

**DELEGATED**

**AGENDA NO  
PLANNING COMMITTEE**

**23 NOVEMBER 2011**

**REPORT OF CORPORATE DIRECTOR,  
DEVELOPMENT AND NEIGHBOURHOOD  
SERVICES**

**11/0650/FUL**

**373 Thornaby Road, Thornaby,**

**Change of use from class A1 to class A5 with external alterations**

**Expiry Date 17 May 2011**

#### **SUMMARY**

Approval is sought for change of use of the application site from a vacant A1 unit to a hot food take-away which is an A5 use under the Town and Country Planning (Use Classes) Order as amended.

In 2009 an application for the change of use to a hot food take away of the application site was refused on the grounds that it would be detrimental to the amenity of neighbouring properties. Eleven objections have been received from neighbouring residents with a further objection being received from the Village Park Residents association. These are largely on the ground of limited parking, impact upon the amenity of neighbouring properties, in terms of fumes, noise, litter and anti-social behaviour, and sufficient take aways being located within the area.

To address the concerns relating to noise and disturbance a condition has been recommended to limit the hours of opening to prevent noise and disturbance beyond that which could occur as part of the retail unit adjacent. Therefore it is considered that satisfactory levels of residential amenity can be preserved.

The applicant has provided marketing evidence, to prove the property has been actively marketed for over 5 years, and a sequential test to support the application and it is not considered that the retention of a vacant unit would positively contribute to the vitality and viability of the surrounding area. As such, on balance, the proposal is considered to be acceptable in terms of planning policy. Furthermore the Head of Technical Services raises no objections in terms of highway safety.

In light of this the proposal is considered to be acceptable subject to the imposition of relevant conditions relating to hours of operation, grease trap and fume extraction.

#### **RECOMMENDATION**

**Planning application 11/0650/FUL be Approved subject to the following conditions and informatives**

**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.**

<b>Plan Reference Number</b>	<b>Date on Plan</b>
001	21 March 2011
03	21 March 2011
01	21 March 2011
06	21 March 2011
02	21 March 2011
05	21 March 2011
04	21 March 2011

**Reason: To define the consent.**

**02. The use shall not take place other than between the hours of 0600 hours and 2200 hours.**

**Reason: To protect the amenity of the nearby residential properties.**

**03. Prior to the commencement of the use hereby permitted, details of a fat/grease trap to be installed in the foul drainage system shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved details, and thereafter retained.**

**Reason: To ensure a satisfactory form of development.**

**04. Before development commences details of a ventilation and fume extraction system in accordance with the details shown on drawing 06 shall be submitted to and agreed in writing with the Local Planning Authority for approval. Such details shall include 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 treatment which shall be installed and used at the premises. The agreed extraction system shall be installed before the development is brought into use and be in full accordance with the agreed details. Thereafter the extraction system shall be retained in full accordance with the approved detail and 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.**

## **INFORMATIVES**

General Policy Conformity;

The planning application satisfies the criteria set out in saved policy S17 with regards to the loss of retail units. The proposal will not result in a detrimental impact upon highway safety or upon the character of the surrounding area and potential impacts on residential amenity can be controlled via a planning condition on opening hours. The development has been considered against the policies below and it is considered that there are no other material considerations that indicate a decision should be otherwise.

Core Strategy Policies

Core Strategy Policy 2 (CS2) - Sustainable Transport and Travel; and Core Strategy Policy 3 (CS3) - Sustainable Living and Climate Change

## Saved Local Plan Policies

Alteration Number 1 to the Adopted Local Plan

Saved policy S14 - Use classes A3, A4 and A5 'food and drink'.

Saved policy S17 - Loss of retail units outside designated centres

National Planning Guidance

Planning Policy Statement 1; Delivering Sustainable Development (PPS1)

Planning Policy Statement 4; Planning for Sustainable Economic Growth (PPS4)

Draft National Planning Policy Framework

## Environmental Health Informative

Lobby should be provided for the WC facilities;

The applicant is advised that the submitted drawings does not provide a lobby to the WC facilities and will open directly into the kitchen area where food will be prepared and / or handled. Toilets must not open directly into a room where food is handled and prepared. Either arrangement must be made not to use this room for food handling or to install a lobby between the toilet and the food room. Further advice can be found under Regulation (EC) No 852/2004 Annex 11 Chapter 1 Para.3.

## **BACKGROUND**

1. A planning application for the change of use to a hot food takeaway in 1991 (App ref; 91/0440/P) was refused on the grounds of the impact on the amenity of neighbouring properties in terms of fumes, noise disturbance and traffic generation to the detriment of highway safety.
2. In August 2006 a revised application for alterations and extensions to the front and rear of the premise to provide; 2 no. shop units on the ground floor; 1 no. shop unit (gents hairdresser); and 1 no. flat on the first floor with office space on the first floor (App ref; 06/1872/FUL) was approved. A condition restricted the opening hours of these premise to the hours of 0600 hrs to 2130 hrs to protect the amenity of the nearby residential properties.
3. September 2009) a planning application for a change of use to hot food takeaway (A5) was refused (App ref; 09/1859/COU) on the basis of planning policy and due to the impact the proposal would have on the amenity of the neighbouring occupiers by operating up to Midnight Monday to Saturday and 11 pm on Sundays.

## **SITE AND SURROUNDINGS**

4. The application site is a ground floor unit within a pair of semi detached properties which recently received approval for change of use to two retail units with a first floor hairdressing salon, office and flat. The application site is located upon the corner plot of Thornaby Road and Laburnum Avenue with the main frontage facing onto Thornaby Road. The property is set back from the main highway, allowing for car parking to the front of the site.
5. The surrounding area is predominantly residential in nature, with residential dwellings directly opposite and to the rear of the application site. There is also a residential nursing home, with a car park, to the south of the site.

## **PROPOSAL**

6. Planning permission is sought for a change of use of an A1 retail unit to a hot food take away (A5). External alterations to the building are proposed in the form of a new doorway and new roller shutter to the side elevation and installation of a flue and extraction system to deal with the associated cooking odours.
7. Various discussions have also taken place with the applicant's agent with regards to the requirements for additional information and the sequential assessment.

## **CONSULTATIONS**

The following Consultees were notified and comments received are set out below:-

### **Environmental Health Unit**

I have no objection in principle to the development, however, I do have some concerns and would recommend the conditions as detailed be imposed on the development should it be approved.

Noise disturbance from access and egress to the premises

Drainage - grease trap

Odour nuisance

No lobby provided for the WC facilities

Regulation (EC) No 852/2004 Annex 11 Chapter 1 Para.3.

### **Head of Technical Services**

General Summary

Urban Design has no objections.

Highways Comments

Adequate incurtilage car parking is provided therefore we raise no highway objections.

Landscape & Visual Comments

No comments.

### **Local Ward Councillor – Mr M Eddy**

Please accept this confirmation of my objection to the above on many grounds particularly the very real potential for traffic problems, the very real risk of litter and Anti-Social Behaviour, the fact that there is already three hot food takeaways in the local vicinity and the fact that this short frontage is becoming display board city.

### **Cleveland Police – Andrew Fox**

My own view is that the opening of a takeaway in a primarily a residential area will lead to an increase in calls relating to noise etc from outside the premises.

## **PUBLICITY**

10 Neighbours were notified and comments received are summarised below:-

Mr Harvindergill

Santonia Laburnum Avenue

Objects to the proposed development as it is considered the proposal will adversely affect their business. Considers that there are sufficient businesses for every purpose around this part of Thornaby and that any other business would be unnecessary. Concerns are also raised in relation to there being limited parking in the area.

Village Park Residents Association

Peter Brennan c/o 6 Richardson Road

I write to notify you that the Village Park Residents' Association object strongly to the planning application 11/0650/FUL, a proposed change of use to bring a takeaway to 373 Thornaby Road.

The objection is base upon a number of points. Firstly, there is an existing number of food take away establishments in the area the nearest of which is 50 yards away The Red Rose Fish Shop. This take away already sees a degree of Anti Social Behaviour (reported and otherwise) which our group has been working with residents, the proprietor and police to stem. This is also the case with other take away establishments, such as the Chinese take away which suffers vandalism and ASB on a regular basis.

Indeed, recently a whole wall surrounding the building was destroyed by youths. The proposed establishment will bring such behaviour to another part of our town. This is entirely unacceptable.

The obvious increase in traffic will see both an increase in noise disturbance and traffic on an already busy road, hitting local people's quality of life.

The litter which radiates out from such establishments along with part eaten and waste food will be a similar blight on our area and this again is entirely unacceptable.

Mr and Mrs Adams

9 St Margaret's Grove Thornaby

I object entirely to the proposed alterations both in respect of usage and the signage. The proposal will make the site a magnet for ASB, litter will spread across the area and there are already enough hot food take aways in the area.

I object entirely to the proposed alterations both in respect of usage and the signage. The proposal will make the site a magnet for ASB, litter will spread across the area and there are already enough hot food take aways in the area.

Mrs P C Wetherill

444 Thornaby Road Thornaby

Object to the development as there are lots of different food outlets in the locality. Existing problems with parking in area and the takeaway would cause more problems with obstructions, litter and youths congregating.

Thomas

442 Thornaby Road Thornaby

Objects to the proposal due to limited street parking, would worsen existing parking problems that cause concerns over highway/pedestrian safety. Concerns are also raised over the impacts from noise and disturbance, cooking fumes, litter and lack of need for further premises.

Gordon and Maureen Stewart

422 Thornaby Road Thornaby

Object on the basis the development will result in cooking smells, noise, anti-social behaviour, litter, dangerous parking on footpaths along Thornaby Road and that there are enough takeaways in the area.

J Layfield

Roselea Laburnum Avenue

Ext alterations to rear i.e. chimney will be directly above my garden within 6ft of house back door

Mr and Mrs Jordan

450 Thornaby Road Thornaby

Strongly object as there is no need for more hot food takeaways. Litter, strong odours and youths congregating are already problems. Since the opening of the aquatics centre parking is a problem with driveways being blocked.

Mrs J Skipp

454 Thornaby Road Thornaby

There are already more than enough take aways in area.

Late night noise to residents.

Mr and Mrs T Marchant

393 Thornaby Road Thornaby

Totally against the proposed development as it is not suitable in a residential area. Highlight that there are many food outlets in the area. Concerns are raised in respect of odour, litter, anti-social behaviour/late night activity, vandalism and youths congregating in the area.

Mr and Mrs Norris

436 Thornaby Road Thornaby

Object as a takeaway already exists on Laburnum Avenue; limited parking is available, would not be in keeping with the area and would result in increased litter and noise.

Stewart Featherstone

4 Stannage Grove Thornaby

I strongly object to this change of use application. As stated in previous applications for this block of shops 91/04440P and most recently 09/1859/COU, there is no need for another hot food shop in the area,

There is a Fish and Chip shop less than 50 yards away in Laburnum Avenue. 100 yards further along Thornaby road there is another shop which has already been passed for a Pizza delivery shop. 250 yards away on Thorntree we have a chip shop, a Chinese take away and a sandwich and pie shop.

Q Khan

413 Thornaby Road Thornaby

Objects to the development as he considers it will cause problems with litter, parking and anti-social behaviour. Points out another takeaway is in close proximity and another facility is not appropriate.

## **PLANNING POLICY**

11. 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 Plan is the Core Strategy Development Plan Document and saved policies of Alteration Number 1 to the adopted Stockton on Tees Local Plan (STLP)

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

### **Core Strategy Policy 2 (CS2) - Sustainable Transport and Travel**

1. Accessibility will be improved and transport choice widened, by ensuring that all new development is well serviced by an attractive choice of transport modes, including public transport, footpaths and cycle routes, fully integrated into existing networks, to provide alternatives to the use of all private vehicles and promote healthier lifestyles.
2. The number of parking spaces provided in new developments will be in accordance with standards set out in the Tees Valley Highway Design Guide. Further guidance will be set out in a new Supplementary Planning Document.

### **Core Strategy Policy 3 (CS3) - Sustainable Living and Climate Change**

3. The minimum carbon reduction targets will remain in line with Part L of the Building Regulations, achieving carbon neutral domestic properties by 2016, and non domestic properties by 2019, although it is expected that developers will aspire to meet targets prior to these dates.
4. To meet carbon reduction targets, energy efficiency measures should be embedded in all new buildings. If this is not possible, or the targets are not met, then on-site district renewable and low carbon energy schemes will be used. Where it can be demonstrated that neither of these options is suitable, micro renewable, micro carbon energy technologies or a contribution towards an off-site renewable energy scheme will be considered.
8. Additionally, in designing new development, proposals will:
  - \_ Make a positive contribution to the local area, by protecting and enhancing important environmental assets, biodiversity and geodiversity, responding positively to existing features of natural, historic, archaeological or local character, including hedges and trees, and including the provision of high quality public open space;
  - 8. \_ Be designed with safety in mind, incorporating Secure by Design and Park Mark standards, as appropriate;
  - \_ Incorporate 'long life and loose fit' buildings, allowing buildings to be adaptable to changing needs. By 2013, all new homes will be built to Lifetime Homes Standards;
  - \_ Seek to safeguard the diverse cultural heritage of the Borough, including buildings, features, sites and areas of national importance and local significance. Opportunities will be taken to constructively and imaginatively incorporate heritage assets in redevelopment schemes, employing where appropriate contemporary design solutions.

### **Saved Local Plan Policy S14**

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.

### **Saved Local Plan Policy S17**

Planning permission will only be granted for a change of use that would result in the loss of a shop within a village or other location outside the Centres listed in Policy S1, where it can be demonstrated that: -

- vii) local need for the facility no longer exists, or
- viii) the facility is no longer economically viable, or
- ix) appropriate alternative facilities exist within reasonable walking distance for residents who live within the pedestrian catchment area of the existing shop.

### **Ministerial Statement from Greg Clark**

“When deciding whether to grant planning permission, local planning authorities should support enterprise and facilitate housing, economic and other forms of sustainable development.

Where relevant - and consistent with their statutory obligations - they should therefore:

- (i) consider fully the importance of national planning policies aimed at fostering economic growth and employment, given the need to ensure a return to robust growth after the recent recession
- (ii) take into account the need to maintain a flexible and responsive supply of land for key sectors, including housing
- (iii) consider the range of likely economic, environmental and social benefits of proposals; including long term or indirect benefits such as increased consumer choice, more viable communities and more robust local economies (which may, where relevant, include matters such as job creation and business productivity)
- (iv) be sensitive to the fact that local economies are subject to change and so take a positive approach to development where new economic data suggest that prior assessments of needs are no longer up-to-date
- (v) Ensure that they do not impose unnecessary burdens on development.

In determining planning applications, local planning authorities are obliged to have regard to all relevant considerations. They should ensure that they give appropriate weight to the need to support economic recovery, that applications that secure sustainable growth are treated favourably (consistent with policy in PPS4), and that they can give clear reasons for their decisions.



## **MATERIAL PLANNING CONSIDERATIONS**

12. The main planning considerations of this application are compliance with planning policies and the impacts of the proposed development on the character of the area, amenity of neighbouring occupiers, highway safety and community safety.

### **Principle of development;**

13. The application site is situated outside any of the designated local centres, previously identified by policy S1 of Alteration number of the Local Plan (now deleted); However, protection of these centres remains under policy CS5 of the Core Strategy. When assessing applications for A3, A4 and A5 uses the relevant planning policies remains that of saved policy S14 and S17 of Alteration No 1 as well as national policy guidance in the form of PPS1 and PPS4.
14. More recently a Ministerial Statement from Greg Clark MP has stated that local planning authorities should support enterprise and facilitate housing, economic and other forms of sustainable development. Amongst others his statement sets out that they should consider fully national planning policies aimed at fostering economic growth and employment and consider the range of likely economic, environmental and social benefits of proposals. Such benefits may include increased consumer choice and more robust local economies (such as job creation). Reference is also made to Planning Policy Statement 4.
15. It is also necessary to consider the requirements of the draft National Planning Policy Framework (NPPF). Whilst this has been subject to much discussion and criticism from some quarters in the national press, Ministers have made it clear that the elements of this document are to be revised and that the document cannot be given significant weight at this time. However, its focus on fostering sustainable development and encouraging economic growth cannot be ignored. Both the ministerial statement and the draft NPPF will be discussed below.
16. PPS1 sets out the Governments aims in terms of delivering sustainable development and makes reference to the fact that developments which attract a large number of people, especially retail, leisure and office development, should be focused in existing centres promoting these centres vitality and viability, encouraging social inclusion and more sustainable patterns of development. Planning Policy Statement 4 (PPS4) builds upon this theme and sets out the Governments wider aims of delivering sustainable economic development.
17. In terms of Local Plan policies, the purpose of saved policy S14 is to try to address some of the recurring problems associated with A3, A4 and A5 uses such as unsociable hours of business giving rise to noise and disturbance, litter, smells and fumes, and traffic problems. These issues and the impact on residential amenity are addressed later in this report. Saved Policy S14 also sets out that A3, A4 and A5 uses should be directed to retailing centres where a broad range of uses would normally be expected and therefore the perceived impact would not be as great. As a consequence its aim is to protect more sensitive locations such as residential areas where food and drink uses are unlikely to be permitted. More specifically criterion 5) of saved policy S14 states that; "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". However Saved Policy S17 specifically deals with the loss of retail units outside of the defined centres and allows development where it can be demonstrated there is no longer a local need for the facility; or the facility is no longer viable; or appropriate alternative facilities exist within reasonable walking distance.

18. As part of the application a supporting statement which includes a sequential assessment was submitted. The sequential assessment sets out a number of the applicant's criteria and also the key sites that have been considered. This initial search focused on Thornaby and set out that there were no available units for such a use within several defined centres. The supporting information concludes by stating that this current application has addressed the previous reasons for refusal.
19. It is also necessary to consider the Coalition Governments aims at fostering economic growth and sustainable development, as set out in the Ministerial Statement from Greg Clark MP and the draft NPPF. The national planning policy on delivering sustainable economic growth (PPS4) has been fully considered, as set out above and it is considered the proposed development conflicts with these aims and requirements. The proposal is also not considered to have any significant economic, environmental or social benefits that would justify a shift away from planning policy in particular instance. Whilst the draft NPPF sets out its support for economic development and that Local Planning Authorities should apply the presumption in favour of sustainable development and seek to find solutions to overcome any substantial planning objections, it also sets out a clear preference for promoting and support the viability and vitality of town centres. In particular paragraph 78 sets out that "Local planning authorities should prefer applications for retail and leisure uses to be located in town centres where practical, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered". Whilst it is acknowledged that the draft NPPF can be given limited weight at this time, this approach is consistent with PPS4.
20. However, as set out above saved policy S17 allows the loss of retail units outside of the defined retail centres, and this policy needs to be considered and balanced against the aims and requirements of the other policies. In this regard it needs to be demonstrated that the need for the facility no longer exists, or the facility is no longer economically viable, or appropriate alternative facilities exist within reasonable walking distance. The agent has provided information with regards to the unit being advertised which states that the premise has been markets for a period of 5 years, with limited interest in an A1 use. It is therefore considered that the need for the facility on longer exists and is no longer viable. Furthermore, alternative shopping facilities exist along Laburnum Avenue and Thorntree Road, and this element of the policy can also be satisfied. As a result the requirements of saved policy S17 are met.
21. Consideration has therefore been given to the appropriate weight attached to these policies. In making such an assessment consideration has been given to relevant planning appeal decisions across the country. Those of note include the London Borough of Tower Hamlets and the London Borough of Barking & Dagenham. In the case of the London Borough of Tower Hamlets (Appeal Ref: APP/E5900/A/10/2141935) where the Planning Inspector noted the Council's policies, which sought to support recognised centres as focuses of retail and other activities and promote a vibrant mix of competitive uses. Whilst he accepted these aim he noted that none specifically seek to exclude retail or indeed takeaway uses in other areas. Whilst the Planning Inspector dismissed the appeal in the case of London Borough of Barking & Dagenham. (Appeal Ref: APP/Z5060/A/10/2136264), he accepted that as the premises has been marketed for over a year, that "there is no effective retail demand for the appeal Premises".
22. Advice contained in the Development Control practice notes set out that whilst some local authorities may have policies which seek to limit the number of incoming uses or direct them to retail centres, in the light of the general thrust of ministerial advice local authorities face particular difficulty in sustaining policy refusals unless clear evidence is produced of specific harm flowing from the introduction of a take-away use into an established shopping frontage.

23. As a result, it is considered that the retention of a vacant unit offers little to the vitality and viability of the area and in view of the criteria of saved policy S17 being met, the principle of the change of use to a takeaway is considered on balance to be acceptable in this instance.

**Character of the surrounding area;**

24. Within the surrounding area there are a mix of uses, though residential is the predominate use. As a result the scale of the surrounding properties are generally single or two storeys. The proposal seeks a few external alterations which would include the installation of a flue, new roller shutter and new doorway into the side elevation.

25. The installation of the new door is considered to be minor and will not have a significant impact on the street scene. The details provided are limited and conditions should be imposed to ensure the final design is appropriate. Typically the use of roller shutters is not supported due to their visual impact, however as this is to the side elevation and is not readily visible within the street scene its impacts are limited. Again the final design and colour should be conditioned in order to further minimise any harmful impacts on the street scene.

26. The majority of the flue serving the fume extraction system would be positioned internally within the building, minimising its visual impact. The element that would protrude from the building is set back along the lower rear roof slope of the building and will be largely screened from view of Thornaby Road by the higher ridge line of the main building.

27. Given the above, the scheme is on balance considered not to have a detrimental impact on the character of the street scene.

**Impact on residential Amenity;**

28. Residential premises on both Thornaby Road and Laburnum Avenue surround the application site, although the application site does have a permitted retail use the adjacent units are presently partly occupied by an aquatics shop and hairdressers. Furthermore, within the vicinity of the application site there is a convenience store and take away located along Laburnum Avenue. The commercial premises have a range of opening hours some of which are controlled through planning conditions, while others are historic and remain uncontrolled. The neighbouring convenience shop is controlled by a planning condition which limits opening hours between 0600 – 2200 hrs, while the planning condition on the 2006 application (06/1872/FUL) controlled the hours of operation at the application site to 0600-2130 hrs to protect the amenity of the nearby residential properties. As referenced within the supporting information the 'Red Rose chippy' on Laburnum Avenue opens until 00.00. However, it is important to note that the premise is not subject to any planning conditions due to the historic nature of the planning consent, the site however covered under licensing legislation.

29. The original proposed opening hours of the takeaway premise are 16.30 - 00.00 (Mon-Sat) & 18.00 -23.00 (Sun) and would add to the existing levels of activity within the area during the evening and extend these beyond 22.00 when the convenience shop closes. Whilst the 'Red Rose Chippy' would still be open this is approximately 50m to the east and the resultant effect would be to have two potential noise sources in close proximity to one another where the impact would be greatest from patrons visiting the sites at unsociable hours. Approval of the original hours for the scheme would also introduce a late night activity closer to the residential properties on the opposite side of Thornaby Road.

30. It is considered that by limiting the hours of opening of the takeaway to those already approved for the application site (22.00 hrs), it would limit opening to those already agreed for the neighbouring unit and allow an additional 30 minutes to the hours previously allowed

at the application site. Consequently it is considered there would be no significant increase in the levels of activity and disturbance beyond those levels already agreed as part of the established retail permissions within the vicinity of the site.

31. Concerns are also raised by local residents regarding litter and cooking fumes/smells. The Environmental Health Unit have considered such issues and raise no objections subject to a number of conditions regarding fume extraction, litter and a grease trap, should the application be approved and it is considered that subject to satisfactory planning conditions these issues could be controlled to protect levels of residential amenity.

**Access and Highway Safety;**

32. Several objectors have raised concerns in relation to the proposed development increasing traffic in the area and worsening existing parking problems. However, the Head of Technical Services has considered the information provided as part of the application and considers that adequate curtilage car parking is provided to serve the existing premise. As a result no objections are raised to the scheme on grounds of highway safety and despite the local residents and Ward Councillors concerns, it is not considered that there are sufficient grounds to refuse the application on this basis.

**Residual Issues;**

33. Whilst the comments made regarding the impacts on neighbouring businesses and there being sufficient takeaway facilities in the immediate locality are duly noted. It is not the role of the planning system to protect a business or resist competition and as a result these concerns are not a material planning consideration.
34. The Environmental Health Unit has noted that the submitted plans show that the lavatory opens directly into the kitchen area where food will be prepared and/or handled. Whilst it is noted that toilets must not open directly into a room where food is handled and prepared, this is not a planning matter and can be addressed through appropriate food licensing requirements.

**Community safety;**

35. Many objections to the proposed development raise the issue of anti-social behaviour and concerns that the proposed development may increase or encourage further instances of anti-social behaviour. Comments have been received from the Police and evidence has been provided to show the number of occurrences within the surrounding area. It is the Police's view that the proposed takeaway could increase these occurrences. However in planning terms an A1 use such as the existing authorised use of the site is also known to attract anti social behaviour as a location particularly for young people to congregate around.
36. However, a restriction in opening hours would mean that any anti-social behaviour that arises would not be beyond that which may arise from the approved retail unit. On this basis a planning condition limiting the hours of opening is further justified

**CONCLUSION**

37. It is considered that the proposal will not result in a detrimental impact upon highway safety or upon the character of the surrounding area and concerns over the impact the development may have on residential amenity, can be addressed through a planning condition restricting hours of opening.
38. , Evidence has been provided to demonstrate that the unit has been actively marketed for over 5 years with little interest in an A1 use. In addition it is considered that appropriate alternative retail facilities exist within a reasonable walking distance to both Laburnum

Avenue and Thorntree Road. Criteria set out in saved Local Plan Policy S17 relating to the loss of retail units is therefore met.

39. Having regard to all material planning considerations the application is recommended for approval.

**Corporate Director of Development and Neighbourhood Services  
Contact Officer Mr Simon Grundy Telephone No 01642 528550**

**WARD AND WARD COUNCILLORS**

<b>Ward</b>	<b>Village</b>
<b>Ward Councillor</b>	<b>Councillor M Eddy</b>

<b>Ward</b>	<b>Village</b>
<b>Ward Councillor</b>	<b>Councillor I J Dalgarno</b>

**IMPLICATIONS**

**Financial Implications:** As report

**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:**

Planning Policy Statement 1; Delivering sustainable development  
Planning Policy Statement 4; Planning for Sustainable Economic Growth  
Stockton on Tees Core Strategy  
Stockton on Tees Local Plan Alteration  
Planning applications; 91/0440/P, 06/1872/FUL & 09/1859/COU