

DELEGATED

**AGENDA NO
PLANNING COMMITTEE
19 MARCH 2014
REPORT OF CORPORATE DIRECTOR,
DEVELOPMENT AND NEIGHBOURHOOD
SERVICES**

14/0190/COU

22 Darlington Road, Stockton-on-Tees, TS18 5BD

Retrospective change of use from A1 (Retail) to mixed use (A1/A3) with external seating area

Expiry Date 24 March 2014

SUMMARY

This application seeks retrospective planning permission for a change of use from a former retail use (A1) to a mixed use (A1/A3) deli at 22 Darlington Road. The submitted information indicates that the use has been operating since September 2013. The scheme also includes the provision of outdoor tables and chairs on the adopted highway which requires planning permission.

The application site relates to an end terrace, two storey building located along Darlington Road, Hartburn, Stockton on Tees. The property includes a single storey extension on the side, facing onto both Darlington Road (north) and Hartburn Village (west) and is within the Hartburn Conservation Area.

The principle of development (change of use) is considered to be acceptable taking into account the sustainable location of the site and that there are exceptional circumstances relating to a 'fall back' position whereby the former A1 use could change to an A2, A3 (café and restaurant) and B1 Use for a period of 2 years without requiring planning permission that outweigh the planning policy requirements of saved Policy S14.

The Head of Technical Services (HoTS) raises no objections to the scheme subject to the applicant funding the introduction of 'no waiting at any time' as part of a Transport Regulation Order (TRO) as there is no in curtilage car parking associated with this property and the HoTS considers that the café use will create a greater demand for on-street parking than the permitted retail use. However it is considered that there are exceptional circumstances relating to the aforementioned 'fall back' position. As such, the change of use is considered to be acceptable in this instance and the HoTS's request for a TRO is not reasonable in this instance.

The Environmental Health Unit has recommended conditions relating to hours of operation and no external lighting or the playing of music which are recommended accordingly.

6 letters of objection have been received from neighbouring properties, which are summarised as the use being inappropriate for the area, the scheme have an adverse impact on highway and pedestrian safety and the use operating as a café and not a deli.

43 letters of support have been received which are summarised as the use bringing an empty unit back into use and the scheme does not significantly worsen existing car parking problems.

Subject to the imposition of the identified relevant planning conditions, the scheme is considered to accord with the general principles of the National Planning Policy Framework and accord with the principles of sustainable development. The scheme as proposed is not considered to have an adverse impact on the character and appearance of the area or lead to an unacceptable loss of

amenity for neighbouring land users. It is considered that the scheme is acceptable in terms of highway matters.

The application is recommended for approval accordingly.

RECOMMENDATION

That planning application 14/0190/COU be approved subject to the following conditions and informatives below;

01 The development hereby approved shall be in accordance with the following approved plan(s);

Plan Reference Number	Date on Plan
SBC0001A	7 March 2014
SBC0002	27 January 2014
SBC0003	27 January 2014

Reason: To define the consent.

Conditions to be Implemented

02. Within one month from the date of the decision notice, a litter bin shall be provided outside the unit during the stipulated hours of operation and shall thereafter be retained for the lifetime of the development hereby approved.

Reason: To ensure a satisfactory form of development

Conditions which will remain in perpetuity

03. The premises to which this permission relates shall not be open for business nor shall there be any deliveries to/from the property outside the hours of 0830 - 2000 hours Monday to Saturday and 0930-2000 hours on Sundays and Bank Holidays.

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

04. Notwithstanding the provisions of the Town and Country Planning Use Classes Order (General Permitted Development) Order 2013 (or any order revoking and re-enacting that order), the development hereby approved shall be used as an A1/A3 mixed use and the unit shall not be sub-divided.

Reason; In the interests of the amenity of neighbouring land users and to which the permission is based upon.

05. There shall be no music played or the erection/use of any external lighting in the external seating area/outside of the building.

Reason: In order to adequately control the impacts of the sites use on the amenity associated with the surrounding residential area.

INFORMATIVE OF REASON FOR PLANNING APPROVAL

The Local Planning Authority has implemented the requirements of the National Planning Policy Framework

Informative 1 to applicant; Waste collection

The applicant should contact the Council's Commercial Waste section (01642 527254) with respect to setting up a Trade Waste Agreement.

Informative 2 to applicant; Highway License for siting of tables and chairs on adopted highway

The applicant should contact Network Safety (technicalservices@stockton.gov.uk 01642 526709) regarding the requirement for a highway license.

BACKGROUND

1. There are no formal records of a planning approval for the existing A1 retail use element of this property. However it is understood that the property had previously operated as a newsagent (A1 Use) for a prolonged period and the last known use was as a sweet shop (A1 Use).
2. However there are planning records for various shop front signs in 1972 (reference WA/559) and 1973 (WA/647). There were also planning approvals in 2004 and 2010 for the residential element of the building of which the floor plans show the layout of 22 Darlington Road with a shop on the ground floor in the front of the building and the single storey side element.

SITE AND SURROUNDINGS

3. The application site relates to an end terrace, two storey building located along Darlington Road, Hartburn, Stockton on Tees. The property includes a flat roof single storey extension on the side, facing onto both Darlington Road (north) and Hartburn Village (west) and is within the Hartburn Conservation Area. This single storey element in addition to a ground floor element (bay window to the front of the building) of the two storey building makes up the existing commercial/retail use. The remaining part of the building forms a dwelling house. No 20 is present beyond No 22 to the east with No 1 Hartburn Village to the rear (south) with the presence of an electricity substation in between. Beyond the highway of Hartburn Village to the west is the Stockton Arms Public House (PH). Beyond the highway of Darlington Road to the north are residential properties along Darlington Road.

PROPOSAL

4. This application seeks retrospective planning permission for a change of use from a former retail use (A1) to a mixed use (A1/A3) deli at 22 Darlington Road. The submitted information indicates that the use has been operating since September 2013. The submitted 'proposed' floor plan indicates internal seating areas within the single storey element of the building and within the front room of the two storey element, facing onto Darlington Road (with a bay window). The working layout includes a counter and a toilet/store room. The submitted information indicates that sales are made up of hot drinks, cakes, hot and cold sandwiches/Panini's with the provision of a microwave, small oven and Panini maker, which were confirmed as part of the case officer's site visit. The provision of shelving within the unit displays the sale of products/goods, commonly associated with a deli/A1 use (as indicated on the submitted proposed floor plan). The operation also makes

provision for sandwiches and other fresh food to be taken away (as would be the operation of a sandwich shop which is an A1 retail use). The total internal floor space is 33m².

5. The scheme also includes the provision of external seating areas, immediately adjacent to the property entrance comprising of 5 sets of tables and chairs (3 sets were present during the case officer's site visit). Whilst this element is primarily controlled by highway licensing, it does constitute a material change of use when situated on adopted highway and therefore planning permission is also required for this element.
6. The submitted information indicates that the deli would operate 0830-2000 hours Monday to Saturday and 0930-2000 hours on Sundays and Bank Holidays.
7. The submitted information indicates that there are no external changes associated with the development. In view of a Google street view image of the unit (dated October 2012), it is noted that the existing shop front has recently been painted a dark grey/blue colour (previously painted white) with the provision of modest scale signage, which does not require advertisement consent, providing the individual letters do not exceed 75cm in height and the overall height of the signage does not exceed 4.6m above ground level.

8. CONSULTATIONS

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

Councillor T Laing
Councillor K A Lupton
No comments received

Head of Technical Services
Highways Comments

The image below shows areas of adopted highway shaded orange; the majority of the proposed outdoor seating areas are located in the adopted highway.

Technical Services is currently in the process of producing policy/procedure documents to issue permission (licenses) for the positioning of items on adopted highway. In the future an annual license may be required which may incur a fee. It is likely that the requirements for a license would include the following:

- Private furniture must not be attached to the highway or highway furniture or obstruct access to highway furniture or utility service covers;
- Private furniture must not obstruct visibility at junctions or be a distraction to highway users;
- Private furniture must be of a high quality construction and uniform style – plastic garden furniture is not acceptable;
- Private furniture must be removed from the highway within 30 minutes of closing the street café or when not in use (i.e. at times of inclement weather conditions);
- Private furniture positioned on the highway must be stable and suitable for the surface on which they are positioned;
- Entrances and emergency exits must not be obstructed.
- The street café must not extend beyond the limits of the premises unless with the express consent of neighbouring properties;
- The street café must be suitably enclosed with the installation of temporary barriers, which include hand and tapping rails to assist people with impaired vision. Well

maintained temporary planters may be acceptable but rope barriers are not acceptable;

- The street café must be maintained in a clean and tidy condition and the operator should ensure that litter does not stray onto neighbouring areas and all spillage and staining is effectively cleaned up;
- Tables should be of a design to permit wheelchair use;
- The layout of the street café and means of enclosure must provide sufficient circulation space for staff and customers including wheelchair users and those with buggies;
- Any approved parasols must not extend beyond the limits of the street café;
- The street café must be for the exclusive use of paying customers, who must use the furniture provided;
- The colour and design of the street café furniture must take into consideration the needs of people with visual impairment and the surrounding street scene;
- Advertising if appropriate should be incorporated into the enclosure barriers to remove any need for A-boards;
- No selling or trading will be permitted on the highway. All transactions should take place within the trading establishment;
- Any applications for an alcohol license under the Licensing Act 2003 should be directed to the Licensing Authority
<http://www.tradingstandards.gov.uk/stockton/needlic.htm>

It should be noted that were the seating area to be relocated within the white un-adopted area then a highway license would not be required, however a barrier should be provided to ensure furniture is not pushed out onto the adopted highway thereby causing an obstruction.

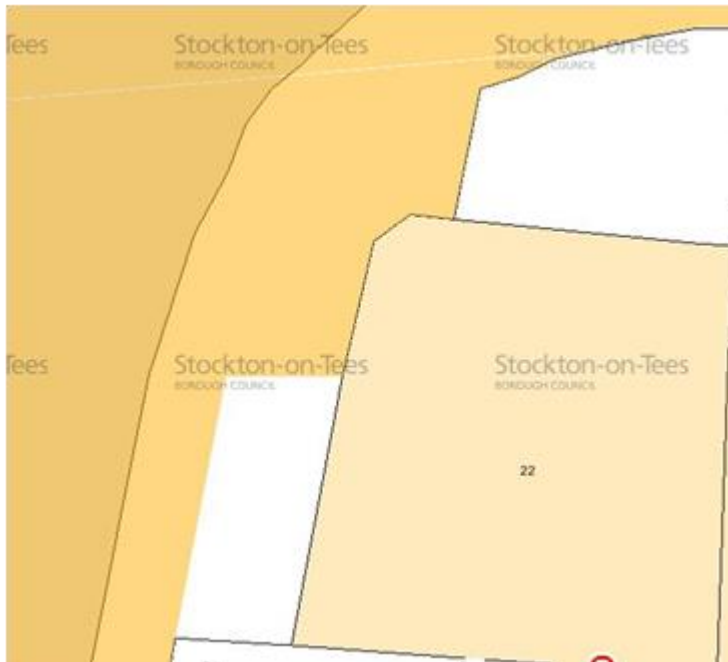
In accordance with SPD3: Parking Provision for Developments 2011, 33m² of A1 retail should provide 1 in curtilage car parking space, a café with 20 covers should provide 10 spaces. As there is no in curtilage car parking associated with this property the café use will create a greater demand for on-street parking than the permitted retail use. The café is likely to attract longer term parking than an A1 retail use and there is evidence of drivers parking close to the junction of Hartburn Village/Darlington Road. Works have previously been carried out to improve highway safety at this junction including the construction of a build-out and relocating the give way line to improve visibility. There was 1 recorded injury accident (slight) at this junction in 2013.

In order to protect the junction the applicant should fund the introduction of 'no waiting at any time' on the eastern side of Hartburn Village from the end of the hatched marking associated with the build-out around the radius of the junction for approximately 20m to the southern edge of the pedestrian dropped crossing. The applicant should meet any and all costs associated with the required Traffic Regulation Order and road markings, likely to be approximately £2000.

The proposed Traffic Regulation Order and associated road markings will mitigate the lack of in curtilage car parking thereby making the proposal acceptable in highway terms, subject to which there are no highway objections.

It has been suggested by objectors that a Residents Parking Scheme be implemented in the area however Residents Parking Schemes are only considered in areas where on-street parking by commuters, shoppers or patrons has a significant impact on available parking for local residents. Priority for consideration is given to areas adjacent to major establishments where patrons park on street to avoid parking charges, such as near hospitals, university buildings or town centres. Any such scheme would also require a minimum of two-thirds support from the affected residents before it could proceed.

Informative: The applicant should contact Network Safety (technicalservices@stockton.gov.uk 01642 526709) regarding the Traffic Regulation Order.



Landscape & Visual Comments

This proposal has no landscape or visual implications.

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

The opening hours should be limited to ensure that adjacent premises are not adversely affected by either customers using the premises or from vehicles servicing the premises at unsocial hours. The times proposed by the applicant are acceptable.

Seating Area

There shall be no music played in the external seating area, and no use of lighting likely to cause a nuisance to adjacent premises. The sides of any shelter used for smoking shall be maintained so as not to be enclosed or substantially enclosed.

Spatial Plans Manager

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permission be determined in accordance with the Development Plan unless the material considerations indicate otherwise. In this case, the relevant development plans are the Stockton on Tees Local Plan and Alteration No.1 to the Stockton on Tees Local Plan.

The retrospective application for the change of use from A1 (Retail) to mixed use (A1/A3) with external seating area at 22 Darlington Road is located within 250m of Harper Parade Neighbourhood Centre, but is not included within the neighbourhood centre itself, as identified in Saved Policy S1 of Alteration No.1 to the Stockton on Tees Local Plan.

In determining this application, consideration should be given to whether the loss of an A1 use in this location is acceptable. Policy S17 states that 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 of the centre listed in Policy S1 where it can be demonstrated that:

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

I note the applicant states the unit no longer economically viable and had been vacant for a considerable period before this change of use. This has not been substantiated with marketing information as required in the preamble to the policy; however, it seems likely that appropriate alternative facilities exist within Harper Parade, which is in reasonably close proximity to the application site. If this is the case, the loss of the A1 use is considered acceptable.

If the loss of an A1 unit in this location is considered acceptable, consideration should then be given to the appropriateness of the replacement use. As the application relates to an A3 use, Policy S14 of Alteration Number 1 to the Stockton-on-Tees Local Plan is particularly relevant. Due to the nature of A3, A4 and A5 uses, Policy S14 directs them to identified retailing centres where a broad range of uses would normally be expected and therefore their impact would not be as great. Where a proposal for an A3, A4 or A5 use is located outside of a defined centre, the applicant is expected to demonstrate that there are no suitable units available within the defined centres or that there are justified exceptional circumstances that necessitate such a location.

The requirements of Policy S14 do not appear to have been addressed in the information submitted in support of the application. This makes it difficult to reach a conclusion on whether the requirements have been met and subsequently, whether the proposal is in accordance with the development plan or not. This should be addressed prior to determining the application, however if, having resolved this issue, you are minded to approve the application, Policy S14 also provides the following criteria on which applications for A3, A4 and A5 uses will be assessed:

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.

PUBLICITY

Neighbours were notified and comments received are set out below:-

9. Six (6) letters of objection have been received to date from the following neighbouring properties;

Mr Adam Randall, 25 Hartburn Village Stockton-on-Tees
Mr Graham Tomlinson, 1 Hartburn Village Stockton-on-Tees (x2)
Mr R McLaren, 19 Hartburn Village Stockton-on-Tees
Mr Andy Darby, Stockton Arms Hotel Darlington Road
Kevin Wilkinson, 18 Darlington Road Stockton-on-Tees
Mr and Mrs Webb, 20 Darlington Road Stockton-on-Tees

These objections can be summarised as follows;

- Retrospective application and operates as a cafe and not as a deli
- Use not suitable for area and is within the wrong location
- Impact on highway and pedestrian safety - the use exacerbates existing car parking problems in area with resultant highway, car parking and traffic issues
- The junction at the village entrance is dangerous
- There are similar café and food uses in the area including a vacant unit in Harper Terrace, which has dedicated car parking.
- The occupier of No 1 Hartburn Village has commented that he is unable to park outside the front of his house and has provided a photo to illustrate this. No 1 has also commented that there should be 'resident only' designated car parking.
- The occupier of Stockton Arms PH has commented that customers of the deli are parking in the pub's front and rear car parks
- the use could become a hot food takeaway in the future
- many customers travel to the site by car

10. Forty five (45) letters of support have also been received to date, from the following addresses;

Ms Julie Metcalfe, 20 Linden Avenue Stockton-on-Tees
Mrs Anna Guest, 23 Greens Valley Drive Stockton-on-Tees
Mr Brian Macaulay, 46 Fleetham Grove Stockton-on-Tees
Mr John Wetherell, 50 Harlsey Crescent Stockton-on-Tees
Miss Siobhan McLean, 291 Surbiton Road Stockton-on-Tees
Mrs Nicola Humble, 101 Auckland Way Stockton-on-Tees
Mr Robert Boal, 23 Redland Close Stockton-on-Tees
Mrs Rachael Forrest, 30 Highfield Crescent Stockton-on-Tees
Mr Ian Smith, 5 Brisbane Grove Stockton-on-Tees
John Stabler, 73 Hartburn Village Stockton-on-Tees
Mrs Sarah Robb, 22 Waltham Avenue Stockton-on-Tees
Mrs Ursula Whitworth, 34 Darlington Road Stockton-on-Tees
Mr and Mrs Perry, 53 Hartburn Village Stockton-on-Tees
Mrs Ivy Purdham, 4 Downholme Grove Stockton-on-Tees
Mrs Anne Rowlands, 8 Green's Lane Stockton-on-Tees
Mrs Jennifer Weatherill, 46A Hartburn Village Stockton on Tees
Mr Andrew Rowlands, 8 Green's Lane Stockton-on-Tees
Mrs Sue Riley, 9 Greens Valley Drive Stockton-on-Tees
Mrs Carol Hall, 18 Kenton Close Stockton-on-Tees
Mrs Rebecca Dodds, 10 Harper Terrace Stockton-on-Tees
Mrs Natalie Donnelly, 60 Sydenham Road Stockton-on-Tees
Miss Marisa Webster, 55 Aiskew Grove Stockton-on-Tees
Miss Lizzie Purdham, 13 Kensington Road Stockton-on-Tees
Mrs Anna Pitt, 41 Kendal Road Stockton-on-Tees

Mrs Louise Dennis, 16 Linden Avenue Stockton-on-Tees
 Mr Alistair McIntyre, 102 Oxbridge Avenue Stockton-on-Tees
 Mrs Rosamond Perkins, 1 Woodhall Grove Stockton-on-Tees
 Mrs Karen Arnold, 35 Harlsey Crescent Stockton-on-Tees
 Miss Carina Prothero, 6 Talisman Close Eaglescliffe
 Mr Mark Johnston, 50 Kilburn Road Stockton-on-Tees
 Mrs Victoria Wanless, 23 Drovers Lane Redmarshall
 Mrs Carol Hughes, 4 Hartburn Avenue Stockton-on-Tees
 Miss Hannah Conlin, 34 Hillcrest Avenue Stockton-on-Tees
 Mrs Jacqueline Wood, 8 Ainderby Grove Stockton-on-Tees
 Mr James Wood, 8 Ainderby Grove Stockton-on-Tees (x 2)
 Mrs Suzy Ellis, 11 Perth Grove Stockton on tees
 Mr John Henderson, 10 Corona Court Stockton-on-Tees
 Mrs Lisa Thornton, 11 Lufton Close Ingleby Barwick
 Mr Christopher Pickles, 11 Oakdene Avenue Stockton-on-Tees
 Ms Helen Whitehead, 2 Dearne Hall Fold Barugh Green
 Mr Christopher Pinkney, 50 Lealholme Grove Stockton-on-Tees
 Wendy Cowan, 26 Darlington Road Stockton-on-Tees
 Mr Andrew Branch, 79 Hartburn Village, Stockton-on-Tees TS18 5DR
 Mrs Victoria Parker, 178 Oxbridge Lane, Stockton-on-Tees TS18 4HS
 Mrs Jade Laidler, 56 Hartburn Lane, Stockton-on-Tees TS18 4EW

These letters of support can be summarised as follows;

- Use complements other local businesses and enhances area
- Visual improvement of previous state and more preferable to have an occupied unit than a vacant unit
- Does not worsen car parking of previous newsagent use of building
- Car parking problems in surrounding area cannot be wholly attributable to visitors to the deli
- The letter of support from 8 Ainderby Grove (Mr Wood) states that the requirement for a Traffic Regulations Order (TRO) is unwarranted and unfair
- The proposal has created employment/has economic benefits

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 the Stockton on Tees Local Plan
12. Section 143 of the Localism Act came into force on the 15 Jan 2012 and requires the Local Planning Authority to take local finance considerations into account, this section s70(2) Town and Country Planning Act 1990 as amended requires in dealing with such an application [planning application] the authority shall have regard to a) the provisions of the development plan, so far as material to the application, b) any local finance considerations, so far as material to the application and c) any other material considerations
13. The following planning policies are considered to be relevant to the consideration of this application:-

National Planning Policy Framework

Paragraph 14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking;

For decision-taking this means:

approving development proposals that accord with the development without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

-any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or -specific policies in this Framework indicate development should be restricted.

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

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.

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

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;

_ 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 Policy S14 of Alteration No 1 of the adopted Stockton on Tees Local Plan.

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:-

- ii) 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;
- iii) any adverse impact of proposals on residential amenity in terms of smell, noise, litter fumes and disturbance;
- iv) the provision of adequate and effective fume extraction and filtration equipment;
- v) the provision of facilities for litter within and adjoining the premises;
- vi) the secure provision for trade waste, stored in an out of sight location;
- vii) where appropriate, conditions limiting the late night opening may be applied.

Saved Policy S17 of Alteration No 1 of the adopted Stockton on Tees Local Plan.

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: -

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

Saved Policy EN24 of the adopted Stockton on Tees Local Plan

New development within conservation areas will be permitted where:

- (i) The siting and design of the proposal does not harm the character or appearance of the conservation area; and
- (ii) The scale, mass, detailing and materials are appropriate to the character and appearance of the area

MATERIAL PLANNING CONSIDERATIONS

14. The main planning considerations with respect to this application are the principle of development, the impact on the character and appearance of the surrounding area (including the conservation area), the impact on the amenity of neighbouring properties and the impact on highway safety. These and any residual matters are considered below.

Principle of development

15. The National Planning Policy Framework states that "*the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system*".

16. In order to achieve sustainable economic growth, the Government's objectives for planning include "*delivering more sustainable patterns of development by reducing the need to travel, especially by car and respond to climate change*".

17. The scheme relates to the provision of a commercial use within an established commercial premise that lies within the defined limits to development. Notwithstanding objections stating that many of the customers travel from all over the Borough by car, the site is within walking distance from residential areas and public transport networks are close by. The scheme also brings an empty unit back into use and has economic benefits (in terms of

providing employment). As such, the site is considered to be sustainable and accords with the general provisions of the National Planning Policy Framework.

18. With respect to the requirements of saved Policy S17 (as set out in full above relating to the loss of a small village shop), in view of a number of retail uses being provided within close proximity of the application site at Harper Parade approximately 250m to the west of the application site, the understanding that the unit has been vacant for periods prior to the current occupation and that the scheme retains an A1 element, the Spatial Plans Manager has confirmed that the loss of the A1 use is acceptable in this instance subject to the scheme according with saved Policy S14 of Alteration Number 1 to the Stockton-on-Tees Local Plan (relating to changes of use to A3, A4 and A5 uses). Where a proposal for an A3, A4 or A5 use is located outside of a defined centre, the applicant is expected to demonstrate that there are no suitable units available within the defined centres or that there are justified exceptional circumstances that necessitate such a location.
19. The Spatial Plans Manager has commented that the requirements of saved Policy S14 "*do not appear to have been addressed in the information submitted in support of the application. This makes it difficult to reach a conclusion on whether the requirements have been met and subsequently, whether the proposal is in accordance with the development plan or not*".
20. However, consideration is given to the 'fall back' position of the recent (May 2013) amendment to 'The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013'; Class D states that the current property (accepted as benefitting from an A1 Use Class) could be changed to either an A2 Use (financial and professional services), A3 Use (restaurant and cafe) or B1 Use (Offices not within the A2 Use, research and development and light industry) without requiring planning permission under a flexible use consent for a single continuous period of up to 2 years (providing it does not relate to a floor space exceeding 150 sq.m). The current application site relates to 33 sq.m and therefore the site could benefit from this.
21. It is also necessary to acknowledge the fall back that the property could lawfully revert back to an A1 retail use under permitted development rights, which on balance and notwithstanding the existing A1 use could be more detrimental to the vitality and viability of defined retail centres than that of the proposed mixed use (A1/A3) in this instance.
22. In view of these fall back positions, the relatively modest floor space of the unit, the site's proximity to large residential areas that are within walking distance to the site, and the established siting of the unit, it is considered that there are exceptional circumstances that would outweigh the requirements of saved Policy S14, and that on balance the principle of the change of use to a mixed use (A1/A3) is considered to be acceptable in this specific instance and that the scheme would not introduce an unacceptable form of development, subject to satisfying other material considerations, including the provisions of saved Policy S14 and the NPPF, as set out below.
23. Objections have been received stating that the current use could change to a hot food takeaway (A5 Use Class) in the future. This would require planning permission and would be subject to being considered by the Local Planning Authority in the event the situation arose. However such a hypothetical scenario is not a material planning consideration. Nonetheless, in view of the above considerations, and with respect to protecting nearby defined retailing centres, it is considered appropriate for the use to be restricted to an A1/A3 mixed use. This can be secured by a planning condition.

Amenity

24. Paragraph 123 of the NPPF states

- *"Planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;*
- **mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;*
- **recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established and*
- **identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason".*

25. Saved Policy S14 also sets out a number of requirements that A3, A4 and A5 uses are required to accord with including an assessment of

- 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.*

26. With respect to criterion vi, the applicant has indicated hours of operation as set out above. The Environmental Health Unit (EHU) considers these hours to be acceptable, which can be secured by way of a planning condition.

27. With respect to smells and odours, in view of the submitted information, which indicates that there is no requirement for any extraction cooking equipment with only a small oven, microwave and Panini maker being used (as viewed by the case officer on site), it is considered that the use will not result in an adverse loss of amenity for neighbouring land users in terms of odours and smells, and therefore accords with criterion iii. Furthermore, the EHU have raised no objections to the scheme in this respect.

28. The scheme does not entail any significant external alterations to the existing building or adversely affect separation distances to surrounding properties.

29. With respect to the siting of the outdoor tables and chairs, these are sited approximately 23m from the front/side elevation of the nearest property to the rear (No 1 Hartburn Village) with the presence of boundary treatment (enclosing part of the rear amenity area of No 22) and an electricity substation in between. The tables and chairs are sited approximately 15m from the nearest property to the west (Stockton Arms PH) and approximately 25m from the front elevations of the nearest properties to the north, with the presence of a highway (Darlington Road) in between.

30. The external tables and chairs at the front of the building (north) are sited approximately 7m from the front elevation of No 20 Darlington Road and approximately 5m to the front entrance of the residential element of No 22. The rear garden/amenity serving No 22 would be screened from the external seating areas by the presence of an approximately 1.8m high wall with brick pillars and fence insert panels in between. As a result of the orientation of the windows in the front (north) and side (west) elevations of the application site, it is considered that no direct views are achievable to the rear garden/amenity area serving No's 20 and 22 Darlington Road and No 1 Hartburn Village (of which a substation is sited between the application site and the front/side of No 1 Hartburn Village).
31. The Environmental Health Unit has also requested that no music or external lighting should be positioned outside/adjacent to the seating areas. A planning condition is recommended accordingly.
32. As noted above, consideration is given to the established siting of the building in relation to the surrounding residential properties. Further consideration is given to the 'fall back' uses that the existing building could operate as without requiring planning permission. In view of the above required planning condition for hours of operation, this would in effect provide the Local Planning Authority with a level of control over the use of the building and adjacent yard that currently does not exist (notwithstanding any controls by other environmental legislation).
33. In view of the above considerations including the imposition of the appropriate planning conditions, separation distances to neighbouring land users and the established commercial nature of the building and its relationship to surrounding residential properties, it is considered that on balance, the scheme will not result in an unacceptable loss of amenity in terms of outlook, overlooking, overbearing, noise disturbance and odour nuisance for neighbouring land users.

Other matters related to saved Policy S14

34. With respect to criterion iv and v, the applicant has confirmed in writing that waste storage is currently stored inside the premises during the day with cardboard/plastics separated, and then removed from the premises for disposal. The Council's Commercial Waste section has advised that the applicant/owner is required to set up a trade waste agreement, regardless of the amount of waste produced, which is a legal requirement for every commercial premises (from a trade waste perspective). With the waste being minimal, the Commercial Waste Officer has suggested that 'sack collections' would be sufficient which would be collected on a weekly basis. Subject to this, which the applicant has confirmed that he will set up such an agreement, and can be secured by an informative, it is considered that the proposal would satisfy criterion v of saved Policy S14. Any further matters would need to be controlled by separate legislation.
35. With respect to the requirement for the provision of a litter bin for customer rubbish, this requirement can be secured by a planning condition, with the provision of a litter bin within 1 month from the date of the decision notice. Subject to this, the scheme would accord with criterion iv of saved Policy S14.

Character and appearance of surrounding area

36. In view of the current scheme not entailing any significant external alterations to the existing building, and in view of the modest scale of the external seating areas, it is considered that the change in use of the building would not adversely affect the character and appearance or the visual amenity of the surrounding area, including the Hartburn Conservation Area

and therefore accords with the provisions of saved policy EN24 and Core Strategy Policy CS3.

Highway safety and access

37. The Head of Technical Services (HoTS) has commented that "*in accordance with SPD3: Parking Provision for Developments 2011, 33m² of A1 retail should provide 1 in curtilage car parking space, a café with 20 covers should provide 10 spaces. As there is no in curtilage car parking associated with this property the café use will create a greater demand for on-street parking than the permitted retail use. The café is likely to attract longer term parking than an A1 retail use and there is evidence of drivers parking close to the junction of Hartburn Village/Darlington Road. Works have previously been carried out to improve highway safety at this junction including the construction of a build-out and relocating the give way line to improve visibility. There was 1 recorded injury accident (slight) at this junction in 2013*".
38. The HoTS has therefore requested that the applicant should fund the introduction of 'no waiting at any time' on the eastern side of Hartburn Village and has indicated that the "*applicant should meet any and all costs associated with the required Traffic Regulation Order and road markings, likely to be approximately £2000*". Subject to the requested Traffic Regulation Order and associated road markings, the HoTS raises no highway objections to the application as he considers that this "*will mitigate the lack of in curtilage car parking thereby making the proposal acceptable in highway terms*".
39. Whilst these comments are acknowledged, in addition to the letters of objection from neighbouring residents regarding the scheme exacerbating existing car parking and highway safety problems, consideration in this instance is given to the above referenced 'fall back' position whereby a new A2, A3 or B1 Use can occupy the unit for up to two years without requiring planning permission. In effect, the Government's permitted development rights provide for such a change of use with any associated impacts such as highway and pedestrian safety being overridden and being able to be taken into account for a two year period.
40. Further consideration is given to a number of appeal decisions within the Borough whereby Planning Inspectors have taken the view that a successful retail unit (A1 Use) can generate as much traffic as any other A-use class, particularly A5 Hot food takeaways.
41. These include application 11/0650/FUL for a change of use from an A1 retail to an A5 use (hot food takeaway) at 373 Thornaby Road. The application was refused by the Local Planning Authority (LPA) on two grounds including "*the proposed takeaway would generate unacceptable levels of traffic generation to the detriment of highway safety contrary to Saved Local Plan Policy S14 i) of Alteration Number 1*".
42. The subsequent appeal was allowed by the Planning Inspectorate on 23 April.2012 (appeal reference APP/H0738/A/12/2169176). With respect to the matter of highway safety, the Inspector commented

I accepted that the takeaway would be well located to draw trade from an area beyond the immediate locality. But that is also true if the now-vacant unit here were to be occupied, as it lawfully could be, by an A1 (shop) use...I note local residents' concerns about additional traffic, but some of these concerns, at least, appear to be based in a comparison with the present circumstances of the unit in question being vacant. The Council, too, took the view that "no matter was (sic) went into the unit significant traffic would be generated...". But these are false comparisons, the proper comparison being between the unit being used as a takeaway and an active shop use.

43. With respect to local residents' concerns that the change of use would exacerbate existing 'inappropriate parking', the Inspector was of the view that *"it has not been demonstrated that the proposed takeaway would be materially worse in this respect than a retail shop"*. The Inspector therefore concluded that the *"arguments against the project on highway safety grounds have not been substantiated. I see no conflict with the highway engineering component of policy S14(i)"*.

44. Another relevant appeal decision (appeal dismissed on planning policy grounds) relates to 72 Durham Road for a change of use from A1 retail to an A5 hot food takeaway (Appeal reference APP/H0738/A/12/2187401, decision dated 7th March 2013), the Inspector was satisfied with the proposed use in terms of highway safety and car parking, particularly in respect of the existing A1 use;

The shop unit does not have any parking for customers. However, the existing use is one which could attract similar numbers of visitors. Moreover, there is scope for on-street parking in the vicinity which I consider would be adequate to serve the needs of customers, particularly given the likelihood that some would arrive on foot from the surrounding residential area. The proximity to a bus stop improves accessibility and there is no evidence that the site's proximity to the bus stop would result in vehicular conflict.

Taking the above considerations into account, it is considered that on balance, there are exceptional material circumstances that would outweigh the HoTS's request for a Traffic Regulation Order and that the change of use is considered to be acceptable in this respect.

45. In view of the above fall-back position and appeal decisions, the change of use is considered to be acceptable in respect of highway matters and as such the HoTS's request for a Traffic Regulation Order would be unreasonable in this instance. Furthermore, any current highway problem within proximity of the application site could be controlled by separate legislation to planning.

46. With respect to the letter of objection from No 1 Hartburn Village and the matter of car parking to the front of his property, car parking directly outside of No 1 Hartburn Village is currently not restricted (there are double yellow lines on the opposite side of the road) and such parking by anyone would relate to car parking on the adopted public highway. Matters of any vehicle blocking a vehicular entrance to a property would need to be controlled by the Uniform Enforcement Section. Furthermore, any indiscriminate car parking on sections of the adopted highway that are in breach of the Highway Code would need to be controlled/enforced by separate highway legislation.

47. With respect to the request by the occupier of No 1 Hartburn Village for 'residents only' car parking permits or road markings, the HoTS has advised *"Residents Parking Schemes are only considered in areas where on-street parking by commuters, shoppers or patrons has a significant impact on available parking for local residents. Priority for consideration is given to areas adjacent to major establishments where patrons park on street to avoid parking charges, such as near hospitals, university buildings or town centres. Any such scheme would also require a minimum of two-thirds support from the affected residents before it could proceed"*. In view of the scale of the current scheme, the requested restriction is not a requirement.

48. With respect to the objection from the occupiers of Stockton Arms PH and the deli customers parking in the car park of the PH, as this is private land, this is a civil matter and not a material planning consideration.

49. The HoTS's has raised no objection to the siting of the external tables and chairs within the adopted highway however the applicant would need to obtain a highway license and accord with the criteria for positioning items on the adopted highway. The applicant has been made aware of this required, which can be secured by an informative.

Residual matters

50. A number of objections have referred to the retrospective nature of the application in which the use has been operating for several months without planning permission and that the use operates more as a cafe than a deli. After the matter was brought to the attention of the Planning Enforcement Section, the applicant has chosen to submit a retrospective application to seek to regularise the situation for a mixed use. Whilst the Local Planning Authority does not condone such applications, to seek the submission of a planning application is the first step of planning enforcement action (unless there is significant material harm that would require an Enforcement Stop Notice).

51. With respect to objections stating that the use operates solely as a cafe and not as a deli, following the case officer's site visit, it was noted that goods were being sold from shelving units including dried pasta, jars of jam and sauces. As such, it is considered that the mixed use nature of the scheme, including the café element, has been assessed accordingly.

52. The matter of business competition is not a material planning consideration as highlighted by several planning appeal decisions. With respect to the existing provision of cafes and other establishments in proximity of the site, whilst these are noted, in view of the above considerations in which the principle of development (change of use) is accepted, this is not a material planning consideration in this instance.

CONCLUSION

53. The scheme is considered to accord with the general principles of the National Planning Policy Framework as the scheme is considered to accord with the principles of sustainable development. The scheme is not considered to have an adverse impact on the character and appearance of the area or lead to an unacceptable loss of amenity for neighbouring land users subject to compliance with the recommended planning conditions. Matters of highway safety are also considered to be acceptable in this instance for the reasons detailed above. The application is therefore considered to be in accordance with the Council's Development Plan policies as identified above.

54. It is recommended that the application be Approved with Conditions for the reasons specified above.

Corporate Director of Development and Neighbourhood Services
Contact Officer Mr Daniel James Telephone No 01642 528551

WARD AND WARD COUNCILLORS

Ward Hartburn
Ward Councillor Councillor Laing

Ward Hartburn
Ward Councillor Councillor K.A. Lupton

IMPLICATIONS

Financial Implications: As report.

Legal 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