

DELEGATED

**AGENDA NO
PLANNING COMMITTEE**

15 JUNE 2016

**REPORT OF DIRECTOR,
ECONOMIC GROWTH AND DEVELOPMENT
SERVICES**

15/2978/FUL

66B Leven Road, Norton, Stockton-On-Tees

Change of use of vacant shop unit to hot food takeaway

Expiry Date 26 May 2016

SUMMARY

The application site is located on the northern side of Leven Road, on the corner with Eamont Road. The surrounding area is predominately residential in nature with the application site and surrounding properties being two storeys. This site forms part of the ground floor with the remainder of the ground floor is currently being operated as a 'Nisa' retail unit.

Planning permission is sought for a change of use of the existing premise to a hot food takeaway with opening hours of between 8am and 10pm. The proposed use is to be split over two floors with the storage and food preparation on the first floor. As part of the proposal it is proposed to include a fume extraction flue projecting out of the rear roof slope.

Objections have been received from the two local ward councillors and 12 members of the public. The main objections to the proposed development include; that there are sufficient takeaways in the area; will exacerbate existing traffic and parking problems; will increase, noise disturbance, cooking odours, litter and vermin in the area; and, will generate and worsen existing anti-social behaviour problems. One letter of support has also been received which provides general support for a southern fried takeaway but not pizza/kebab takeaways

In view of the above, whilst the proposed development is not strictly in accordance with saved policy S14, it does accord with the wider aims of the policy in terms of being adjacent to a use with associated activity. Provided that any use and activity associated with the takeaway does not extend beyond that of the retail premise it is considered that its associated impacts would not significantly worsen the existing impacts of the retail unit on residential amenity. The scheme is also not considered to have an adverse impact on the character of the area or highway safety and the proposal will also bring into beneficial use a vacant premise offering some economic benefits.

RECOMMENDATION

That planning application 15/2978/FUL be approved subject to the following conditions and informative;

Approved Plans;

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

| | |
|-----------|------------------|
| 1560/LP | 30 November 2015 |
| 1560/02 | 30 November 2015 |
| 1560/03 | 30 November 2015 |
| 1560/06 | 30 November 2015 |
| 1560/04 A | 15 February 2016 |
| 1560/07 A | 15 February 2016 |
| 1560/05B | 1 April 2016 |

Reason: To define the consent.

Conformity with submitted layout.

02. *Notwithstanding any submitted information, the hereby approved use shall be carried out in strict accordance with the layout and identified room uses as shown and approved on drawings 1560/04A and 1560/05B.*

Reason: To protect the amenity of the occupants of the dwelling from excessive noise and disturbance and for the avoidance of doubt.

Hours of opening:

03. *The hereby permitted use shall not take place other than between the hours of 08:00 and 22.00 hours with the premise being vacated by all staff at 22.30 hours.*

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

Fat/grease trap:

04. *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.

Odour nuisance:

05. *Notwithstanding any of the submitted details, before any development commences details of a ventilation and fume extraction system 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. Such a scheme shall also detail that any flue is provided no less than 1 metre above the eaves of the main building and positioned at least 2 metres away from any window that is able to be opened. 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 and to ensure that the neighbouring premises do not suffer from odour nuisance.

Noise protection for adjacent residential flat:

06. *No development shall take place until a scheme for sound insulation and attenuation to limit noise and sound from the hereby approved use to the adjacent dwelling has been submitted and approved in writing by the local planning authority. The*

development shall be carried out in accordance with the approved details prior to the use commencing and shall retained thereafter.

Reason: To protect the amenity of the occupants of the dwelling from excessive noise and disturbance.

Waste storage/collection:

- 07. *Prior to the commencement of the development hereby approved, details for the siting of waste storage facilities and methods/frequency of collection shall be submitted to and be approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the use commencing and all waste procedures shall be carried out in full accordance with those agreed details thereafter.***

Reason: To ensure a satisfactory form of development

INFORMATIVE OF REASON FOR PLANNING APPROVAL

Informative: Working Practices:

The Local Planning Authority has worked in a positive and proactive manner and sought solutions to problems arising in dealing with the planning application by seeking a revised scheme to overcome issues and by the identification and imposition of appropriate planning conditions

BACKGROUND

1. The application site has a varied planning history with planning permission being granted in 1983 for the conversion of the former co-op building into Youth Training Centre (App ref; S1750/83). A further application (02/0042/P) was approved in 2002 to change the use of the premises into a retail unit once again.
2. In 2004 and 2005 planning consent was sought to convert the existing retail unit to form 11 apartments with associated external alterations, both applications were subsequently withdrawn (App refs: 04/3337/FUL & 05/0383/REV). A further application in 2005 (05/3100/REV) sought external alterations and to convert the property into 9no. Apartments, the application was refused on highway grounds and the subsequent appeal dismissed, due to the inadequate, cramped nature of the parking provision that represented an over-development of the site and would have had an adverse impact on highway and pedestrian safety. A more recent application (07/3019/FUL) again sought the conversion of the property into 9no. flats. The applicant had resolved to address the highway safety issues, which included the relocation of the adjacent bus stop and the application was subsequently approved.
3. However, a further planning application (08/1496/FUL) for a Change of use to mixed use development consisting of general food store, tea room, showroom, offices, retail/internet café and 1no. two bedroom flat was approved and this consent has been implemented. A subsequent application to vary the opening hours of the store from 7:00am to 10:00 pm. (08/3129/VARY) was also approved. A further application followed in 2011 (ref; 11/0636/FUL) to create two new flats at first floor which was also approved.

SITE AND SURROUNDINGS

4. The application site is located on the northern side of Leven Road, on the corner with Eamont Road. The surrounding area is predominately residential in nature with the application site and surrounding properties being two storeys. The property itself was originally built as a Co-operative retail store. Over recent years it has had several users, although the ground floor is currently being operated as a 'Nisa' retail unit, with the application site being a vacant unit.

PROPOSAL

5. Planning permission is sought for a change of use of the existing premise to a hot food takeaway. The premises will be separated out over the ground and first floor, with a dumb waiter operating between the two floors. The proposed opening hours are between 8am and 10pm. As part of the proposal it is proposed to include a fume extraction flue projecting out of the rear roof slope.

CONSULTATIONS

6. The following Consultations were received and those comments received are set out below (in summary):-

Highways, Transport and Environment – This unit appears to have an extant use as a tearoom which would have a higher parking requirement (1 space per 2 covers) than the proposed hot food takeaway (1 space per 50m² for staff plus 1 space per 25m² for visitors plus 1 space for deliveries). Therefore this proposal is not expected to increase the demand for parking and the Highways, Transport & Environment Manager raises no objections.

Environmental Health Unit – Having assessed the additional information (including the revised floor plans, elevations and supporting statement) have no objection in principal to the proposal subject to conditions controlling the following matters;

- Construction/ Demolition Noise
- Noise disturbance from access and egress to the premises
- Drainage - grease trap
- Odour nuisance

Local Ward Councillors, Steve and Kath Nelson – Object to the application as such developments are better located in existing retail centres where they better serve potential customers rather than residential areas such as this, particularly given proximity to residential properties regarding noise, parking, litter etc. The surrounding area also has a history of anti-social behaviour which this application is likely to exacerbate by providing a focal point.

Further, there are already parking issues with the NISA shop and this application will only add to those problems. Concerns are also expressed regarding the where the extraction flue will be located and the impact of smells etc on residents who live in the immediate vicinity of the premise.

Stockton Police – No comments received

Community Protection Department – No comments received

PUBLICITY

7. Neighbouring properties were notified and a total of 12 objections and 1 letter of support have been received. These are detailed below (in summary);

Objections;

- Already a large number of takeaways in the High Street
- Will add to increased obesity adding to existing pressures on the Health Service
- Worsen existing traffic and parking problems
- Children play ball games in the middle of cross roads
- The proposed takeaway is surrounded by housing and residents will be affected by noise and fumes
- Will Increase litter which is already a problem from the shop
- Will attract vermin to the area

- The proposal will generate and worsen existing anti-social behaviour problems
- Property is hard enough to sell without a takeaway on the corner
- The level of consultation is not considered extensive enough
- Existing problems with the main sewerage drains if fat and oil were to enter them this would add to the problems
- Leven Road has been prove to flooding
- No parking bays are marked out
- Premises has never be used as a tea room or café
- Proposed will result in a loss of privacy as more people use the premises

Objectors:

1. J Donnelly - 68 Leven Road Norton
2. D Glennon - 73 Leven Road Norton
3. Mr J Glennon - 77 Leven Road Norton
4. Blue Hall Residents Association – c/o 77 Leven Road Norton
5. Robert Harbron - 83 Leven Road Norton
6. Mr Gary Nolan - 94 Leven Road Norton
7. Mrs Robinson - 48 Eamont Road Norton
8. K Hart - 52 Eamont Road Norton
9. Miss Lynne Thompson - 54 Eamont Road Norton
10. Mr Dennis Demoily - 55 Eamont Road Norton
11. Mrs Jacky Cordiner - 69 Eamont Road Norton
12. Miss Maxine Turner - 67 Eamont Road, Norton, Stockton-on-Tees TS20 1DE

Support comments:

- In favour of southern fried takeaway but not pizza/kebabs
- Only need reasonable assurance about noise and removal of litter
- Lives in close proximity but is willing to give it a go

Supporter:

1. David Garton - 51 Eamont Road Norton

PLANNING POLICY

8. 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. 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

National Planning Policy Framework

9. 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.

Local Planning Policy

10. 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.

3. 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

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;

_ 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:-

- 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

11. The main planning considerations of this application are whether it complies with planning policy and the impacts of the development on the character of the area, amenity of neighbouring occupiers, access and highway safety and any other matters arising out of consultation.

Principle of development;

12. The National Planning Policy Framework (NPPF) advises Local Authorities of a presumption in favour of sustainable development with significant weight being placed on the need to support economic growth. Core planning principles of the NPPF revolve around proactively driving and supporting opportunities for growth and seeking high quality design. With specific regards to this proposal, section 2 of the NPPF (Ensuring the vitality of town centres) offers further guidance on promoting competitive town centre environments, recognising town centres as being at the 'heart of their communities' and encouraging policies to support their viability and vitality. In this regard the proposed development will have some economic benefits associated with it.

13. In terms of the Local Plan and Core Strategy, Core Strategy CS5 sets out the retail hierarchy but does not define neighbourhood centres. Nevertheless saved policy S14 of the Local Plan Alteration does seek to direct food and drink uses (A3, A4 and A5) to defined retail centres unless there are no suitable units available within the defined centres or there are justified exceptional circumstances. In addition there are no policy restrictions with regards to evidencing a need for such facilities

14. The application site is not within a defined retail centre and does not include any evidence to demonstrate that either there are no suitable units available within the defined centres or that there are exceptional circumstances in this case, instead it is stated that the test should be compliance with the NPPF and whether it is sustainable development.

15. Notwithstanding the above view, within the justification of Policy S14 it is apparent that the real intention of directing "food and drink" uses to the identified retail centres is as a result of "reoccurring problems" with these uses (i.e. unsociable hours of business, noise and disturbance, smells/fumes, and traffic problems) and that by directing "food and drink" uses to retailing centres the perceived impacts are less.

16. Although residential properties lie adjacent, behind and opposite the site the premises forms part of larger building which includes a Nisa retail store immediately adjacent to it. This store is open between 6am and 10pm and therefore a degree of activity already occurs within the immediate locality and particularly later into the evening. Whilst the proposed development does not specifically meet with the locational criteria set out in saved policy S14, it is not considered that there is any significant conflict with the aims of the policy other than it is not within a defined neighbourhood centre. The impacts of the development in terms of the vitality and viability of nearby centres is also considered to be extremely limited given its small scale. Matters relating to the other criteria identified with saved policy S14, are considered and addressed within the material planning consideration which are outlined within the report below.

Character of the area;

17. The proposed development proposes only very limited changes to the rear of the premise which will include the installation of an extraction flue. Given that the rear of the property is not readily visible from the main public vantage points, the scheme is not considered to have any significant impacts on the character of the surrounding area and is acceptable in this regard.

Amenity;

18. The proposed unit will be created from an existing commercial premise at ground floor and a residential flat at first floor. Given these existing uses it is not considered to have any significant implications for privacy on the surrounding residents. In terms of the existing premises. At first floor there is also a flat immediately adjacent to the dry goods store. In order to ensure that the occupier of this premise is not adversely affected by the operations of the takeaway premise it is considered necessary to require a condition to ensure that sound insulation is provided between the two premises and that the layout remains as submitted to prevent potential noisier activities.
19. As identified within saved policy S14, food and drink uses can result in noise and disturbance to neighbouring occupiers given that those premises are often open late into the evening and attract patrons. Whilst the concerns of the neighbouring residents are noted, a degree of activity already occurs within the immediate locality, as a result of those operations associated with the Nisa convenience shop. Provided that the opening hours were limited to those of the retail shop, the resultant harm from the associated activities arising out of the proposed takeaway use on the surrounding residential properties is therefore considered to be limited. A planning condition is recommended to control this aspect.
20. The Councils Environmental Health Officers have considered the application and made a number of comments in relation to the operational requirements of a takeaway premises. This led to a revised scheme being submitted which utilises the first floor and provides a dumb waiter between the kitchen/prep areas and service counter on the ground floor. As a consequence there are no objections to the proposal subject to appropriate controls being placed on matters including odour control, drainage and hours of construction activity and use. As these matters can be adequately controlled it is considered that acceptable levels of residential amenity can be maintained and that the impacts of the proposal would not be sufficient to warrant a refusal of the application on these grounds.

Access and Highway Safety;

21. Whilst the number of objections received in relation to a potential increase in traffic and parking problems are noted, the Highways Transport and Environment Manager has considered the proposed development and the existing use and compared the degree of car parking required for each use. This proposal is not expected to increase the demand for parking and as a consequence the Highways, Transport & Environment Manager has no objections on grounds of highway safety.
22. By way of background, the retail shop is required to provide car parking spaces outside the retail unit as part of a previous planning approval. Following very recent discussions a car parking scheme has also been agreed in principle and will be implemented in the near future.

Crime and Anti-social behaviour;

23. Section 17 of the Crime and Disorder Act requires that the planning system and the Local Planning Authority must do all that it reasonably can to prevent, crime and disorder in its area. It is noted that there is an existing retail use adjacent to the site and that objectors consider that the proposal would give rise to anti-social behaviour particularly as young people can congregate around the site. However, there is no firm evidence before the Local Planning Authority which would indicate that the proposal would give rise to or increase crime or anti-social behaviour. In addition the restriction in opening hours would mean that both premises would shut at the same time minimising the attraction to the site beyond these hours. In the event that any instances arise then this would be a matter for the appropriate authorities, such as the Police and not the planning system.

Residual Issues;

24. Objection comments have been received with regards to the potential for vermin to be associated with the proposed use. Whilst these comments are noted, a condition is recommended for the final details regarding waste storage and collection to minimise such instances. There are also existing litter bins within the immediate vicinity.
25. Whilst matters relating to obesity are noted, there are no specific policies within the Local Plan or NPPF which prevent hot food takeaways being opened on obesity or health grounds. Such matters would therefore carry little weight in the determination process and would not substantiate a reason for refusal.
26. With regards to the level of consultation, letters were sent to those residents who live in close proximity to the premises and whom could be directly affected by the proposal. It is therefore considered that sufficient consultation has been carried out.
27. With regards to drainage, the facility will utilise the existing drainage system and a condition is required for the provision of a fat/grease trap ensuring that the existing drainage network is not polluted with fat and oil and prevent flooding/drainage issues.

CONCLUSION

28. In view of the above, whilst it is acknowledged that the proposed development is not strictly in accordance with saved policy S14, it does accord with the wider aims of the policy in terms of being adjacent to a use with associated activity. Provided that any use and activity associated with the takeaway do not extend beyond that of the retail premise it is considered that its associated impacts would not significantly worsen the existing impacts on residential amenity. The scheme is also not considered to have an adverse impact on the character of the area or highway safety and the proposal will also bring into beneficial use a vacant building.
29. It is considered therefore that the proposal constitutes sustainable development which will provide economic and social benefits and by the imposition of conditions will protect the environment which should be attributed significant weight as the scheme would not result in a significant adverse impact on the amenity of existing and future occupiers of the surrounding neighbouring properties in terms of noise disturbance. The proposal is therefore considered to satisfy the provisions of the National Planning Policy Framework and be in accordance with the Development Plan when taken as a whole. It is recommended that planning permission be granted with conditions for the reasons specified above.

Director of Economic Growth and Development Services
Contact Officer Mr Simon Grundy Telephone No 01642 528550

WARD AND WARD COUNCILLORS

Ward Norton North
Ward Councillor(s) Councillor S I Nelson and Mrs K. F. Nelson

IMPLICATIONS

Financial Implications:

Section 143 of the Localism Act has been taken into consideration and there are no known financial considerations/implications at this time.

Environmental Implications:

The proposal relates to a hot food takeaway which will not have any significant visual impacts. Matters relating to the impacts on residential amenity including noise disturbance and odour

nuisance and highway safety have been considered and addressed within the report, although they are viewed as having a very limited impact.

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

Stockton on Tees Local Plan Adopted 1997

Alteration Number 1 to the Adopted Local Plan – 2006

Core Strategy – 2010

Emerging Regeneration and Environment Local Plan – Publication February 2015.