

DARLINGTON BOROUGH COUNCIL
PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 4th December 2019

APPLICATION REF. NO: 19/00981/FUL

STATUTORY DECISION DATE: 13 December 2019

WARD/PARISH: NORTHGATE

LOCATION: 27 Corporation Road

DESCRIPTION: Application submitted under Section 73 of the Town and Country Planning Act 1990 for the variation of condition 2 (open hours and deliveries) attached to planning permission 17/00878/CU dated 07 November 2017 - to permit changes to deliveries 08.00am - 17.50pm Monday to Friday and 08.00am - 16.00pm Saturday, with no deliveries on Sundays or Bank Holidays and to permit change to opening hours to 07.30am - 21.00pm Monday to Saturday, and 08.00am - 21.00pm Sunday and Bank Holidays (amended description)

APPLICANT: Mr Namiq Hama Raouf

APPLICATION AND SITE DESCRIPTION

The application site is a single and 1.5 storey building close to the junction of Corporation Road and Northgate. The building had previously been used as a motor vehicle repair premises and showroom until planning permission was granted in November 2017 (See Planning History) to change its use to a Class A1 retail unit for the sale of animal feed. The animal feed business has recently vacated the unit and it is currently empty. The premises has two flat roofed sections (high and low) with an open forecourt at front for the parking of approximately 10 cars.

The site is bound by residential terraced dwellings to the north (on the opposite side of Corporation Road); offices/snooker hall to the east; the ASE Club to the south and No 29 Corporation Road to the west, a former NHS building, which has planning permission to be converted to seven flats and appears to have been implemented. The wider area includes the retail and commercial units on Northgate (east), the Navy Club on Corporation Road/Northgate junction (North east); St Georges Hall on Elmfield

Street which is a building converted to bedsits for vulnerable people (south west) and the continuation of residential dwellings on Corporation Road (west).

The premises are located within the Northgate Conservation Area.

When planning permission (ref no: 17/00878/CU) was granted for the animal feed store, it was subject to the following condition:

- *The use hereby permitted and its associated deliveries shall not take place outside the hours of 0900 - 1730 Monday to Friday and 0900 - 1600 on Saturdays with no opening or deliveries on Sundays and Bank Holidays.*

The above planning condition was based on the hours of operation and deliveries that were included within the application and met the operational requirements of that operator.

The applicant wishes to use the existing building as a convenience store and as the premises already fall within Class A1 (retail) no change of use of the property is involved. This planning application is seeking approval to extend the hours of deliveries and the hours of use to those set below

Hours of Delivery

- *08.00am - 17.50pm Monday to Friday and 08.00am - 16.00pm Saturday, with no deliveries on Sundays or Bank Holidays*

Hours of Use

- *07:30am - 21.00pm Monday to Saturday, and 08.00am - 21.00pm Sunday and Bank Holidays.*

Following the submission of comments from local residents, the applicant requested that the hours of opening be restricted to 21:00 Monday to Sunday, including Bank Holidays and the application has been amended accordingly.

A separate planning application (ref no 19/00982/FUL) has been submitted for external alterations to the premises and is also attached to this Agenda.

Application documents including Planning Statement, Design and Access statement, detailed plans, consultation responses, representations received, and other background papers are available on the Darlington Borough Council website.

PLANNING HISTORY

The relevant entries are:

17/00878/CU In November 2017 planning permission was GRANTED for the change of Use from Vehicle repair/showroom (Use Class Sui Generis) to Animal feed Sales (Use Class A1)

RESULTS OF CONSULTATION AND PUBLICITY

Following the Council's publicity exercises, six letters of objection have been received and the comments can be summarised as follows:

- *It is noisy enough with the pub etc without added deliveries until at least 9 at night, every day of the week, I live directly opposite, and it would affect me and my sleep for work and only day off with noisy deliveries;*
- *This will be detrimental to the amenity of the surrounding residents because of increased noise from the number of vehicles stopping and slamming doors. This building is surrounded by homes.*
- *Light from the building during all waking hours will also be intrusive for people living here*
- *Increase in noise and light affecting the amenity of the surrounding residents and interfering with their rest and enjoyment of their home*
- *This does not take into account that people may work shift or unsocial hours and increased activity of the type being applied for will interrupt proper rest;*
- *There are high density homes in the immediate vicinity and could also be affected in a similar way*
- *There is a local shopping area nearby at the other end of Corporation Road and the town centre shopping area is nearby*
- *Another retail shopping site is not needed*
- *The location will inevitably attract many vehicles from outside the area making short stops. So much coming and going, especially after working hours will increase nuisance to residents*
- *There are already parking problems in this area for residents especially outside working hours so extending the hours will increase this;*
- *My objections are based on noise and parking issues*
- *Resident's Permits have already become necessary. In summer, when residents might often have their windows open, it is already difficult to sleep because of traffic noise. Cars and lorries manoeuvring in an out will further spoil the quiet enjoyment of the residents*
- *An alcohol licence should not be granted. There are already two clubs serving alcohol within yards of the address. This is an area which requires improvement and further easy access to alcohol is inappropriate.*
- *This will have a huge impact due to increased noise levels from customers entering and leaving the premises along with then "hanging outside" talking and passing the time of day and even antisocial behaviour*
- *There will also be constant stream of cars coming and going from the car park which can apparently hold 10 cars however I am not convinced this capacity can be achieved without some vehicles being blocked in by others which again could cause issues.*
- *The carpark and shop entrance are only a few metres from my front door and living room so noise from customers and vehicles is a factor and also car headlights will shine directly into my living room.*
- *The other issue will be customers who will park up but wait in their cars with the engine running*

- *People park on the double yellow line which is on place across the whole block of houses opposite the site. This is a regular event and creates a narrowing of the road, which is a very busy road and bus route as well as a route to the hospital for emergency vehicles. This creates a pinch point which stops the flow of traffic*
- *People also regularly park in the bus stop causing further obstruction*
- *Another problem is pavement parking as this means less abled people in wheelchairs and motorised chairs along with families who have buggies and prams have to cross the road to get around the obstruction and then cross back over again. This becomes a greater risk when there are cars parked on the double yellow lines. I am aware that opening hours will not have any effect on whether people park on yellow lines and pavements however the chances of customers dropping into the shop and parking on the double yellow lines is dramatically increased*
- *If the opening hours are extended then my concern is the risk of an incident occurring is greatly increased, especially in winter time due to the dark and also, by the law of averages, the more often the traffic flow is compromised by illegal parking, the greater the risk of an incident happening will become*
- *There is insufficient parking for a retail unit as Residents Permits have already become necessary*
- *In the interests of improving the profile of this area of Northgate and North Road, I do not think more sales of alcohol are required or desirable*
- *If the forecourt has vehicles parked in front, the delivery vehicles will only be able to unload on the road, which has double yellow lines and outside people's homes*
- *I imagine people wandering between the snooker hall and the shop after a few drinks not realising the noise that they are making;*
- *I am concerned about an increase in anti-social behaviour and I have contacted the Police on occasions due to anti-social behaviour in the Road and am concerned that this will be increased and may involve damage to property, including resident's cars*
- *There is limited parking on the front of the site and cannot see how many people will be able to park without this impacting on residents. This will result in an overflow of people parking outside houses or in spaces allocated for residents*
- *There has already been a reduction in space available and has resulted in resident permits being required, at a cost to people living in their houses. It is unfair if this will then be further compromised at times when wardens are not available to check on people parked properly*
- *The road is a bus route and an increase in traffic parking in the road is highly likely to compromise the buses route and will result in a bottle neck*

Consultee Responses

The **Council's Highways Engineer** has raised no objections

The **Council's Environmental Health Officer** has raised no objections

The **Durham Constabulary Architectural Liaison Officer** has raised no objections

PLANNING POLICY BACKGROUND

The relevant national and local development plan policies are:

Darlington Core Strategy Development Plan Document 2011
CS2 Achieving High Quality Sustainable Development
CS16 Promoting Environmental Resources, Human Health and Safety

National Planning Policy Framework 2019

PLANNING ISSUES

As stated above, the use of the premises as a convenience store would not require planning permission as the previous and proposed uses both fall within Class A1 (retail) of the Town and Country Planning (Use Classes) Order. A convenience store could operate from the premises without the need for any further approval from the local planning authority if it operated within the hours approved under planning permission reference number 17/00878/CU. The main issues to be considered here is whether the revised hours of deliveries and operation would be acceptable in the following terms:

- Residential Amenity
- Highway Safety and Parking Provision

Residential Amenity

Policy CS16 of the Core Strategy seeks to ensure that new developments do not harm the general amenity and health and safety of the local community which echoes one of the core principles of the NPPF (2019).

The hours of opening and deliveries that are currently in force at the premises were purely based on the operational requirements of that operator and to prevent any activities associated with the use taking place at inappropriate hours of the day and evening.

Since the submission of the application, the applicant has reduced the proposed closing time for the unit from 21:30 to 21:00 in response to some of the concerns that have been received by the local planning authority.

Whilst the application is seeking permission to operate between 08:00 and 21:00 on a Sunday, the premises will be subject to the requirements of the Sunday Trading Act 1994 which restricts the hours of opening on a Sunday to a total of 6 hours and it could not open at all on a Christmas Day or Easter Sunday. The applicant could choose any six hours on a Sunday which would be a matter for the Licensing Section. The proposed condition would enable the applicant to operate for six hours between 08:00 to 21:00. The unit would have an internal bin store area for the storage of waste and refuse.

The closest residential properties are the terraced dwellings opposite the application site; No 29 Corporation Road which is a two storey building that has been converted to flats and St George's Hall, which is a flatted development for vulnerable people, both of which share the western boundary of the application site. There are residential properties further afield to the west. Northgate, which is primarily in commercial and retail use lies to the east.

No 27 Corporation Road is accessed from both Corporation Road and Elmfield Street and St George's Hall is via Elmfield Street. The blank gable wall of No 27 Corporation Road forms the western boundary of the forecourt to the front of the application premises.

It is acknowledged that commercial uses (shops/takeaways etc) within residential areas can result in noise and disturbance from car engines, car audio systems, slamming of doors, the "comings and goings" of customers; noise from delivery vehicles and operations and people congregating outside the premises. As a result, it is necessary to impose a planning condition that limits the hours of opening and deliveries to protect the living conditions of local residents and to prevent such noisy activities taking place outside of the antisocial hours.

The opening times for the unit would not be dissimilar to other retail "local" shops within residential areas throughout the Borough and the Council's Environmental Health Manager has advised that very few complaints are received about their operation other than occasionally from deliveries of newspapers and milk at very early hours (for example, before the shop opens) which would not be the situation at this unit.

When previously considering planning applications for a change of use of a property to a shop or a takeaway or for extending the hours of operation of a commercial property in a residential area, Officers and Members of the Planning Applications Committee have considered 21:00 to be an appropriate closing time as any noise generated by the above would not be occurring at an antisocial time or when residents would reasonably expect a degree of peace and quiet. This has also been supported on appeal on a number of occasions.

It is not unreasonable to consider that Sundays and Bank Holidays are particularly sensitive days of the week necessitating earlier closing times than on any other day of the week, subject, in this case, to the applicant complying with the requirements of the Sunday Trading Act 1994.

The 21:00 closing time would be a continuation of this consistent approach by the local planning authority when considering similar planning applications elsewhere in the Borough.

Deliveries into the premises would take place via an existing entrance in the side elevation of the building via a cobbled lane which runs along the eastern boundary of the site. A planning condition can be imposed to ensure that all deliveries occur at the premises via this entrance which would reduce the impact of any disturbances on the neighbouring dwellings. The deliveries would also take place whilst the store is open rather than prior to and/or after the operational hours.

It is acknowledged that vehicles entering and leaving the site with headlights on during the evening hours may cause an issue for the dwellings opposite the site, but officers do not consider that this disturbance would be so significant to justify a recommendation to refuse the planning application.

The following material considerations can be taken into account in this instance: the site is in close proximity to existing commercial uses on Northgate that already generate some activity during the day and on an evening; the entrance to the store is behind the front entrance of the flats within No 27 Corporation Road; the gable wall of No 27 Corporation Road which forms the boundary of the forecourt does not contain any openings; existing road traffic along Corporation Road will generate background noise in the area; the front entrance into the store would be approximately 23m from the front elevations of the dwellings on the opposite side of the road; the vacant unit will be brought back into use creating a small number of jobs and providing a service primarily to the local community.

The Durham Constabulary Architectural Liaison Officer has advised that the Police would have no objections to the proposed hours of operation from an anti-social behaviour perspective.

Having considered the site context, the comments made by local residents and the consistent approach taken by the local planning authority and Planning inspectors on similar planning applications elsewhere, the proposed variation to the hours of deliveries and opening considered to be acceptable in amenity terms.

Highway Safety and Parking Provision

Policy CS2 of the Core Strategy 2011 seeks to ensure that proposals provide vehicular access and parking suitable for its use and location.

The unit has a forecourt at the front which is accessed directly off Corporation Road and can accommodate 10 spaces. Deliveries to the unit would occur via an existing access of a lane that runs alongside the building.

The dwellings in the local area are terraced properties with very few having any in-curtilage parking and residents will rely upon on-street parking.

The use of the building from an animal food store to a convenience store is likely to generate increased turnover of short duration vehicular trips. However, the parking provision on the site is broadly in accordance with current design standards for a Class A1 retail use.

The eastern end of Corporation Road has parking restrictions near to the application site which should help ensure overspill parking is not problematic. The site will attract many customers on foot and those who do arrive by car will be parked for a short duration enabling a high turnover of customers to park within the car park spaces. The Council's Highways Engineer has advised that police accident records do not show any pattern of incidents at or near to the application site and he has advised that the planning application should not be recommended for refusal on highway safety grounds.

Sufficient parking restrictions are already in place and no further measures are envisaged to be necessary at this time, but this can be the subject of further review in the future should parking become cause for regular complaints.

The Council's Highways Engineer has raised no objections.

Other Matters

It is likely that any new signage for the premises will require the submission of a separate application for advertisement consent and one of the considerations for such an application is the impact of the proposal on the amenity (both visual and residential) of the local area.

The potential sale of alcohol from the premises would not be a material planning consideration and would be a matter for the Council's Licensing Section, should a licence be applied for.

THE PUBLIC SECTOR EQUALITY DUTY

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.

Whilst the proposed use of the unit as a store does not require planning permission, the building would retain the level entrance into the premises and the car park can be safely accessed by pedestrians and disabled persons.

The unit has space to provide ten off street parking spaces, which are currently not available for use and this will help to alleviate some on street parking pressure and the existing problems of people parking on pavements causing obstructions for elderly persons, people in wheelchairs or with push chairs.

Whilst it is acknowledged that people in the local area have different working hours, it is considered that the proposed hours of deliveries and opening are not unreasonable in an area that has a mix of residential and commercial properties.

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 existing unit is currently in Class A1 (retail) use. Planning permission was granted for the retail usage subject to planning conditions which restricted the hours of operation and deliveries based on the operational requirements of the previous occupant. The applicant for this application wishes to operate a convenience store from the premises which can occur without the need for planning permission, but they wish to extend the hours of operation and delivery.

The hours of opening have been amended at the request of the applicant in response to the comments made by the local residents and the revised closing time is consistent with other planning permissions and appeal decisions for commercial uses within residential areas elsewhere in the Borough. Overall, it is considered that the proposed hours of deliveries and opening are acceptable in amenity terms.

It is considered that the parking provision within the site is acceptable for the retail unit and will help to alleviate existing on street parking issues.

The proposal is considered to accord with appropriate national and local development plan policy.

RECOMMENDATION

PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. No deliveries shall occur outside the hours of 08.00am - 17.50pm Monday to Friday and 08.00am - 16.00pm Saturday, with no deliveries on Sundays or Bank Holidays
REASON: In the interest of the amenity of the local area
2. All deliveries to the premises shall take place via the entrance in the east elevation of the building
REASON: In the interest of the amenity of the local area
3. The premises shall not operate outside the hours of 07:30am - 21.00pm Monday to Saturday and 08.00am - 21.00pm Sunday and Bank Holidays.
REASON: In the interest of the amenity of the local area

INFORMATIVES

The applicant is advised that the granting of the application does not remove the need to comply with the requirements of the Sunday Trading Act 1994

The applicant is advised that the Council's Environmental Health Section enforces Food Safety and Health and Safety legislation at this premises and the applicant is advised to contact Environmental Health prior to the undertaking of any work to ensure that all legislative requirements are met.

The applicant is advised that the premises may also require a Premises Licence under Licensing Act 2003 if they are to serve alcohol and if this is the case the applicant should contact the Licensing Department for further advice.