

DELEGATED

**AGENDA NO
PLANNING COMMITTEE
7 JUNE 2023
REPORT OF DIRECTOR OF FINANCE,
DEVELOPMENT AND BUSINESS SERVICES**

21/1270/RET

16-16A Leven Road, Norton, Stockton-on-Tees

Retrospective application for change of use to café/hot food takeaway to include the installation of a flue and associated abatement system.

Expiry Date 9 June 2023

SUMMARY

The application site is an end of terrace commercial unit, 16-16A Leven Road, Norton which is located to the east of Norton High Street. The premises as live within both the boundaries of Norton Conservation Area and District Centre.

Planning permission is sought retrospectively for the change of use of the property to a cafe/hot food takeaway to include the installation of a flue, following an enforcement complaint and investigation.

During the course of the application, the applicant and agent have worked with Planning and Environmental Health Officers to agree to a satisfactory odour abatement system, which has recently been installed at the site.

The application is referred to planning committee as six letters of objection have been received meaning it falls outside of officer's scheme of delegation.

The application site is situated on the western edge of Norton District it is considered that the proposed change of use would not lead to a harmful overconcentration of non-retail units and consequently would not undermine the overall vitality or viability of the centre.

The external works to the building therefore revolve around the addition of the associated flue which following concerns over its appearance, the applicant has changed so it lays horizontally across the roof of the building and it is no longer visible from Leven Road and only a small element is visible from the Fox Almshouses.

The proposed unit will be created from an existing single storey commercial premise and a degree of activity already occurs within the immediate locality. A flue is proposed to be positioned to the rear of the building. The applicant has submitted details of the proposed flue, including noise, odour mitigation and servicing and the Council's Environmental Health Unit have been involved in discussions with the applicant to secure satisfactory proposals.

For those reasons detailed within the report, the proposal is therefore recommended for approval subject to conditions.

RECOMMENDATION

That planning application 21/1270/RET be approved subject to the following conditions and informatives;

Approved Plans

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

Plan Reference Number	Date Received
TPS001A	10 October 2022
TPS002A	10 October 2022

Reason: To define the consent.

Operating Hours

- 02 The hereby approved hot food takeaway use (sui generis) shall not be open to customers outside the hours of 09:00 - 22:00 Monday to Sunday.

Reason: In the interests of the amenity of neighbouring residential occupiers.

Service Deliveries to the Premise

- 03 No deliveries or associated service vehicles shall serve or visit the Hot Food Takeaway outside of the hours of 07:00 - 19:00 Monday to Sunday.

Reason: To prevent noise and disturbance in the interests of the amenity of the

Extraction System Specification

- 04 The extraction system hereby approved shall be maintained in accordance with the submitted and approved extraction specification details as shown on drawing TPS001A (10 October 2022) and including the carbon filtration box with pre-filtration and twin carbon filters. The extraction system and carbon filtration box shall be operated and maintained in strict accordance with the submitted service agreement (J&T Ventilation Services, dated 1st March 2023) for the lifetime of the development.,

Reason: In order to control of odours management, in the interest of the amenity of the surrounding area.

Paint colour of odour abatement system

- 05 Within one month of the date of this permission, the rear bend (adjacent to the Fox Almshouses) of the hereby approved odour abatement system (as indicated on plan TPS001A, 10 October 2022) shall be painted black and this paint colour shall be retained and maintained for the lifetime of the development.

Reason; In the interests of the visual amenity of the conservation area and adjacent listed buildings The Fox Almshouses.

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 gaining additional information required to assess the scheme and by the identification and imposition of appropriate planning conditions.

BACKGROUND

1. The planning application was submitted following a planning enforcement investigation.

SITE AND SURROUNDINGS

2. The application site is an end of terrace commercial unit, 16-16A Leven Road, Norton which is located to the east of Norton High Street.
3. To the east is 14 Leven Road which is currently in use as a newsagents. To the north are the grade II listed Fox Almshouses, whilst located to the south and west are the residential properties of Leven Road.
4. The premises as live within both the boundaries of Norton Conservation Area and District Centre.

PROPOSAL

5. Planning permission is sought retrospectively for the change of use of the property to a cafe/hot food takeaway to include the installation of a flue.
6. During the course of the application, the applicant and agent have worked with Planning and Environmental Health Officers to agree to a satisfactory odour abatement system, which has recently been installed at the site.

CONSULTATIONS

7. The following consultees were notified and the associated comments were received (in summary);

Environmental Health Unit - I have checked the documentation provided, including the submitted Noise Report (16/12/2021, Ref 6991RD) which was requested from the applicant to assess the level of noise from the flue and air conditioning unit that has been installed on the roof of the premises.

I am satisfied that the recommendations in the report will ensure there is "No Observable Effect" upon the nearest residential receptors as a result of noise from the units. I would have no objection to approval of the application on noise grounds subject to confirmation by the applicant of the installed measures in the report.

The odour abatement measures that have been installed are suitable for high odour premises, and includes flue and extract canopy, grease baffle filters and carbon filtration.

Local Ward Councillors Nelson and Evans - These are the joint comments of Councillors Steve Nelson and Lisa Evans. We have had complaints about parking issues residents inform us have arisen since the opening of the takeaway. We have asked the Council's Enforcement Service to monitor this location via both officer visits and adjacent CCTV. We would ask that any identified parking/traffic related issues are considered as part of this application. We have also had complaints from residents on the Almshouses at the rear of the property about the flue that has been installed there. These complaints relate to the visual impact of the flue, smells and noise. We note that the application includes a metre high fence to the rear which we assume is designed to hide the flue. If so we would ask officers to ensure that any such fence is in keeping with the location and does not merely replace one visual eyesore with another. Also this would not appear to address the issues of smell and noise which residents inform us causes them to have to close their doors and windows even on hot days. We have made

Environmental Health aware of these issues and they are currently investigating residents complaints and will obviously feed their findings and recommendations into the decision making process as statutory consultees. We understand the building falls just within the boundary of the conservation area and if so would ask the relevant Heritage Officer to ensure the works are acceptable having regard to that. Finally this may be a semantical point but the application refers to the establishment being a café when in fact it seems to be operating solely as a takeaway "

Highways Transport & Design Manager - no objections to this application.

Highways Comments

There are no highway objections to the proposed retrospective application.

Landscape & Visual Comments

There are no landscape and visual objections to the proposed retrospective application.

PUBLICITY

8. Neighbours properties were notified alongside wider publicity in the form of a site notice and press advert and the following comments were received (in summary);

Mr and Mrs D A Daly, 14 Fox Alms Houses High Street – The unit emits cooking smells which is at times overpowering and already experience problems from the Highland Laddie's extraction system which is a few yards away. Concerns are also expressed with regards to additional flues and extraction units which have been erected at other premises on Leven Road.

The Grade II listed building should be protected from these intrusions

Mrs Siani, 7 Fox Alms Houses Norton – Objects to the flue installed on the flat roof opposite and is concerned over potential health implications. The flues are considered to be distressing and ugly given the properties are listed buildings.

Mr David Durham, 18 Leven Road Norton, - The noise and smell coming from the takeaway is constant and very irritating, I can hear it in every room of my house even above my television and cannot use my garden because of the constant noise and smell, the change to the flue seems to have made the noise even worse.

Fred Dunn, 13 Leven Road Norton – concerned that if people sit on the roof they will be able to see into the properties opposite also if the flue is extended it will cause the grease to spread further. The pavement outside of the shop is already quite bad.

J Hill, 12 Fox Almshouses Norton -

Whilst the flue has been taken down, it has not been removed and lays across the roof, it is now even worse in terms of noise and smell. The noise starts at around 2.15pm and sometimes goes on until midnight even though it closes at 10pm. Is concerned over the implications for the listed buildings as the alterations have implications for the surroundings.

S And P Stead, 11 Fox Almshouses Norton –

The flue affects the listed buildings and is directly in front of the property. The flue is noisy and smells, which affects the bedrooms which are located at the front of the Almshouses, which operates from 2.30pm to midnight. The associated impacts affect the ability to sit out and enjoy the garden.

Whilst the flue has been changed, it is still visible and cooking smells are still present.

PLANNING POLICY

9. 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 Stockton on Tees Borough Council Local Plan 2019.
10. Section 143 of the Localism Act came into force on the 15 January 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 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

11. The purpose of the planning system is to contribute to the achievement of sustainable development. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. These are economic social and environmental objectives.
12. So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development (paragraph 11) which for decision making means;
 - approving development proposals that accord with an up-to-date development plan without delay; or
 - where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. 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.

Para 81. Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can be a global leader in driving innovation, and in areas with high levels of productivity, which should be able to capitalise on their performance and potential.

Para 130. Planning policies and decisions should ensure that developments:

- (a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- (b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- (c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- (d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

(e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and

(f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Local Planning Policy

13. The following planning policies are considered to be relevant to the consideration of this application

Policy SD1 - Presumption in favour of Sustainable Development

1. In accordance with the Government's National Planning Policy Framework (NPPF), when the Council considers development proposals it will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. It will always work proactively with applicants jointly to find solutions which mean that proposals for sustainable development can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.

2. Planning applications that accord with the policies in this Local Plan (and, where relevant, with policies in neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise.

3. Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise - taking into account whether:

- Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or,
- Specific policies in that Framework indicate that development should be restricted.

Policy SD4 - Economic Growth Strategy

1. Economic development needs will be directed to appropriate locations within the Borough to ensure the delivery of sustainable economic growth.

Policy SD5 - Natural, Built and Historic Environment

To ensure the conservation and enhancement of the environment alongside meeting the challenge of climate change the Council will:

1. Conserve and enhance the natural, built and historic environment through a variety of methods including:

a. Ensuring that development proposals adhere to the sustainable design principles identified within

Policy SD8 – Sustainable Design Principles

1. The Council will seek new development to be designed to the highest possible standard, taking into consideration the context of the surrounding area and the need to respond positively to the:

a. Quality, character and sensitivity of the surrounding public realm, heritage assets, and nearby buildings, in particular at prominent junctions, main roads and town centre gateways;

b. Landscape character of the area, including the contribution made by existing trees and landscaping;

c. Need to protect and enhance ecological and green infrastructure networks and assets;

d. Need to ensure that new development is appropriately laid out to ensure adequate separation between buildings and an attractive environment;

e. Privacy and amenity of all existing and future occupants of land and buildings;

f. Existing transport network and the need to provide safe and satisfactory access and parking for all modes of transport;

- g. Need to reinforce local distinctiveness and provide high quality and inclusive design solutions, and
 - h. Need for all development to be designed inclusively to ensure that buildings and spaces are accessible for all, including people with disabilities.
2. New development should contribute positively to making places better for people. They should be inclusive and establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit.
 3. All proposals will be designed with public safety and the desire to reduce crime in mind, incorporating, where appropriate, advice from the Health and Safety Executive, Secured by Design, or any other appropriate design standards.
 4. New development will seek provision of adequate waste recycling, storage and collection facilities, which are appropriately sited and designed.
 5. New commercial development will be expected to provide appropriately designed signage and shop fronts.

Economic Growth Policy 2 (EG2) - Managing Centres

Maintaining Vitality & Viability

1. The Council will seek to maintain and enhance the vitality and viability of all centres in the Town Centre Hierarchy, as defined in Policy SD4 and represented on the Policies Map. Proposals for the change of use, or redevelopment of premises, away from retail (Use Class A1) will only be supported where it can be demonstrated that:
 - a. The proposal will contribute to the centre's vitality and viability and does not detrimentally impact on the retail function of the centre; and
 - b. The proposal does not result in the unjustified loss of a key retail unit which due to its size, location or other characteristic is an important component of the retail function of the centre; and
 - c. The proposal does not result in an over-concentration of non-retail or evening economy uses to the detriment of the vitality and viability of the centre; and
 - d. Proportionate evidence has been provided to demonstrate that the premises are no longer required for retail purposes.
2. In addition to the above, within town, district and local centres the Council will support proposals for food and drink (Use Classes A3, A4 and A5) and other evening economy uses providing the activities in the area do not result in a harmful over-concentration of that use, either as a proportion of the centre overall or as a cluster within the centre.

Stockton Town Centre

3. The Primary Shopping Area, as defined on the Policies Map, will continue to be the main town centre shopping location in the Borough. The Council will aim to retain and enhance the retail function of the town centre whilst seeking a reduction in the number of vacant ground floor commercial units. In addition to the criteria above, the vitality and viability of the Primary Shopping Area will be maintained and enhanced by:
 - a. Directing proposals for hot-food takeaways (Use Class A5) and uses that operate principally outside daytime hours away from the Stockton Primary Shopping Frontage, with significant clusters of these uses resisted elsewhere in the town centre; and
 - b. Resisting development proposals that would result in a harmful over-concentration of nonretail uses to the detriment of the vitality and viability of the Primary Shopping Area; and
 - c. Resisting proposals for ground floor residential development within the Primary Shopping Area; and
 - d. In order to consolidate the retail offer of the centre, encouraging proposals which reduce the proportion of retail uses (Use Class A1) in the wider town centre, outside the Stockton Primary Shopping Area, that provide opportunities for a wider variety of town centre uses, including offices (Use Class B1), hotels (Use Class C1) and assembly and leisure (Use Class D2).
4. The Council will support proposals for food and drink uses (A3, A4, A5 Use Class) and other

evening economy uses outside the Stockton Primary Shopping Frontage, providing the activities do not result in a harmful over-concentration of that use in that area, either as a proportion of the centre overall or as a cluster within the centre.

5. Proposals to reconfigure and modernise commercial units throughout the town centre, whilst protecting and enhancing the historic character of the area, will be encouraged.

Economic Growth Policy 3 (EG3) - Protecting Centres

1. Subject to the scale and catchment of the proposal, retail (A1 use class) development will be directed to suitable and available sites and premises in defined centres, as identified on the Policies Maps, in the following sequence:

- a. Stockton Town Centre Primary Shopping Area; then,
- b. Sites within the boundaries of Stockton Town Centre; then,
- c. Sites within the ground floor shopping frontages of the District Centres; then,
- d. Sites within the boundaries of the District Centres; then,
- e. Sites on the edge of Stockton Town Centre which have the opportunity to connect to the defined

Primary Shopping Area; then,

f. Sites on the edge of the District Centres which have the opportunity to connect to the District Centre's main shopping areas or frontages; then,

g. Sites within the Local Centres; and finally,

h. Sustainable out-of-centre locations within the limits to development.

2. Other main town centre uses will be directed to suitable and available sites and premises in the following locations, subject to the scale and catchment of the proposal:

a. Town and District Centres, and for office development only, Principal Office Locations; then,

b. Sites on the edge of the Town and District Centres, which are well served by public transport and have a high likelihood of forming links with the centre; then,

c. Within the boundaries of the Local Centres; then,

d. Sustainable out-of-centre locations within the limits to development.

Historic Environment Policy 2 (HE2) - Conserving and Enhancing Stockton's Heritage Assets

1. In order to promote and enhance local distinctiveness, the Council will support proposals which positively respond to and enhance heritage assets.

3. Development proposals should conserve and enhance heritage assets, including their setting, in a manner appropriate to their significance. Where development will lead to harm to or loss of significance of a designated or non-designated heritage asset the proposal will be considered in accordance with Policy SD8, other relevant Development Plan policies and prevailing national planning policy.

6. The following are designated heritage assets:

c. Conservation Areas - Billingham Green; Bute Street; Cowpen Bewley; Eaglescliffe with Preston; Eggescliffe, Hartburn; Norton; Stockton Town Centre; Thornaby Green; Wolviston and Yarm

d. Listed Buildings

MATERIAL PLANNING CONSIDERATIONS

14. The main considerations of this application are the principle of development, the impact on the street scene, heritage assets, the impact on the amenity of neighbouring occupiers and highway safety.

Principle of development

15. The application site is located within the limits to development and is also located with Norton District Centre and conservation area. The National Planning Policy Framework states hot food takeaways are considered to be a main town centre use and should be directed to these locations in the first instance.

16. Local Plan policies EG2 and EG3 seek to manage and protect the defined retail centres by maintaining and enhancing the vitality and viability of all centres within the Boroughs Hierarchy, with EG2 seeking amongst others to ensure proposals for a change of use away from retail use, are only supported where the retail function of the centre is not undermined and there would not be an over-concentration of non-retail or evening economy uses to the detriment of the vitality and viability of the centre. Policy EG3 also directs main town centre uses within the hierarchy of town and district centres.
17. The application site is situated on the western edge of Norton District Centre and is a relatively small commercial premises which is situated at the end of a range of commercial premise which includes a range of different uses. Considering both the Leven Road element of Norton district centre and the wider centre as a whole, it is considered that the proposed change of use would not lead to a harmful overconcentration of non-retail units and consequently would not undermine the overall vitality or viability of the centre.
18. Overall it is considered that the proposals accord with the aims of policies EG2 and EG3 and the principle of development is considered acceptable, subject to those material considerations as indicated below.

Impact on the Character of the Surrounding Area

19. Planning policy SD8 states the Council will seek new development to be designed to the highest possible standard, taking into consideration the context of the surrounding area and the need to respond positively to the character and sensitivity of the surrounding buildings.
20. Local Plan policy HE2 relates directly to those applications which affect heritage assets, of which Norton conservation is one. It seeks to promote and enhance local distinctiveness and conserve and enhance heritage assets.
21. The external works to the building revolve around the addition of the associated flue. Originally the flue was a vertical 'jet' cowl which protruded above the buildings parapet and was visible to both Leven Road and the Fox Almshouses to the rear and was considered to adversely affect those two heritage assets.
22. However, following those concerns over the external appearance and impacts on the setting of the adjacent listed buildings and conservation area, the applicant changed the flue design so it lays horizontally across the roof of the building. This has minimised its visual impacts so that it is no longer visible from Leven Road and only a small element is visible from the Fox Almshouses. Subject to the bend of the flue being painted black, it is considered that the visual appearance of the flue is acceptable and a planning condition is recommended accordingly.
23. Overall and in view of the above considerations, the proposals would not cause significant harm to the character of the surrounding Conservation Area and nor would it adversely affect the overall character of the street scene, subject to those conditions identified in the report above controlling the nature and colour of the flue. The proposal therefore accords with the provisions of Local Plan Policy SD8 and HE2.

Setting of Listed Building

24. The Fox Almshouses are a series of terraced bungalows which have a landscaped frontage and face towards the rear of the application site. The proposed flue would be situated approximately 19 metres from the frontage of the listed buildings.
25. As detailed in the report above, the original flue has been changed as a result of concerns over the associated impacts on the setting of the Fox Almshouses, consequently, the applicant changed the flue design minimising its external appearance and the impacts on the setting of the adjacent listed buildings

26. As above, subject to the flue being painted black, it is considered that the impacts on the setting of the Fox Almshouses would be limited and not adversely affect the setting of those listed buildings and the proposals accords with Policy HE2.

Impact on the amenity of neighbouring occupiers

27. Planning Policy SD8 seeks to provide sufficient levels of amenity for all existing and future occupants of land and buildings.
28. The proposed unit will be created from an existing single storey commercial premise and it is well established that 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. As a degree of activity already occurs within the immediate locality, the proposals are not considered to have a significant impact on those levels of activity to warrant a refusal of the application.
29. It is noted that a number of residents have raised concerns over odour and noise from the extraction system during the course of the application. As above, amendments to the flue extract system have been made to address visual concerns and likewise Officers have fully considered the implications for both noise and odour.
30. As part of the proposed development, a flue is proposed to be positioned to the rear of the building. The applicant has submitted details of the proposed flue, including noise, odour mitigation and servicing arrangements and the Council's Environmental Health Unit have been involved in discussions with the applicant to secure satisfactory proposals. They have considered the relationship between the proposed commercial unit and the surrounding properties and raise no objections. However, planning conditions are recommended with regards to opening hours, delivery hours and the odour abatement system.
31. Therefore on balance and subject to the recommended conditions, it is considered that the proposed change of use would not impact upon the amenity of any surrounding occupiers by way of noise disturbance or odour.

Impact on highway safety

32. The Highways Transport & Design Manager has considered the information forming part of the application and raises no objections to this application. Additionally, being located in close proximity to Norton Centre, there are places for public parking as well as access to public transport. Consequently, it is considered that the proposal would not adversely impact upon highway safety.

Residual Matters;

33. Concerns expressed with regards to additional flues and extraction units which have been erected at other premises on Leven Road are noted and have been picked up through the planning enforcement process. Such matters have no bearing on the outcome of this application which has been amended to make it acceptable in planning terms.
34. Matters relating to grease on the pavement along Leven Road are noted and where picked up directly between Environmental Health and the applicant, no new recent complaints on this issue have been raised via the planning application.
35. For clarity, the roof of the premise is not to be used for additional seating.

CONCLUSION

36. In view of the above, the proposed development subject to those conditions recommended within the report, are considered to adequately mitigate the visual impacts on the character of the area and setting of the listed buildings. Additional measures to reduce odour have also been installed and these are all controlled along with the maintenance/servicing arrangements, ensuring satisfactory levels of residential amenity for surrounding residents.

37. The proposal is therefore recommended for approval subject to those considerations identified in the report above.

Director of Finance, Development and Business Services
Contact Officer Simon Grundy Telephone No 01642 528550

WARD AND WARD COUNCILLORS

Ward	Norton North (Pre May 2023)
Ward Councillor	Councillor S I Nelson LLB(Hons) BA (Hons)
Ward Councillor	Councillor Lisa Evans

IMPLICATIONS

Financial Implications:

No known implications

Environmental Implications:

The implications of the application in respect of visual impact, odour and noise have been considered and as set out within the report, the application is considered to be satisfactory.

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 2019