

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

**COMMITTEE DATE: 10<sup>th</sup> July 2019**

---

<b>APPLICATION REF.</b>	18/01166/CU
<b>STATUTORY DECISION DATE:</b>	3 <sup>rd</sup> May 2019
<b>WARD/PARISH:</b>	NORTH Road
<b>LOCATION:</b>	303 and 303A North Road Darlington
<b>DESCRIPTION:</b>	Change of use of Cafe (Use Class A3) to Hot Food Takeaway (Use Class A5) erection of single storey extension incorporating wc and addition of external flue to the rear elevation and insertion of window window to first floor flat (side elevation)
<b>APPLICANT:</b>	Mr B Mohammed

---

**APPLICATION AND SITE DESCRIPTION**

This is one of a number of retail outlets located in this upper North Road location. The application property is a corner property located on the west side of North Road at the junction of Peabody Street, with a bus stop outside the frontage. The property is currently empty but was last used as a café and has a flat above.

The application proposes the change of use of the property from a café to a hot food takeaway. It is also proposed to erect a small ground floor extension to the rear of the property to accommodate a toilet and to erect an external flue in the rear elevation. A new first floor window is also proposed in the north gable end of the property to replace an existing first floor window in the rear elevation which will be obscured by the proposed flue.

The application form also proposes that a change in the opening hours of the takeaway from those approved in 2016 (16/01158/FUL) to 12:00 – 22:00 Monday to Thursday, 12:00 – 23:00 Fridays and Saturdays and 12:00 – 22.30 Sundays and Bank Holidays.

**PLANNING HISTORY**

Numerous applications to change the use and extend over the years, but the most relevant are set out below:

08/00014/FUL - Variation of condition 3 of Planning Permission 02/00599/CU (Change of use from computer shop (A.1 retail) to cafe/takeaway (Class A.3) opening hours 8 am – 6pm) to permit opening hours from 0800 - 2300 every day. REFUSED 08.02.2008

16/01158/FUL - Variation of condition 3 (opening hours 8.00 am - 6.00 pm Monday - Saturdays) of planning permission 02/00599/CU dated 27 August 2002 for change of use from Computer Shop (A1 Retail) to Cafe/Takeaway (Class A3) to permit opening hours of 0800 to 2100 Monday to Saturday and 0800 to 2000 on a Sunday (as amended by letter received 21 December 2016). GRANTED 14.02.2017

## **RESULTS OF CONSULTATION AND PUBLICITY**

**Highway Engineer** – No highway objection

**Environmental Health Officer** – Further information (relating to the extraction system) has been provided by the applicant/Agent/Supplier and I am happy with what has been stated. As long as the system is installed as described I would not envisage any problems with regard to noise and odours. As is always the case the system must be managed and maintained on a regular basis to ensure the performance is maintained and this is a matter for the operator/landlord to agree upon. I don't currently have grounds to object as long as the extraction system is installed as agreed.

Letters were sent to occupiers of neighbouring properties advising of the proposal and a site notice was displayed.

**Three letters** were submitted objecting to the application. The following issues were raised :

- Increase in litter in the locality
- Increase in anti social behaviour
- Increased loss of car parking for local people
- No need for another take away
- Increased noise in the locality.

## **PLANNING POLICY BACKGROUND**

### **Borough of Darlington Local Plan 1997**

Policy E38 – Alterations to Business Premises

Policy S18 – Food and Drink Uses Outside Town Centre

### **Darlington Core Strategy Development Plan Document 2011**

Policy CS2 – Achieving High Quality, Sustainable Design

Policy CS16 - Protecting Environmental Resources, Human Health and Safety

### **National Planning Policy Framework, 2019**

## **PLANNING ISSUES**

It is considered that the main issues relating to this application are the potential impacts on residential and visual amenity and highway safety.

## **Residential Amenity**

Core Strategy Policy CS16 (Protecting Environmental Resources, Human Health and Safety) states that development should protect and, where possible, improve environmental resources, whilst ensuring 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.

The main issues associated with hot food take aways and their impact on local residents relate to noise, fumes and anti social behaviour. The Environmental Health Officer has raised no objection to the proposed flue which will reduce and noise and odour emissions to acceptable levels, provided it is maintained in an appropriate manner. Any future problems would be addressed by the Environmental Health Officer under separate legislation.

Although the application property is one of a number of commercial properties in this part of North Road, those adjacent uses: a barbers shop, funeral directors and party shop are not typically open in the later evening. The surrounding area does have a predominantly residential character, with a first floor flat above the application property and the living conditions of the occupants of these properties could be adversely affected by additional activity associated with a hot food takeaway such as noise and disturbance from car engines, slamming of doors and people congregating and conversing if appropriate controls are not in place.

These activities would not however be too dissimilar from the existing café use and it is not considered that the proposed hot food takeaway use would generate significantly more litter or traffic than this use. The extant café permission is subject to a condition restricting opening hours to 08.00 – 21.00 Monday – Saturday and 08:00 – 20:00 on a Sunday. Notwithstanding the proposed request to extend the opening hours as set out previously in this report, in view of the predominantly residential character of the surrounding area it is not considered acceptable to extend the opening hours, and associated activity levels, into the later evening at a time when residents are likely to be resting and sleeping and would have a reasonable expectation that their living environment would be quieter.

The current opening hours would be similar to the closing times of other hot food establishments at 87 Grainger Street (13/00958/CU), 15 Belvedere Road (19/00002/FUL), 155 Corporation Road (14/01163/FUL) and 366 Yarm Road (16/00896/FUL) which are all in residential areas, and in most instances on the end of a terrace of residential dwellings. A condition restricting opening hours to those approved as part of the 2016 permission is therefore attached once more.

The proposed rear extension is modest in nature and will be enclosed by the boundary wall adjacent to Peabody Street. The new window in the north gable end of the

property will look onto Peabody Street and North Road and as such neither alteration will impact on the amenities of adjacent residential properties.

### **Highway Safety**

The Highway Engineer has studied the proposals, including the existing use, the proposed hours of opening and the existing numerous retail and service uses in the locality, and has concluded that the type and scale of traffic likely to be associated with the hot food take away use will not cause any material increase in car parking problems or road safety.

### **Impact on the Character and Visual Appearance of the Building and Surrounding Local Area**

A new extraction flue is proposed to the side/rear of the property, which because of its location and limited height, just above gutter height, it will not be over intrusive visually in this locality. Similarly, the rear extension will largely be enclosed from views outside the site by the existing brick boundary walls surrounding the rear yard.

### **SECTION 17 OF THE CRIME AND DISORDER ACT 1998**

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

### **CONCLUSION**

The property benefits from an extant permission as a café (Use Class A3) with restriction on opening hours until 21:00 Monday – Saturday and 20:00 on a Sunday. It is not considered that activity levels associated with the proposed hot food takeaway use would be significantly differ from those associated with the café, and as a result the proposed use would not adversely impact upon the living conditions of nearby residents subject to appropriate controls. As such, it is considered appropriate to restrict opening hours to those currently approved 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. Neither the Environmental Health Officer nor the Highway Engineer raise an objection to the application and subject to appropriate conditions the proposal is considered to comply with Saved Policy S18 (Food and Drink Uses Outside the Town Centre), Policy CS16 (Protecting Environmental Resources, Human Health and Safety) and paragraph 180 of the NPPF, 2019. The proposed extension, flue and new window are similarly acceptable and comply with Saved Policy E38 (Alterations to Business Premises) and CS2 (Achieving High Quality, Sustainable Design).

### **RECOMMENDATION**

THAT PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS :

1. A3
2. The development shall be carried out in complete accordance with the approved plan(s) as detailed below:

## Elevation and Floor Plan No – 250119 Sheet 2

Any material change to the approved plans will require a formal planning application to vary this condition and any non-material change to the plans will require the submission of details and the agreement in writing by the Local Planning Authority prior to any non-material change being made.

REASON - In order to ensure that the development is carried out in complete accordance with the approved plans and any material and non-material alterations to the scheme are properly considered.

3. This permission shall relate to the additional details relating to the extraction system submitted by Eastern Catering Ltd on 11<sup>th</sup> March 2019.

REASON – In the interests of residential amenity.

4. The hot food takeaway hereby approved shall not be open to customers outside the hours of 1200 to 2100 Monday to Saturday and 1200 to 2000 on a Sunday.

REASON – In the interest of residential amenity

### **THE FOLLOWING POLICIES AND DOCUMENTS WERE TAKEN INTO ACCOUNT WHEN ARRIVING AT THIS DECISION:**

#### **Borough of Darlington Local Plan 1997**

Policy E38 – Alterations to Business Premises

Policy S18 – Food and Drink Uses Outside Town Centre

#### **Darlington Core Strategy Development Plan Document 2012**

CS2 - Achieving High Quality Sustainable Design

CS16 - Protecting Environmental Resources, Human Health and Safety

#### **National Planning Policy Framework 2019**