasonably expect a certain degree of peace and quiet. It is not considered that having a small number of customers on the first floor during these opening times would result in noise impacts which would cause significant disturbance to neighbouring properties, including No.14 Station Terrace, above that which could be generated from the existing living accommodation use.

32. The proposed use is to be closed to the public at 6pm and 4pm as set out above. It is proposed that cake decorating and training by the owner could occur outside of these times. It is not considered that noise impacts from these activities would be significantly above that which could be generated from the existing living space and therefore would not result in significant disturbance to neighbouring properties, including adjoining property No. 14 Station Terrace to warrant the refusal of this application.
33. The proposed plans include sound proofing measures along the adjoining wall next to No.14 Station Terrace and roof insulation. The proposal also includes extraction equipment and a flue which is to come through the existing chimney, for the purpose of controlling odours and fumes. The Council's Environmental Health Officer has been consulted on the application and have raised no objections to the proposal.
34. There have been concerns raised with regards to privacy impacts on neighbouring property No.14 Station Terrace in terms of overlooking from windows to the rear.
35. The existing ground floor south elevation of the off-shoot to the rear of the premises features a window and a door. The proposed ground floor south elevation features a high level window with a cill height of 1.5m and a replacement door. It is therefore considered that there would not be direct overlooking above that of the existing window. The existing first floor south elevation of the off-shoot to the rear features a window serving a bedroom and another window serving a bathroom. The proposal includes the blocking up of the bathroom window and a replacement window serving a cake decorating area. The proposed replacement window will be partially obscured and will have a maximum opening of 150mm. It is therefore considered that the proposed replacement window would not result in increased overlooking to the neighbouring property, No.14.
36. The existing rear east elevation features a window on the ground floor. The proposal includes the blocking up of this window. The existing rear east elevation features a bedroom window on the first floor. The proposal includes a replacement first floor high level window with a cill height of 1.65m. It is therefore considered that the proposal would not result in increased overlooking to neighbouring property No.14 Station Terrace.
37. It is considered that the comings and goings associated with the proposed café use would not be significantly above the potential of those of the existing shop use and would therefore not result in a significant increased impact on nearby residential amenity.

38. It is considered that the proposed shop/café use will attract some visitors who will arrive by car. It is proposed that a small number of off-street parking spaces are to be provided. However where overspill parking is generated in this location it is difficult to mitigate as little to no off-street parking is available nearby as there are no pay and display car parks or similar facilities nearby. Whilst there is likely to be some impact on neighbouring residential amenity through increased vehicle movements and extra demand for car parking spaces where residents are reliant upon on- street parking, it is considered that a change of use to a café could take place on the ground floor or a further shop could operate under permitted development and that the proposed use would not necessarily produce significantly more cars above these permitted uses in this location.
39. Owing to the proposed daytime opening hours set out above it is likely that people will park in nearby streets at times when they are less parked up due to people being out at work during the week. However there is likely to be more of a conflict in the evenings and on weekends. As set out it is considered that the proposed use would not result in further parking conflict above that which could exist for a ground floor shop/café use. Noise from vehicles coming and going is not considered to result in significant disturbance to neighbours due to the daytime opening hours not extending later into the evening when residents would expect a reasonable level of quiet. It is further considered that the proposed use is for a local facility which is primarily aimed at attracting visitors from the nearby village and therefore is likely to attract a good proportion of visitors arriving on foot.
40. It is therefore considered that, on balance, the impacts of increased vehicles on nearby residential amenity would not be so significant as to warrant refusal in this instance.
41. It is considered that by limiting the hours of 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.

(c) Highway Safety

42. The surrounding area is residential in nature with on street parking available on Heathfield Park and along Station Terrace, although the demand from residents is high as terraced properties are reliant on on- street parking. It is considered that there is some existing conflict in terms of parking in the nearby area for residents. It is considered that the proposed shop/café use would not necessarily generate visitors above that which could be generated from a shop/café use on the ground floor and therefore whilst there is existing conflict, it is considered that the proposed use would not result in impacts which could not already potentially occur in this location.
43. Objections refer to problematic parking at the Station Road/Heathfield Park junction. The highways Authority do have the power to impose formal restrictions with double lines following appropriate consultation exercises with residents.

44. It is considered that a total provision of around 15 parking spaces would be required to accord with advised parking standards. Although there are existing parking conflicts, due to the nature of the surrounding area and existing premises it is difficult to provide suitable off street parking that would meet the advised parking standards. It is considered that bringing the premises back into use which would support the local community in terms of providing a local place to meet and supporting the local economy would be a public benefit in accordance with Paragraphs 92 and 93 of the NPPF 2021 which sets out that decisions should promote inclusive and safe places which promote social interaction, including opportunities for meetings between people. It is considered that although the premises has limited opportunity for off-street parking that this should not prevent the commercial premises from coming back into use in this instance. On balance it is considered that bringing the premises back into use to primarily serve the local community would outweigh the short fall of off-street parking in this location.
45. There have been amended plans submitted which show two off-street car parking spaces and further cycle spaces within the forecourt to the north of the proposed property. The Council's highways engineer has been consulted on the application and has set out that the proposed spaces do not make efficient use of available parking and offer poor intervisibility between vehicles exiting parking spaces and the adjacent rear lane. It is also set out that access would be tight and would require drivers to pass over 3rd party land. It is set out that it is generally a requirement that parking spaces should be located at 90 degrees to the adjacent road. A revised arrangement where parking is accessed directly from Heathfield Park, would be likely to enable 3 parking spaces to be created without having parking located on the junction radii. It is requested that the street name plate is relocated closer to the junction and a low form of barrier is provided to prevent vehicle trespass of the tactile paving and access/egress of the junction which is unsafe. It is therefore ensured by condition that amendments to the proposed parking spaces and the inclusion of a barrier are to be submitted and considered by the Local Planning Authority prior to the operation of the use.
46. It is set out by the Council's Highway's Engineer that whilst the proposals would not necessarily create any highway safety issues provided the parking arrangements are amended, they would still raise some concern over impacts on residential amenity in terms of insufficient parking. Subject to conditions being applied as set out above, and for the reasons set out above it is considered that the proposed change of use would not, on balance, warrant 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.'

(e) Disabled Access

47. Policy CS2 of the Core Strategy states that all developments should provide safe, convenient and attractive access for disabled people.

48. The proposals include level access to the premises and provides a wheelchair accessible toilet.
49. Darlington Association on Disability have been consulted on the application and have raised no objection to the proposals.
50. It is considered that the proposal is in accordance with Policy CS2.

Other Matters

51. There have been some concerns raised by nearby neighbouring properties regarding the proposed use attracting 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.
52. The Council's Architectural Liaison Officer has been consulted on the application and has not commented.
53. Other objections have raised 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, this can also be dealt with by other powers and through the management of the premises. Furthermore, it is considered that the ground floor use could come back into use as a shop/café without having to apply for further planning permission and therefore it is not considered that the impacts from the proposed use would be significantly worse than these uses.
54. An objection has raised concern over the potential for the proposed use and the mural leading to increased levels of obesity. There is currently no development plan policy which relates to shop/cafes within the Borough and their impact on health and wellbeing of an area and therefore limited weight can be attached to this as a material consideration in the determination of this application. As set out previously, it is further considered that a shop/café selling food could operate on the ground floor without further planning permission.

PUBLIC SECTOR EQUALITY DUTY

55. 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.

CONCLUSION AND RECOMMENDATION

1. The application property has an existing ground floor use as a shop (Use Class E) with living accommodation above. It is considered that activity levels associated with the proposed shop/café on the ground and first floor would not result in a significant adverse impact on the residential amenity of neighbouring properties above that of the existing uses and of a shop/café use on the ground floor which could be implemented without further planning permission and would therefore be in accordance with Policy CS16 of Darlington's Core Strategy.
2. It is considered that the proposed opening hours between 8pm -6pm Monday – Saturday and 10am-4pm Sundays and Bank Holidays are acceptable and would not result in adverse impacts on residential amenity later into the evening times when a reasonable level of quiet would be expected in accordance with Policy CS16 of the Core Strategy.
3. It is considered that the proposal, on balance, would not result in significant impacts on residential amenity in terms of parking that would warrant the refusal of the application in this instance. It is also considered that the use should planning permission be Granted, would provide a useful community use. Subject to conditions ensuring suitable off street parking and highway measures are implemented it is considered that the proposal does not raise concern in terms of highway safety in accordance with the NPPF 2021. The proposal raises no issues in terms of disabled access in accordance with Policy CS2.
4. For the above reasons the proposal is recommended for approval subject to the below conditions.

THAT PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. The development hereby permitted shall be commenced not later than the expiration of three years from the date of this permission.

REASON - To accord with the provisions of Section 91(1) of the Town and Country Planning Act, 1990.

2. The use hereby approved shall not open outside the hours 08:00am – 18:00pm Monday to Saturday and 10:00am – 16:00pm Sundays and Bank Holidays unless otherwise agreed in writing by the Local Planning Authority.

REASON: In the interests of residential amenity.

3. The change of use shall not take place unless plan drawing 21.149 PD 06B (Amended Ground Floor Plan Proposed) hereby submitted is amended so that off-street parking spaces are provided within the forecourt to the north and accessed directly from Heathfield Park, the street name plate is relocated and a low form of barrier is erected to prevent vehicle trespass of the tactile paving and access/egress of the junction submitted and approved in writing by the Local Planning Authority, any such works

shall be implemented prior to the operation of the use in accordance with those approved details.

REASON: In the interests of Highway Safety.

4. Outdoor seating will not be permitted within the forecourt area located to the north of the application site as shown in plan drawing 21.149 PD 06B (Amended Ground Floor Plan Proposed) hereby submitted. The forecourt area shall be for the use of vehicle and cycle parking only.

REASON: To ensure additional seating is not provided without mitigating an increased parking shortfall in the interests of residential amenity.

5. Details of Mural

Prior to the installation of the proposed advertisement detailed in plan drawing 21.149 PD 09A (Amended Gable Elevation Proposed), details of the advertisement shall be submitted under a separate advertisement consent application.

REASON: In the interests of visual amenity.

6. The number of covers to be provided shall be limited to 20 covers at any one time.

REASON: In the interests of protecting residential amenity.

7. PL

The development hereby permitted shall be carried out in accordance with the approved plan(s) as detailed below:

- Location Plan
- 21.149 PD 07A Amended First Floor Plan Proposed
- 21.149 PD 08A Amended Front and Rear Elevations Proposed
- 21.149 PD 09A Amended Gable Elevation Proposed
- 21.149 PD 10A Amended Proposed Section and Return Boundary Elevation

REASON: To ensure the development is carried out in accordance with the planning permission.

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.

Licencing

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.

Signage

The applicant is advised that any new advertisements (including the proposed mural) on the building may require the submission of a separate planning application for advertisement consent.