

DARLINGTON BOROUGH COUNCIL

PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 6 September 2023

APPLICATION REF. NO:	23/00637/FUL
STATUTORY DECISION DATE:	14 th 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

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. Members will recall that this planning application was considered at the Planning Applications Committee on 9th August 2023. The officer report recommended that the application be refused, taking into account relevant planning policies, the views of consultees, and all material considerations, including the views of objectors and those in

support of the application. Members of the Planning Applications Committee, having considered the report, deferred making a decision on the planning application and instructed officers to present the application at the next available Planning Applications Committee, with a list of suggested planning conditions, for their consideration. Although the application was deferred to allow officers to prepare a list of suggested conditions, Members have not yet made a formal decision on the application.

2. A copy of the original report is appended to this update so that members have all the information available to make an informed decision on the application.
3. The planning application relates to an existing café/shop known as 'MJ's Cake Café' located at 15 Station Terrace, Middleton St George, on the corner of Station Road and Heathfield Park at the northern end of the village. 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.
4. This application, submitted under Section 73 of the Town and Country Planning Act 1990, seeks to vary some of these conditions, as follows:
 - (i) Condition 2 (opening hours) to permit extended opening hours until 9pm on a Thursday, Friday and Saturday evening to allow either a maximum of 2 late openings per calendar month or a total of 24 late openings per year
 - (ii) Condition 4 (outdoor seating) to permit the retention of 4 no. picnic benches which have been located on the forecourt area to the north of the property
 - (iii) Condition 6 (no. of covers) to allow an increase in the maximum number of covers to be served at the premises at any one time from 20 no. to 30 no.

MAIN PLANNING ISSUES

5. The officer report set out the main issues to be considered in the following terms:
 - (a) Parking and Highway Safety
 - (b) Residential Amenity

PLANNING POLICIES

6. 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

7. The officer report advised that there are no objections from the Council's Environmental Health Officer. The Council's Highway Engineer recommends the application be refused.

RESULTS OF PUBLICITY AND NOTIFICATION

8. The officer report confirmed that overall 58 letters of objection and 23 letters of representation had been received over the course of the consideration of the planning application, in response to the initial consultation on the planning application and a further period of reconsultation. Following the publication of the officer report, a further 3 letters of objection and 14 letters of representation have been received. Middleton St George Parish Council advise that they generally support the application.

PLANNING ISSUES/ANALYSIS

9. The officer report highlighted that the application seeks to vary conditions attached to the original planning 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.
10. Any request to vary or remove these conditions must be considered in this context having regard to the requirements set out in Local Plan policies DC1 and IN4 relating to parking, and DC4 relating to amenity.
11. On assessment of the proposal against these planning policies and taking account of the comments of the Council's Highway Engineer and Environmental Health Officer, the report sets out that the proposed variation of the 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. This would be contrary to Local Plan Policies DC1 and IN4.
12. The report also sets out that on balance, the proposal would be unlikely to give rise to unacceptable impacts to the amenities of nearby residential properties and the report sets out there would be no unacceptable conflict with Policy DC4. 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.

13. At the Planning Applications Committee, Members debated the application at length. Members considered the issues being faced by the applicant and the business and heard from the Council's Highway Engineer regarding the potential impact of the proposal on parking within the village.
14. Having done so, Members agreed to defer the planning application and instructed officers to present the application at the next available Planning Applications Committee, with a list of suggested conditions for Members' consideration. Although the application was deferred to allow officers to prepare a list of suggested conditions, the Committee has not yet made a formal decision on the application.
15. Since the last meeting the applicant has advised they would be willing to keep the maximum number of covers to be served at any time at 20 as currently set out in condition 6. Members may wish to take this into account in their further consideration of the application.
16. Should Members decide that the concerns regarding the impact of the proposal on parking within the vicinity of the site could be set aside, having regard for Section 38(6) of the Planning and Compulsory Purchase Act 2004, officers suggest that the following conditions would be appropriate:

PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. The use hereby approved shall not open outside the hours of 08:00 – 18:00 Monday to Saturday and 10:00 – 16:00 Sundays and Bank Holidays, with the exception of a maximum of 2 no. late night openings per calendar month on either a Thursday, Friday or Saturday evening where the premises shall close not later than 21:00. The applicant shall retain a record of all late night openings which shall be made available to the Local Planning Authority upon request.

REASON – In the interests of residential amenity

2. Outdoor seating and parking on the forecourt area to the north of the application site shall be provided in accordance with the details shown on drawing number 21.149.PD 06G 'Proposed Ground Floor Plan'. Notwithstanding details of the cycle parking shown on this drawing, the cycle parking shall be repositioned to a location on the forecourt that shall first be agreed in writing by the Local Planning Authority within 2 months of the date of this decision.

REASON – In the interests of highway safety and to encourage access to the premises by sustainable modes of transport

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

REASON – In the interests of highway safety and residential amenity

4. The development hereby permitted shall be carried out in accordance with the approved plans as detailed below:
 - (a) Site location plan
 - (b) First floor proposed, drawing number 21.149 PD 07A
 - (c) Front and rear elevations proposed, drawing number 21.149 PD 08A
 - (d) Gable elevation proposed, drawing number 21.149 PD 09A
 - (e) Proposed section and return boundary, drawing number 21.149 PD 10A

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

INFORMATIVES

The applicant is advised that any new advertisement at the premises, including the proposed mural depicted on drawing number 21.149 PD 09A, may require the submission of an application for advertisement consent

THE PUBLIC SECTOR EQUALITY DUTY

17. 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.

RECOMMENDATION

For the reasons set out in the appended report, officer recommendation remains:

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.