

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 9 August 2023

APPLICATION REF. NO: 23/00367/FUL

STATUTORY DECISION DATE: 14th June 2023

WARD/PARISH: SADBERGE AND MIDDLETON ST GEORGE

LOCATION: 15 Station Terrace, Middleton St George

DESCRIPTION: Application submitted under Section 73 of the Town & Country Planning Act 1990 for the variation of condition 2 (opening hours) and 4 (outdoor seating), and removal of condition 6 (no. of covers) attached to planning permission 21/00922/FUL dated 29 Oct 2021 to permit a change in opening hours on Thurs, Fri and Sat from 8am-6pm to 8am-9pm to allow up to 2 late openings per month, to allow the installation of 4 no. picnic benches in front forecourt with alterations to car-parking and to permit an increase in the number of covers from 20 to 30 (description amended following receipt of amended application form and supporting statement on 20th June 2023)

APPLICANT: Mrs Shalona Kaneen, MJ's Cake Café

RECOMMENDATION: REFUSE PLANNING PERMISSION (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?activeTab=documents&keyVal=RSXWUWFPLGB00>

APPLICATION AND SITE DESCRIPTION

1. The application property is a two-storey end of terrace property located on the corner of Station Road and Heathfield Park at the northern end of Middleton St George, which currently operates as 'MJ's Cake Café'. The surrounding area is predominantly residential in character, with some commercial properties close by. These include Sainsbury's Local approximately 120 metres to the north, and a former storage building attached to 16 Station Terrace, immediately to the rear (east) of the application property which has permission to be used as a shop.
2. The application property formerly comprised a ground floor shop (Use Class E) with living accommodation above. Planning permission was granted in October 2021 (21/00922/FUL) for the change of use of the property to a shop/café at both ground and first floor (Use Class E) with associated internal and external alterations and was granted subject to a number of conditions which seek to control certain operations at the premises to safeguard the amenities of surrounding residential properties and to ensure the safety of users of the adjacent highway.
3. This is an application submitted under Section 73 of the Town and Country Planning Act 1990 which seeks to vary conditions 2 (opening hours), 4 (no outside seating) and 6 (number of covers). The application originally sought to vary the wording of condition 2 (opening hours) to permit later opening every Thursday, Friday and Saturday evening and to remove condition 6 (number of covers) in its entirety to allow the retention of the external seating and an unlimited number of covers to be served. The application has subsequently been amended to seek to address concerns raised during the course of the application. The changes being sought are set out below:

4. Condition 2 of the permission states:

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

REASON – In the interest of residential amenity

5. The application seeks permission to amend the wording of condition 2 to extend the opening hours on a Thursday, Friday and Saturday evening from 8am - 6pm to 8am - 9pm to allow either a maximum of 2 late openings per calendar month or a total of 24 late openings per year. The applicant advises that the café would be used on these occasions for the holding of craft-related activities such as a cake decorating, macrame, painting, and charity evenings, to create another revenue stream for the business. The classes would be run by herself or local artists and teachers, with no more than 10 participants. The classes would run from 6pm – 8pm with an additional hour for cleaning up after the classes.
6. Condition 4 of the permission states:

Outdoor seating will not be permitted within the forecourt area located to the north of the application site as shown on 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

7. Four picnic benches have been placed on the forecourt area without the benefit of planning permission and in contravention of condition 4. The application seeks permission for the variation of this condition to allow the retention of these benches in this location to be used by customers who would prefer to sit outside, particularly during warmer months. The revised site plan shows the location of these benches on the forecourt area to the north of the property, and also shows the retention of existing cycle parking and the addition of an extra car parking space, increasing the number of parking spaces available at the premises from 2 no. to 3 no.

8. Condition 6 of the permission states:

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

REASON – In the interest of protecting residential amenity

9. The application seeks permission to vary the wording of this condition to increase the number of covers to 30 to allow for the use of the picnic benches on the forecourt area outside in addition to existing tables within the café.

MAIN PLANNING ISSUES

10. It is important to note that the applicant's fallback position is the existing permission which allows the use of the premises as a café subject to those conditions set out in planning permission 21/00922/FUL. The use of the premises as a café is not therefore a matter for reconsideration as part of this application. The only issues for consideration in the determination of this application are whether the proposed variations to conditions 2, 4 and 6 as set out are acceptable in terms of their impact on:

- (a) Parking and Highway Safety
- (b) Residential Amenity

PLANNING POLICIES

11. Relevant Local Plan policies include those seeing to ensure that new development:
 - Provides suitable and safe vehicular access and suitable servicing and parking arrangements (Policies DC1 and IN4)
 - Is sited, designed and laid out to protect the amenity of existing users of neighbouring land and buildings, and the amenity of the intended users of the new development. Development relating to the use of land and buildings, including traffic movements and hours of operation will be supported where it is

suitably located and is acceptable in terms of noise and disturbance, lighting, vibration, emissions and commercial waste (Policy DC4)

RESULTS OF TECHNICAL CONSULTATION

12. The Environmental Health Officer raises no objection. The Council's Highway Engineer recommends the application be refused.

RESULTS OF PUBLICITY AND NOTIFICATION

13. A total of 40 letters of objection were received in response to the original proposal, raising the following concerns:
 - Significant issue with congestion at the junction of Heathfield Park/Station Terrace which will get worse when the beauty shop opens next door
 - Exit from Heathfield Park is a dangerous junction as cars come round the corner at speed. Difficult to see when cars are parked in front of the shop
 - Inconsiderate and sometimes dangerous parking causes issues with visibility at the junction and blocking of residents' drives and accesses
 - Outdoor seating is already being used without permission
 - Will increase in opening hours result in request for alcohol license?
 - Cars parking on the pavement on Heathfield Park close to the junction, unable to get wheelchair/pram access with pedestrians having to walk in the road
 - Tables will draw a people to congregate when the shop has closed causing anti-social behaviour
 - Many customers park on double yellow lines outside the café and on both sides of the road
 - Extended hours and outside seating would likely exacerbate the problems
 - No changes should be considered without a solution to the current parking and congestion issues
 - Café impacts upon family members' health and well-being due to noise, cooking smells and disturbance and increasing opening hours will affect them greatly
 - Support new business in the community but new proposals will add more problems to an existing problem and should not be approved at expense of residents
 - Conditions were put in place on the original application and should be withheld
 - Traffic and parking problems will increase when business directly next door to MJs Café on Heathfield Park opens. This business has no parking
 - Would welcome study of parking/traffic during the café's current operating hours before the application is processed any further
 - Difficult for residents and visitors to park in Heathfield Park
 - Residents parking permits should be introduced
 - The full estate of Heathfield Park should have been consulted
 - The café causes noise disturbance to me in my home which adjoins the property due to the adjoining wall being of single brick construction, causing emotional

stress. As the property was previously a shop the applicant was not required to install soundproofing downstairs. Extension to these hours would only make things worse

- Noise and disturbance already starts before 0800 and ends after 1800
- Before the picnic benches were put in place the area was used to park extra cars, enabling 5 cars to be parked instead of the 3 proposed
- If the kitchen cannot cope with more than 20 covers then why take the chance of exceeding this?
- Evening classes could be held in the village community centre
- trouble parking my car outside my home
- Since the café opened have been disturbed by the banging of car doors by people arriving and leaving the area in front of my house visiting café.
- Events and classes already held at the café without the need for further opening hours
- Use causes noise pollution, car doors banging, engines idling
- Object to the removal of the street light which now illuminates the area near to the outdoor seating area as opposed to the entrance to the back lane

14. A total of 22 letters of representation were received raising the following issues in support of the original proposal:

- Successful business with positive reputation in the village
- Huge benefit socially for the community of all age groups
- Extension to opening hours and outside seating will allow business to flourish further and allow additional customer access
- With businesses closing in the area this will help them survive in an already hard time
- Classes are a good idea, opportunity to meet local, like-minded people
- Having lived in the village many years, parking around this junction has already been busy with people parking too close to the junction, even before the café opened
- Need to support local people opening small businesses to improve our area and facilities
- Precisely what the village needs, engagement, inclusion and progressiveness
- Longer hours would be perfect for workers
- Outside seating good for young families, cyclists, dog walkers and others who do not always want to sit inside, especially during warmer weather
- Would provide accessible seating for disabled people
- Entrepreneurship should be encouraged and celebrated
- Limitations of kitchen factored into application and parking implications considered and solution presented
- Why would parking be an issue when the housing estate off Grendon Gardens has been approved with a single access creating much more traffic than the café

15. Following reconsultation on the amended proposal a further 18 letters of objection were received which raise the following additional concerns:
- The proposed amendments to the application do not address previous objections
 - People continue to use the pavement seating despite it not having permission
 - On occasion have had verbal abuse from people parking on the corner when challenged
 - Why would seating be allowed on a busy road junction with parking next to families sat on benches and traffic idling at the junction? Should be refused on health and safety grounds
 - Saturday and Sunday afternoons are reasonably quiet most weeks, with very few customers after 2pm. Could classes be held then?
 - Special events can still be held within the current opening hours originally approved
 - How will the maximum capacity of 10 attendees at events be policed?
 - Concern about the use of craft materials where food is being prepared and served
 - Safety barrier required around seating area if permission granted
 - Revised number of covers does not make sense as 4 outside tables seating 4 per table is 16 not 10
16. A total of 1 further letter of representation was received which raises the following issues in support of the amended proposal:
- Following the restoration of the building it now looks 100% better than it did.
 - Café is not noisy and seating area will be an asset
17. Middleton St George Parish Council advise that they generally support the application but ask that Darlington Borough Council liaise with the Police to enforce current waiting/parking restrictions.

PLANNING ISSUES/ANALYSIS

18. The application seeks to vary conditions attached to the original permission relating to opening hours, outdoor seating and a restriction on the number of covers. These conditions were considered necessary to enable the business to operate without unacceptable impact on the amenities of the surrounding area in terms of parking and residential amenity. Any request to vary or remove these conditions must therefore be considered in this context.
- (a) Parking and Highway Safety**
19. A shortfall in parking provision at the premises to meet the requirements of the Tees Valley Design Guide was acknowledged then planning permission was granted for the change of use of the property in 2021. On balance however it was considered that the benefits of the proposal, which would bring an existing business back into use, outweighed these concerns. This was subject to the provision of 2 no. parking spaces and

cycle parking on the forecourt to the north of the café, and a condition that this land was not to be used for the siting of any outdoor seating, together with a further condition limiting the number of covers to be served to 20, in order to ensure that additional seating is not provided without mitigating an increased parking shortfall.

20. The proposed uplift in covers (from 20 to 30) represents a 50% increase in the existing condition, with further capacity added in the form of the external seating. The Tees Valley Design Guide standard requires 1 space per 2 no. covers for customer parking. On this basis an additional 5 no. spaces would be required to mitigate this uplift. While the submitted site plan indicates an additional parking space can be provided, bringing the overall total of parking spaces to 3, this still represents a significant shortfall particularly given the existing under provision of parking.
21. While use of the external seating area would be somewhat seasonal, it would nevertheless be likely to result in an increase in parking demand in an area where there are existing parking problems, particularly around the Station Road/Heathfield Park junction, close to the application site. While this is an area wide issue, and not solely attributable to the application property, the business has nevertheless been the subject of complaints regarding inconsiderate and unlawful parking since opening. It is also a matter that has attracted significant objection from nearby residents during the course of the application. The Local Highways Authority has implemented parking restrictions (double yellow lines) in the vicinity of this junction since the business opened in an effort to address problematic parking and to maintain safe visibility splays.
22. The additional parking requirement cannot be met on site and there are no facilities in the locality such as pay and display car parking that could be used. This would therefore result in further displacement of vehicles onto the surrounding highway. While additional parking restrictions could be considered, this is likely to move the problem elsewhere onto the public highway, where there is already high demand for on-street parking from residents of properties on Station Terrace with no off-street parking, and visitors to properties on Heathfield Park.
23. Other committed development within the village is currently under construction where additional traffic is yet to fully hit the local highway network. The nearby Station Road development to the north of the site opposite the Sainsbury's Local store, whilst undetermined, is a Local Plan allocation and therefore also likely to be delivered within the Local Plan period. This all contributes to additional vehicle movements on Station Road further increasing conflict should problematic parking still occur when the Council has a duty to maintain the safe operation of the public highway and the expeditious movement of traffic.
24. While in isolation, the proposed extension of opening hours as outlined, to permit 2 late openings per calendar month would be unlikely to result in significant parking demand, when considered cumulatively with the other changes proposed, this would add to the problems previously highlighted by generating additional demand into the evening when people are at home and residential parking demand is at its highest.

25. In view of these considerations, the proposed changes to conditions 2, 4 and 6, as outlined would represent an intensification of use of the existing business, resulting in an increase in parking requirements at the premises which cannot be provided for either on the site or safely within the surrounding streets. Local Plan Policies DC1 and IN4 require that new development, including change of use, provides safe and secure space for vehicle parking and servicing and the proposal would therefore be contrary to these policies. The Council's Highway Engineer recommends that the application be refused on this basis.

(b) Residential Amenity

26. The forecourt area to the north of the application property is located on the junction of Station Road and Heathfield Park with the benches located towards the front of the site to allow for the remaining land to be used for the parking of vehicles and cycles. Given that there is some distance from the seating area to the nearest residential properties, separated by the road, it is not considered that the use of this area, within the current permitted hours of opening, would be likely to give rise to any unacceptable issues of noise, nuisance and disturbance to nearby residents.
27. The proposal to extend the opening hours on Thursday, Friday and Saturday evenings from 8am – 6pm to 8am – 9pm, to permit 2 late openings per calendar month, for the holding of craft-related activities as outlined, would extend activities associated with café later into the evening when residents can reasonably expect a degree of peace and quiet. This has the potential to impact upon the amenities of the nearest residential properties, including the adjoining property at 14 Station Terrace to the south and at 16 Station Terrace to the rear (east), as well as the wider residential area.
28. There have been some instances where commercial uses adjoining residential properties i.e. hot food takeaways have been granted planning permission to open until 9pm. Recent appeal decisions have established that on some occasions 9pm is a reasonable cut off time for commercial activities after which background noise levels would be lower and residents would be more likely to be resting or sleeping. However each application must be 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.
29. The application property is located in a predominantly residential area with an adjoining residential property to its southern side and another in close proximity to the rear, with other residential properties beyond. There is a small commercial enterprise to the rear and the Sainsbury's Local store approximately 120 metres to the north, however the predominant character of the area is residential.
30. Plans approved under the previous permission show that soundproofing was to be installed on the party wall between the application property and the adjoining property at 14 Station Terrace. No soundproofing was proposed at ground floor level due to the

existing commercial use of the property. The issues of noise, nuisance and disturbance from the application property have been raised during the course of the application and while the use of the property is not for consideration as part of this application, these issues are material to the consideration of proposals to extend the opening hours of the property. The Council's Environmental Health Manager has raised no objection to the proposal. It has been confirmed that a noise complaint was received while works were being undertaken to the property in 2021 prior to it opening. A further noise complaint was received in June 2022 once the café was open however this was subsequently withdrawn, and no further complaints have been received.

31. The extension of the opening hours until 9pm every Thursday, Friday and Saturday evening is unlikely to be acceptable in this predominantly residential area given the close relationship of the property to adjoining and closely related residential properties, and the impact this would have on the amenities of these properties in terms of activity at the premises, the comings and goings of customers etc on a regular basis each week.
32. It is proposed however that these later openings would only occur on two occasions per calendar month, as a means of providing an additional revenue stream for the business. Given the infrequency of the proposed later openings as a means of supporting a local business, on balance it is not considered that the later use of the cafe on this basis would adversely impact on the amenities of nearby residents. The proposal would therefore accord with the requirements of Policy DC4 insofar as it relates to impacts on residential amenity.

(c) Other matters

33. Several objections relate to the siting and use of the benches without planning permission and before the application has been determined. The applicant has been advised that the benches are not to be used until the outcome of the application is known. There have been occasions during this time when complaints have been received that the benches have been in use and the Enforcement team have responded quickly to these and reaffirmed that the benches are not to be used. Should the application be refused then the benches will need to be removed and it is hoped that this will be by agreement rather than the need for formal enforcement action.
34. Further objections raise issues in respect of the potential for the benches to encourage people to congregate when the shop is closed leading to anti-social behaviour. Whilst this is noted, there is no evidence to suggest that this will be the case leading directly to an increase in anti-social behaviour. This can be adequately dealt with by other powers and through the management of the premises.
35. A number of objections also relate to the extent of consultation undertaken in connection with the planning application, specifically that this should have included all residents of Heathfield Park. A total of 56 consultation letters were sent to those properties closest to the site. A site notice was also displayed on the site. Following the amendment of the application, reconsultation letters were sent to notify those people

who had previously commented on the application and a further site notice was displayed on the site notifying of these changes. The consultation exercise associated with the application is however considered proportionate in terms of the number and spread of letters and site notices posted upon receipt and at reconsultation stage.

36. There is considerable support for the application, and the important role the business plays as a community facility within the village, as set out in paragraphs 16 and 18 of the report. Furthermore, the applicant advises that this would create a further revenue stream for the business. While this is noted, in the balance of considerations, the impacts of the proposal relating to increased demand for parking and the inability for this to be safely accommodated either on the site or on the public highway surrounding the site, as set out in the report, are considered to outweigh the economic or public benefits of the proposal in this instance.

THE 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. There is no overt reason why the proposed development would prejudice anyone with the protected characteristics as described above.

CONCLUSION AND RECOMMENDATION

38. The proposed variation of conditions would lead to an intensification of use of the existing business, resulting in an increase in parking requirements associated with the business that cannot be adequately mitigated for on site or accommodated safely on the public highway surrounding the site where there is an existing and acknowledged parking problem. On balance, the proposal would be unlikely to give rise to unacceptable impacts to the amenities of nearby residential properties. However this, together with the support for the business, would not be sufficient to set aside concerns relating to a shortfall in parking and resultant impacts on the safe operation of the public highway and the expeditious movement of traffic. While the proposal would not, on balance, be contrary to the requirements of Policy DC4 relating to residential amenity, it would be contrary to Policies DC1 and IN4, and accordingly it is recommended:

THAT PLANNING PERMISSION BE REFUSED FOR THE FOLLOWING REASON:

1. The proposed variation to conditions 2, 4 and 6 of planning permission 21/00922/FUL to extend opening hours, permit the siting of 4 no. picnic benches, and an increase in the number of covers to be served at the premises represents an intensification of use of the existing business, resulting in an increase in parking requirements at the premises which cannot be provided for on the site or safely within the surrounding streets. The proposal would therefore be contrary to Policies DC1 (Sustainable Design Principles and

Climate Change) and IN4 (Parking Provision including Electric Vehicle Charging) of the Darlington Local Plan (2016 – 2036) which require that new development, including change of use, provides safe and secure space for vehicle parking and servicing.