

DELEGATED

AGENDA NO
PLANNING COMMITTEE

4 November, 2009

REPORT OF CORPORATE DIRECTOR,
DEVELOPMENT AND NEIGHBOURHOOD
SERVICES

09/1831/COU

31 - 33 Station Road, Billingham,
Change of use from retail to restaurant/café and ancillary takeaway

Expiry Date: 16 September 2009

SUMMARY

Members will recall that this application was deferred at the last Planning Committee on the 14th October 2009 so that more information could be presented in relation to the cumulative impact of food and drink uses and Section 17 of the Crime and Disorder Act. This information is contained in paragraphs 53 – 57 and 65 –68.

Planning permission is sought for the change of use of a vacant retail unit to a restaurant/café with ancillary takeaway at 31/33 Station Road in Billingham

The application site is located in Billingham Green Local Centre and 10 individual letters of objection have been received from local residents/businesses and 1 letter of support. The Ward Councillor has also objected to the proposed change of use.

The application accords with the local plan policies and the application is recommended for approval with conditions.

RECOMMENDATION

Planning application 09/1831/COU be Approved subject to the following conditions:

01 *The development hereby approved shall be in accordance with the following approved plan(s); unless otherwise agreed in writing with the Local Planning Authority.*

<i>Plan Reference Number</i>	<i>Date on Plan</i>
<i>SBC0001</i>	<i>22 July 2009</i>

Reason: To define the consent.

02. *Before development commences details of a ventilation and fume extraction system, including a full technical specification by a suitably qualified technical professional person, specifying the position of ventilation, fume or flue outlet points and the type of filtration or other fume or odour control treatment which shall be installed and used at the premises in pursuance of this permission shall be submitted to and approved in writing by the Local Planning Authority and shall be installed before the development is brought into use and thereafter be retained in full accordance with*

the approved details. The approved ventilation and extract system shall be operated and maintained in accordance with the manufacturer's recommendations, including the frequency of replacement of any filters.

Reason: To ensure a satisfactory form of development

- 03. Before any extract ventilation, fume extraction or refrigeration system is brought into use the building, structure and system shall be insulated against the emission of noise in accordance with a scheme to be approved by the Local Planning Authority. Such noise insulation shall be thereafter maintained to the satisfaction of the Local Planning Authority. Any new ventilation, fume extraction or refrigeration system installed subsequent to the approval shall not increase background levels of noise as agreed without the agreement in writing of the Local Planning Authority.***

Reason: To ensure that the extract ventilation, fume extraction or refrigeration system plant is adequately soundproofed in the interests of the amenities of the occupants of nearby premises.

- 04. The drainage system to the premises shall be provided with a suitable grease trap so as to prevent the discharge of grease into the public sewer.***

Reason: To ensure a satisfactory form of development

- 05. The use hereby permitted shall not be open for business outside the hours of 0800 hours and 2300 hours with the property being closed and vacated by 2330 hours each day.***

Reason: To ensure that adjoining residential properties are not adversely affected by the development.

The proposal has been considered against the policies below and it is considered that the scheme accords with these policies as the development is considered to be a suitable use for the local area and will not have an adverse effect on the vitality and viability of the neighbourhood centre or have an adverse impact on neighbouring properties or highway safety and there are no other material considerations which indicate a decision should be otherwise.

Stockton on Tees Local Plan

GP1 General Principles, S1 Retail Hierarchy and S10 Local and Neighbourhood Centres and S14 Use Classes A3, A4 and A5

PPS6 Planning for Town Centres

PROPOSAL

1. Planning permission is sought for the change of use of an existing vacant A1 retail unit to a hot food takeaway (A5).

SITE AND SURROUNDINGS

2. The application site is 31 – 33 Station Road; a vacant retail unit located Billingham Green Local Centre. The application site is within a parade of units with a mix of A1, A2, A3, A5 and sui generis uses. To the rear of the site is an gated alleyway serving Station Road and the residential properties to the rear in Stockton Street.

3. The building is two storeys and is currently vacant at ground floor having last been used as a retail shop.

CONSULTATIONS

4. The following Consultations were notified and any comments received are set out below:-

Head of Technical Services

5. From a highways standpoint, a restaurant/café/takeaway in this location requires 1 car parking space per 2 seats. The existing retail unit required 2 incurtilage spaces. However, it does not appear to have any incurtilage car parking. A restaurant/café/takeaway is unlikely to generate a greater number of vehicular trips to the site than retail.
6. Existing waiting restrictions on Station Road mean that any on street parking, which may occur as a result of this development, can be enforced.
7. There is adequate public parking nearby and given that there are a number of other takeaways within the vicinity I have no objection to this application.
8. No comments have been raised from a Landscape and Visual standpoint

Environmental Health Unit

9. I have no objection in principle to the development, however, would recommend conditions be imposed on the development should it be approved relating to;
 - Drainage - grease trap
 - Odour nuisance
 - Construction Noise

Spatial Plans Manager

10. Planning application proposes the change of use of 31 - 33 Station Road Billingham from retail to restaurant/cafe/takeaway A1 to A3 with an element of A5. It is taken that the takeaway element of the proposal is ancillary to main use.
11. The proposal calls for consideration of the loss of retail frontage (Policy S10) from the local centre alongside the provision of food and drink development in a defined retail centre (Policy S14). General policy and guidance in respect of other individual material considerations are also set out in SPD 3 and Policy GP1 of the Adopted Stockton on Tees Local Plan.
12. The application site is in the Billingham Green Local Centre as defined by Policy S1 (C) and in summary it is considered that the proposed scheme satisfies the requirements of Policy S10 and Policy S14, albeit some issues are controlled by condition.
13. Overall, I consider that the proposal is appropriately located in a local centre, where the café/restaurant would form part of a diversity of facilities for local residents. The proposed use would not, by virtue of a loss of a retail unit and provision of a food and drink related use have an adverse impact on the character, vitality and viability of local centre.
14. The re-use of a long vacant unit would help to maintain the vigour and improve the physical appearance and attractiveness of the local centre. In terms of the impact of a food and drink use in this location, subject to confirmation of waste storage and collection

arrangements, it is considered that any adverse impacts arising from smell, noise, litter, fume and disturbance can be mitigated by condition. Traffic and parking arrangements are considered adequate.

15. It is considered therefore that the proposal accords with guidance in PPS 6 and the approach of Alt No.1 in Policies S1, S10 and S14. Furthermore, minor clarifications and the imposition of conditions can mitigate or resolve matters relating to impacts on the environment, the amenity of users of nearby properties including residential and thereby the proposal would not conflict with Policy GP1 of the Adopted Stockton on Tees Local Plan, the advice and standards in SPD 3 and Policy S14 of Alt No. 1.

Councillor J O'Donnell

16. I cannot support this application in that I feel the variety of retail premises that we should be able to expect will be lost here if this application is successful. We already have a proliferation of takeaway sites and three restaurant/cafes all within an extremely short distance. This may or may not amount to material planning objection but the retail use of these premises ought to be allowed to remain simply because of the lack of variety.
17. I have also been provided with a copy of the Road Casualty Review which shows up some pretty awful statistics for Billingham South Ward. This particular part of Station Road is double yellow, it has build-outs, a zebra crossing, zig-zag road markings and a bus stop all on top of each other and all of which are ignored by the local motorists.
18. There have been two very bad accidents on this crossing which is immediately outside the premises in question and, in addition, there is the daily battle with fast cars and absolutely criminal parking on this road which obscures pedestrian access. There is a very high level of incidence in this area which continues down to The Green where there have been other road traffic accidents on that zebra too. Could I ask you therefore, to take into account my concerns that traffic problems, together with parking problems at the locus should be considered when this application is dealt with.
19. Furthermore, I have a very strong recollection that when the last application for hot food takeaway was refused, the Planning Inspector gave the over-abundance of such outlets as one of his reasons for refusal.

PUBLICITY

20. Neighbours were notified and any comments received are below (if applicable):-

Letter of Objection

J McDermott 45 Station Road Billingham

21. If this goes ahead there is every chance we will go out of business as there are enough food establishments. We will lose staff. Please support us as we have supported the council.

Food For Thought Sandwich and Cake Shop, 41 Station Road Billingham

22. I have taken out a loan to open this shop which I now feel is under threat by another food shop. There are enough in the area and my business would suffer.

D Stephenson, 39 Station Road Billingham

23. I object as there are enough food shops. Half the shops are empty during the day and do not bring trade in. It will end up a dead street and the parking will be horrendous

G Mineham, 18 Stockton Street Billingham

24. Station Road has 5 pizzerias, 2 bakeries and fish shop, if approved this will be overkill as well as taking business away from these shops, increase problems with parking and rubbish surely more retail should be encouraged. The people who back onto these shops have to contend with rubbish and parking. Another cafe will make our life's worse.

Mr and Mrs D Temple, 4 Stockton Street Billingham

25. Too many food outlets. Parking is a problem with many parking illegally. This will cause more congestion and more litter. Other traders will suffer as this will take business away.

Mr P Elliott, 21 Station Road Billingham

26. I operate a food shop and object to another selling food. I will be forced to close if this opens.

Mrs N Woodhouse, 4 Parkston House Stockton Street

27. There are enough food shops in Station Road, which back onto Stockton Street. I cannot open my windows at certain times due to the smells. There are plenty of units in Billingham Town Centre please give this area a break.

T Hassan, 17 Station Road Billingham

28. I object due to the number of takeaways on Station Road and business down significantly.

K Ikin, 19 Station Road Billingham

29. Object to another food shop as it's not needed, we are just managing to survive and if approved this would put another business under threat of closure.

D Coates, 1 Stockton Street Billingham

30. There are 10 takeaways on Station Road. This affects other businesses. Station Road smells at night.

Letter of Support

Sweeney Insurance Associates Limited, 37 Station Road Billingham

31. No objections and happy to see the premises occupied

PLANNING POLICY

32. Where an adopted or approved development plan contains relevant policies, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permissions shall be determined in accordance with the Development Plan(s) for the area, unless material considerations indicate otherwise. In this case the relevant Development Plans is the Stockton on Tees Local Plan (STLP), Tees Valley Structure Plan (TVSP) and the Regional Spatial Strategy (RRS).

33. The following planning policies are considered to be relevant to the consideration of this application:-

Policy GP1

34. Proposals for development will be assessed in relation to the policies of the Cleveland Structure Plan and the following criteria as appropriate:
- (i) The external appearance of the development and its relationship with the surrounding area;
 - (ii) The effect on the amenities of the occupiers of nearby properties;
 - (iii) The provision of satisfactory access and parking arrangements;
 - (iv) The contribution of existing trees and landscape features;
 - (v) The need for a high standard of landscaping;
 - (vi) The desire to reduce opportunities for crime;
 - (vii) The intention to make development as accessible as possible to everyone;
 - (viii) The quality, character and sensitivity of existing landscapes and buildings;
 - (ix) The effect upon wildlife habitats;
 - (x) The effect upon the public rights of way network.

Policy S10

35. Proposals for change of use from retailing (Used Class A1) within the defined boundaries of the Local and Neighbourhood Centres identified on the Proposals Map will be resisted, unless it can be demonstrated that : -
- i) The character, vitality and viability of the Centre will not be adversely affected as a retailing centre;
 - ii) Reasonable efforts have been made to market the premises for retail uses;
 - iii) It is appropriate in scale and function to the Centre;

Policy S14

36. Proposals for Use Class A3, A4 and A5 `Food and Drink` development will be permitted in the defined retail Centres listed in Policy S1, where the proposal is in accordance with the following retail locational policies:-
- 1) Within the Defined Stockton Town Centre, subject to Policies S4, S5 and S6;
 - 2) Within the defined District Centres except Yarm, subject to Policy S7;.
 - 3) Within the defined Yarm District Centre, subject to Policies S8;
 - 4) Within the defined Local and Neighbourhood Centres, subject to Policies S10;
 - 5) Outside of the defined retail Centres, proposals for A3, A4 and A5 uses will only be permitted if there are no suitable units available within the defined Centres, or there are justified exceptional circumstances that necessitate such a location.
- Proposals for all Use Class A3, A4 and A5 uses will be considered against the following criteria:-
- i) the level of traffic generated and the provision of parking facilities, both in terms of highway engineering considerations and the general amenity of the area;
 - ii) any adverse impact of proposals on residential amenity in terms of smell, noise, litter fumes and disturbance;
 - iii) the provision of adequate and effective fume extraction and filtration equipment;
 - iv) the provision of facilities for litter within and adjoining the premises;
 - v) the secure provision for trade waste, stored in an out of sight location;
 - vi) where appropriate, conditions limiting the late night opening may be applied.

MATERIAL PLANNING CONSIDERATIONS

37. The main planning considerations of this application are planning policy implications, the impact on the amenity of the surrounding properties and access and highway safety.

Planning Policy

38. The application site lies within a defined local centre and Policy S10 seeks to resist the loss of retail uses from local and neighbourhood centres and that policy sets out three tests relevant to the consideration of this proposal and they relate to the impact of the development on the character, vitality and viability of the retailing centre; seek to ensure that reasonable efforts have been made to market the property and that the development is appropriate in scale and function to the centre.
39. Objections raised to the proposal raise the question of the proportion of food related uses on Station Road. Policies regarding developments in centres further towards the top of the retail hierarchy provide percentage indicators for proportions of uses likely to leave the character, vitality and viability of those centres unaffected. Policy S10 provides no such help. However, those policies have, in the past, been found useful and whilst of little weight in consideration of this proposal, provide a useful benchmark to consider. This approach has been most recently used in determining an application at 32-34 Station Road, which similarly involved the loss of a retail unit, but this time to an A2 use.
40. In doing so, the case officer considered the policy approach in Alteration No.1 which states that 10% non retail use is acceptable in the primary shopping frontage and a figure of 40% in the secondary shopping frontage. Yarm, which is a district centre has a policy (Policy S8), stating that no more than 60% of the high Street's overall length of frontage will be given over to non-retail uses." With this advice in mind, a recent survey and analysis of the uses within the local centre reveals that of the frontage exists in the following proportions (all figures rounded)

A1 (Shops)	= 55%
A2 (Financial and Professional Services)	= 6%
A3 (Restaurants and Cafes)	= 3%
A4 (Drinking Establishments)	= 8%
A5 (Hot food takeaways)	= 15%
D1(Non residential institutions)	= 3%
Sui Generis	= 3%
B1/B2 (Business/General Industry)	= 6%
Not known	= 2%

The loss of No. 31/33 from retail frontage (9.5m) would reduce the proportion of retail in the centre to 51.8%.

41. Making a judgement based on comparative percentages, one could argue that it is unlikely that the change in composition of the centre arising from the loss of a retail use from this unit would have an adverse impact on the character, vitality and viability of Billingham Green Local Centre.
42. Further to this, given the nature proposed use, which is a restaurant/café with ancillary takeaway, the intention of which is trade in the day and into the evening, I consider that the use would maintain activity and footfall within the centre and not lead to the 'dead frontage' sometimes associated with a stand alone take away.

43. PPS 6 Planning for Town Centres also advises that “local authorities should encourage...a wide range of facilities in district and local centres, consistent with the scale and function of the centre, to meet people’s day to day needs, so reducing the need to travel”: This is reflected in Alteration No. 1.
44. Taking account of both sets of evidence, it is considered that the provision of a café/restaurant would help achieve a diversity of uses and facilities in the local centre, without an adverse impact on the character, vitality and viability of the centre or the short terrace of outlets that it sits amongst.
45. In terms of marketing, the applicant submits “this property was formally placed on the market in March 2008. During this time a full marketing exercise has taken place, including the erection of a To Let board, local press advertising and several mail shots” and “Despite the landlord being very flexible on the rent and other terms he is willing to accept, to date we have had very little interest in the property. Of those enquiries received the majority have tended to be from café or takeaway operators, which is where the market for this property seems to be.”
46. There is no reason and evidence to hand which would refute this and therefore it is considered that the proposal satisfies *part ii) of Policy S10*.
47. The provision of a café/restaurant with an ancillary takeaway is a facility that one would expect to find in local centres and is considered to be in scale and function with not only the Local Centre, but the terrace of outlets amongst which it is set. It is considered that the proposal satisfies *Part iii) of Policy S10*.

Previous Appeal Decisions

48. The Ward Councillor has commented on an appeal decision made in 2004 at 36 Station Road which was dismissed as the Inspector was of the opinion that the proposed change of use from A1 (retail) to A3 (food and drink) would have an adverse effect on the vitality and viability of the retail centre due to the number of other food and drink uses in the locality.
49. Planning permission was sought for the change of use of retail unit to cafe/bistro and takeaway, with the installation of an extraction duct to the rear at 36 Station Road, Billingham (03/2136/P). The application was refused on the 13th October 2003, by the local planning authority for the following reason

The proposed use would adversely affect the vitality and viability of the district shopping area by cumulatively changing its character and function from providing convenience goods to hot food takeaways, resulting in the loss of customer choice and greater reliance on the motor vehicle to allow residents to access suitable retail facilities in the locality, thereby contrary to emerging sustainable development policies. The proposal would be contrary to Policy SUS1 of the Consultation draft Tees Valley Structure Plan which states, inter alia, that new development should make a positive contribution towards achieving sustainable development.
50. The planning inspector upheld this decision and concluded that the development would be harmful to the vitality and viability of Station Road District shopping centre and at variance with the objectives for sustainable development, expressed in local development plan policy.
51. This local authority and appeal decision was made prior to Alteration No 1 to the Local Plan, which was adopted in March 2006 and therefore the current application has to be considered against up to date planning policy. In particular, a significant change in planning retail policy is that while it states that the loss of a retail unit will be resisted, it also provides

it to be demonstrated that; the character, vitality and viability of the Centre will not be adversely affected as a retailing centre, reasonable efforts have been made to market the premises for retail uses, and it is appropriate in scale and function to the Centre.

52. Whilst it is acknowledged that an appeal was dismissed in 2004, there is a more recent appeal for a change of use to a café, which has been allowed and determined using the current policies (application 07/0924/COU).

Cumulative Impact

53. At present there are 2no A3 uses (restaurants and cafes), 1no A4 use (drinking establishments) and 10no A5 uses (hot food takeaways) within the Billingham Green Local Centre.
54. The saved policies in the local plan offer no guidance on acceptable levels of uses within a defined centre, other than retail uses. Whilst this proposal will mean that 14 of the approximately 53 units (some double fronted) are of a food and drink related use, only 3 will be a restaurant/café.
55. When considering the cumulative impact it is considered the impacts from a hot food takeaway would be different from a restaurant. Hot food takeaways are usually open from early evening until late at night. Cafes and restaurants operate differently; in particular this proposal will be open both during the day and extending into the evening and attracting a more varied clientele.
56. It is considered that the introduction of a restaurant in this location will offer more choice and the number of units in A3 or A5 use in the Local Centre as a whole would not dominate the centre. Competition is not a material planning consideration and is further considered in Paragraph 60. It should also be noted that A5 uses may change to A1 and A3 uses as permitted development.
57. Taking the above into account it is therefore considered that the proposal satisfies the requirements of Policy S10 and the proposed scheme will not have an adverse effect on the vitality and viability of this local centre or result in an adverse cumulative impact.
58. Policy S14 of Alteration No 1 to Stockton on Tees Local Plan is also relevant which states that to Proposals for all Use Class A3, A4 and A5 uses will be considered against certain criteria which are addressed in the remainder of the report

Impact on the amenity of neighbouring properties

59. Concerns were raised over the need for the development and the number of existing takeaways in the locality, competition, litter and potential increase in traffic.
60. The issue of competition is not a material planning consideration; PPS 6 states, "It is not the role of the planning system to restrict competition, preserve existing commercial interests or to prevent innovation". The number of hot food takeaways has been addressed above, and it is not considered that such a use will have an adverse effect on the vitality of viability of this neighbourhood centre.
61. This is a local centre on a main thoroughfare where a certain amount of noise and disturbance is to be expected. Environment Health has viewed the proposal and has requested that the hours of construction be restricted to prevent any adverse impact on the neighbouring properties from the implementation of the development. Nevertheless, I consider that to protect the amenity of local residents from general noise and disturbance at

the more sensitive times of the night and early morning, it is considered expedient to also attach a condition limiting the hours of operation. The applicant has requested opening hours until 1.00 however this is considered to be unacceptable and to protect the amenity of nearby residents the recommended hours are similar to nearby hot food takeaways, which ensures the operation is closed by 23.30.

62. Issues regarding smell can be dealt with by installing adequate and effective fume extraction and filtration equipment, which can be secured by condition.
63. Objectors have commented that the area may suffer with increases litter. This is a societal issue and litterbins have been provided in the area, including one outside the application site. It is considered that adequate facilities exist for the disposal of litter, however as the primary use is for a restaurant/café the majority of food will be consumed on the premises and should not give rise to any problems with litter that would warrant refusal of the application. In respect of waste, the applicant has confirmed that the waste will be stored in commercial waste bins an out of sight secure location (rear yard).
64. In light of the above, the impacts of the proposal on residential amenity and users of nearby properties can be limited by condition, and it is considered that the proposal would not have an unacceptable adverse impact in terms of smell, noise; litter fumes and disturbance and would therefore accords with Policy S14 and GP1.

Section 17 of the Crime and Disorder Act

65. Section 17 of the Crime and Disorder Act, states: *"Without prejudice to any other obligations imposed upon it, it shall be the duty of each authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all it reasonably can to prevent crime and disorder in its area."* The aim is to anticipate the likely consequences on crime of decisions made and look to ensure that any negative impact is avoided.
66. Safer Places and Crime Prevention (ODPM, February 2004) states that "the development of an evening economy is a good way of diversifying uses and extending activity throughout the day and night" and "in the determination of planning applications, local planning authorities should consider whether proposed development could be amended or planning conditions imposed that would aid the prevention of crime and disorder". Whilst this is a local centre on a main thoroughfare where a certain amount of noise and disturbance is to be expected the hours of operation have been controlled to prevent any late night disturbance though the comings and goings of customers.
67. There is no evidence to link such issues or concerns to either the applicant's property or the proposed use and whilst it is considered unlikely that any crime or disorder issues will occur from this establishment, any potential problems arising from this anti-social behaviour can be dealt with by other methods such as the police service or community enforcement section.
68. Overall, it is considered that as this particular application is for a restaurant as opposed to uses which may result in such problems such as a drinking establishment and the proposal is unlikely to raise any issues under the Crime and Disorder Act that would warrant refusal of the application

Highway Safety

69. The site has no parking provision; all parking would be accommodated on the highway or the nearby car park.

70. Objections have been raised regarding the possible increase in traffic and the possible exacerbation of problems caused by existing users of the highway parking illegally causing a high accident rate.
71. These objections were considered by the Head of Technical Services who is of the opinion that existing waiting restrictions on Station Road mean that any on street parking, which may occur as a result of this development, can be enforced and considers there to be adequate public parking nearby. No objections have therefore been raised on highway terms
72. Taking the above comments into account it is considered that the proposed use will not give rise to any traffic problems or exacerbate an existing problem which can be dealt with under separate legislation. In addition, there is sufficient parking available within the area to accommodate the car parking requirements of the use.

Conclusion

73. In conclusion, it is considered that the proposal accords with guidance in PPS 6 and the approach of Alt No.1 in Policies S1, S10 and S14 and the imposition of conditions can mitigate or resolve matters relating to impacts on the environment, the amenity of users of nearby properties including residential.
74. The application is recommended for approval with conditions.

Financial Implications:

None

Environmental Implications:

As report

Human Rights Implications:

The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report

Community Safety Implications:

The provisions of Section 17 of the Crime and Disorder Act 1998 have been taken into account in the preparation of this report.

Background Papers: 09/1831/COU, Alteration Number 1 Stockton on Tees Local Plan

**Corporate Director of Development and Neighbourhood Services
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WARD AND WARD COUNCILLORS

**Ward Billingham South
Ward Councillor Councillor Mrs J. O' Donnell**

**Ward Billingham South
Ward Councillor Councillor M. Smith**

