
APPLICATION DETAILS

Application No:	18/0294/COU
Location:	123 Victoria Road Middlesbrough TS1 3HX
Proposal:	Change of use from (A1) Retail to (A5) Hot Food takeaway and installation of ducting
Applicant: Company Name:	Mr S Salm
Ward:	Central
Recommendation:	Approve with Conditions

SUMMARY

Planning permission is sought for the change of use of 123 Victoria Road from a retail use (A1 use class) to Hot Food Takeaway (A5 use class). The proposal will include internal alterations to provide a service area, preparation area and store room/w.c on the ground floor with an external flue to be placed on the rear elevation.

Following a consultation exercise there have been five objections received which are made up of 3 Councillor and 2 neighbour comments. In summary the objections relate to the number of takeaways in the area with no diversity of shops, concerns on public health, highways safety issues, litter, anti-social behaviour and potential fire and safety issues for the first floor residents.

The development is considered to be an appropriate use for the unit and is of an appropriate design which will not impact on the amenities of the neighbouring properties, the character and appearance of the area and highway safety. The development is considered to be in accordance with the requirements of relevant guidance and policies DC1, CS4, CS5 and CS13 and the Urban Design Supplementary Planning Document.

SITE AND SURROUNDINGS AND PROPOSED WORKS

The application site is an end of terraced property at 123 Victoria Road. The site is a corner property at the junction of Victoria Road and Egerton Street. The properties within the area are predominantly residential with several of the ground floors of the corner properties having been converted into commercial premises. Retail units currently occupy the three remaining corner units at the junction of Victoria Road and Egerton Street. To the rear of the property is 27 Egerton Road. The upper floor of the property is a residential flat which has a separate access from Egerton Street.

The proposal is for the change of use of the ground floor of the property from a retail use (A1) to a Hot food takeaway (A5). Externally there will be no alterations to the frontage of the property with an external flue to be located on the rear elevation. Internally the alterations will include the installation of a service area, kitchen area and store/w.c.

The hours of operation for the use will be between 11am and 9pm Monday to Sunday.

PLANNING HISTORY

M/FP/1225/99/P – Internal alterations to extend shopping and storage areas, refused November 1999

M/FP/0014/00/P – Change of use of No 123 as shop with storage over and No 125 as offices with storage, refused February 2000

PLANNING POLICY

In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, Local Planning Authorities must determine applications for planning permission in accordance with the Development Plan for the area, unless material considerations indicate otherwise. Section 143 of the Localism Act requires the Local Planning Authority to take local finance considerations into account. Section 70(2) of the Town and Country Planning Act 1990 (as amended) requires Local Planning Authorities, in dealing with an application for planning permission, to have regard to:

- The provisions of the Development Plan, so far as material to the application
- Any local finance considerations, so far as material to the application, and
- Any other material considerations.

Middlesbrough Local Plan

The following documents comprise the *Middlesbrough Local Plan*, which is the Development Plan for Middlesbrough:

- Housing Local Plan (2014)
- Core Strategy DPD (2008, policies which have not been superseded/deleted only)
- Regeneration DPD (2009, policies which have not been superseded/deleted only)
- Tees Valley Joint Minerals and Waste Core Strategy DPD (2011)
- Tees Valley Joint Minerals and Waste Policies & Sites DPD (2011)
- Middlesbrough Local Plan (1999, Saved Policies only) and
- Marton West Neighbourhood Plan (2016, applicable in Marton West Ward only).

In addition the Council has produced its Middlesbrough Local Plan Publication Draft 2018. Whilst not yet adopted is a material consideration in the assessment of planning applications.

National Planning Policy Framework

National planning guidance, which is a material planning consideration, is largely detailed within the *National Planning Policy Framework* (NPPF). At the heart of the NPPF is a presumption in favour of sustainable development (paragraph 11). The NPPF defines the role of planning in achieving economically, socially and environmentally sustainable development although recognises that they are not criteria against which every application can or should be judged and highlights the need for local circumstances to be taken into account to reflect the character, needs and opportunities of each area.

For decision making, the NPPF advises that local planning authorities should approach decisions on proposed development in a positive and creative way, working pro-actively with applicants to secure developments that will improve the economic, social and environmental conditions of the area and that at every level should seek to approve applications for sustainable development (paragraph 38). The NPPF gives further overarching guidance in relation to:

- The delivery of housing,
- Supporting economic growth,
- Ensuring the vitality of town centres,
- Promoting healthy and safe communities,
- Promoting sustainable transport,
- Supporting the expansion of electronic communications networks,
- Making effective use of land,
- Achieving well designed buildings and places,
- Protecting the essential characteristics of Green Belt land
- Dealing with climate change and flooding, and supporting the transition to a low carbon future,
- Conserving and enhancing the natural and historic environment, and
- Facilitating the sustainable use of minerals.

The planning policies and key areas of guidance that are relevant to the consideration of the application are:

CS4 - Sustainable Development

CS5 - Design

DC1 - General Development

CS13 - Town Centres etc Strategy

UDSPD - Urban Design Supplementary Planning Document

The detailed policy context and guidance for each policy is viewable within the relevant Local Plan documents, which can be accessed at the following web address.
<https://www.middlesbrough.gov.uk/planning-and-housing/planning/planning-policy>

CONSULTATION AND PUBLICITY RESPONSES

There have been three Councillor objections and two neighbour objections from 158 Victoria Road and a resident on Egerton Street.

In summary the objection comments relate to the following:-

- Number of hot food takeaways in the area
- Public health issues
- Highway safety issues
- Litter
- Anti-social behaviour
- Potential fire and safety issues to first floor

MBC Environmental Protection Officer

No objections subject to conditions requiring a noise assessment for plant and machinery noise and to the first floor residential accommodation, fume/ ventilation extraction details, hours of use and delivery and collection.

MBC Planning Policy

The above and previous sequential assessments are acceptable, they have provided some, albeit weak, justification for the location of the need (serving the Kurdish community), and likewise have provided justification for most of the vacant units in the vicinity.

MBC Waste Policy

No comments

MBC Highway Officer

No highway objections

158 Victoria Road

I would like to voice my concerns about the council granting another premises a hot food license at 123 Victoria Road, there are already a selection off hot food places on the road causing crowds off people lingering around the road at all times off the night making residences uncomfortable already. Please reject this application as me and my neighbours all against this business opening

Egerton Street resident

I also add that there is two floors of occupied flats above the premises, a fire and a noise from fans issue.

Councillor Linda Lewis

I have had residents contact me regarding the potential for another Takeaway along Victoria Road. There are far too many in this area and residents do not have diversity when it comes to shops in this part of Central ward. For this reason I would like to object.

Councillor Matthew Storey

I would like to object to this application on the same basis as Cllr Lewis. Central Ward has one of the worst records in terms of Public Health outcomes in the town and it is our job as elected

representatives to do all we can to turn that around. Another takeaway is actively detrimental to that effort.

Councillor Zafar Uddin

The residents are concerned about the state of the area, they feel that there are already so many takeaways, restaurants and other food outlets as a result the residents having to face difficulties with drivers are driving up and down the roads, often driving through no entry, fly tipping, car parking problem and anti-social behaviours on the increased. Residents feel that they don't need any more takeaways and restaurants in the area, in support of the local residents I would like to object to this application along with two of my ward colleagues Cllrs Lewis and Storey as they have highlighted some of the issues which are cause for concerns for our residents. Therefore I would be pleased if you could kindly take into consideration our residents' views and wishes, and safeguard their wellbeing.

Public Responses

Number of original neighbour consultations	49
Total numbers of comments received	5
Total number of objections	5
Total number of support	0
Total number of representations	0

PLANNING CONSIDERATION AND ASSESSMENT

1. The main considerations with this proposal are the principle of the development, the impact on the character and appearance of the street scene, the impact on the privacy and amenity of the neighbouring properties and the impact on highway safety.

Principle of the Development

2. The application site is located within an area that has no specific allocation within the Middlesbrough Local Plan (adopted November 2014). Notwithstanding this, Core Strategy Policies CS4 (Sustainable Development), CS5 (Design) and CS13 (Town District, Local and Neighbourhood Centres) and the emerging local plan are relevant considerations.
3. Core Strategy CS4 states that the proposal will be required to contribute to sustainable development, making the most efficient use of land and being located so that services are accessible on foot, bicycle and public transport.
4. National Planning Policy requires town centre uses to be located in town centre / local centre locations. Further to this, Core Strategy Policy CS13 aims to protect and enhance the identified hierarchy of the vital and viable town centres. Development within the town centre will only be considered acceptable providing it meets local needs, is of an appropriate scale and will not adversely impact on the vitality and viability of other nearby centres.
5. The application site is outside of the defined town centre, district centres and local centres but is within walking distance of the town centre and the main bus route links along Borough Road and Linthorpe Road so is considered to be in a sustainable location.

6. The hot food takeaway use is defined as a main town centre use although the site is located outside the town centre. In such circumstances, the applicant needs to demonstrate that there are no sequentially preferable sites within the town / local or other centres where the proposed use should first be directed towards. During the course of the application a sequential assessment was requested from the applicant to provide adequate supporting evidence. The applicant has provided a sequential test providing justification for the need for the use in this location, suggesting it will be a Kurdish Takeaway and will provide for the local community. The submitted information provides further justification as to why existing vacant premises in the area are not considered suitable. The sequential assessment is considered to not be comprehensive and therefore relatively limited in assessing alternative locations for this proposed use. Notwithstanding this, consideration is given to the existing use of the property already being a town centre use (retail) in an out of centre location. The Council's Policy officers have considered the sequential test information and consider the assessments to be acceptable. Further to these matters, the proposal is one of several commercial properties within this immediate vicinity which would provide local services. In view of all of these matters, the proposal is considered to be appropriate in this location. In addition, it is recognised that the proposed use will bring a vacant premises back into use and the opening times of between 11 am and 9pm will enable an active frontage during the daytime which will assist in supporting the vitality and viability of the area.
7. Objection comments have been received regarding the number of hot food takeaways in the area. With the application site being located outside of the town centre and primary shop frontage areas there is no policy guidance relating to the number or percentage of hot food takeaways which can be located in this area, relevant policies simply guide such uses to town, district, local or neighbourhood centres prior to being considered in out of centre locations.
8. The Council has an emerging Local Plan which was published in October 2018. The consultation period has expired with the submission date for review of the plan being June 2019. Although not formally adopted, limited weight can be given to the policies at this stage. The relevant policies within the emerging Local Plan are EG6 Town, District and Local Centres and ECG7 Hot Food takeaways.
9. Emerging Plan Policy ECG6 - Town, District and Local Centres aims to safeguard the hierarchy of the centres whilst ensuring the proportion of A1 retail uses is retained, particularly within the identified primary shop frontage areas. This application site is not located within the town centre, district centre or local centre so the loss of the retail unit would not be contrary to emerging policy ECG6.
10. Emerging Policy ECG7 - Hot Food Takeaways sets out that Hot food takeaways should be located within defined centres with the number of Hot Food Takeaway uses being limited to not exceed a total of 10% of the total uses within the centre, not result in more than 2 adjacent Hot Food takeaway units and not within a designated shopping frontage. In addition, consideration should be given as to the proximity of the Hot Food Takeaway use to a school and submissions of the application should be supported with a Health Impact Assessment.
11. The applicant has not submitted a Health Impact Assessment in support of the application with the application having been submitted prior to the emerging local plan having been

published. Abingdon Primary School is located a minimum of 300 metres from the property. However, this criteria forms part of the emerging Local Plan Policy ECG7 and the requirement can only be given limited weight at this point.

12. Overall, the proposal change of use is considered to be acceptable and adequately accords with Policies CS4, CS5, CS13 and emerging Local Plan policies ECG6 and ECG7.

Privacy and Amenity

13. Core Strategy Policy DC1 (General Development) comments that all new development should consider the effect on the occupiers of nearby properties both during and after completion.
14. The proposal is for the change of use of a commercial retail unit to a hot food takeaway use with the hours of opening requested as being between 11am and 9 pm Monday to Sunday. The proposal includes the installation of a fume extraction flue on the rear elevation. There are residential properties surrounding the site with a residential flat on the upper floors. The Environmental Health Officers have commented that they have no objections subject to conditions regarding a noise report and noise assessment, ventilation / extraction details and the limitation of the hours of operation and delivery hours.
15. Objections comments have been received in relation to potential litter. The proposal includes the internal storage of two waste bins at the rear of the premises, the Council's Waste Officer has no objections to the proposal. Whilst litter may be generated away from the site by patrons of the premises, this is a social aspect which is not within the control of the applicant or the proposed use and as such, is not considered to be material to the considerations of this application.
16. Concerns have been raised regarding anti-social behaviour from the proposed change of use. Anti-social behaviour is not normally considered a material planning consideration, although disturbance associated with the operation of the unit and the coming and going of customers is. It is considered that subject to the limitation on the opening hours to 9pm, the proposal would not have a significant impact on surrounding residential amenity and privacy and would not have any significant impacts in terms of comings and goings of customers, beyond that of a retail use were that use to resume operation.
17. Comments have been received regarding the potential fire and related safety issues to the first floor residential accommodation through the change of use. These comments are noted but are not a material planning consideration which can be considered.
18. Overall, the proposed change of use is not considered to have a detrimental impact on the privacy and amenity of the neighbouring premises and accords with the guidance set out in Core Strategy Policy DC1.

Character and Appearance

19. Core Strategy Policy CS5 (Design) comments that the visual appearance and layout of new development and its relationship with the surrounding area should be of a high quality in terms of scale, design and materials.
20. The properties within the street are traditional terraced properties with bay window detailing at ground and first floor with ground floor commercial units located on the properties sited on the corner of the highway junctions.
21. The application site is an end of terraced property located at the junction of Victoria Road and Egerton Street. The frontage of the property has a traditional shop front with a central entrance door and timber fascia facing towards Victoria Road with a separate side access door to the first floor residential flat from Egerton Road. There will be no alterations to the external frontage of the building with an external flue to the rear of the property, affixed alongside the existing chimney. On balance, although the flue will be visible from Egerton Street the location and scale of the flue is in this instance considered to be acceptable and is not considered to have a detrimental impact on the existing character and appearance of the street scene.
22. The proposal is considered to accord with the guidance set out on Policy DC1 and is considered not to have a detrimental impact on the character and appearance of the street scene.

Highway Safety

23. The property is currently a retail unit which has no incurtilage car parking provision with on-street car parking to the front along Victoria Road and to the side along Egerton Street. Given the existing retail use at the property the proposed use as a hot food takeaway is not considered to generate any additional car parking issues. The Highway Officers have no highway objections to the proposal.

RECOMMENDATIONS AND CONDITIONS

Approve with Conditions

1. Time Limit

The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.

Reason: The time limit condition is imposed in order to comply with the requirements of Section 91 of the Town and Country Planning Act 1990.

2. Approved Plans

The development hereby approved shall be carried out in complete accordance with the following plans:

- a. Location plan drawing dated 3rd May 2019
- b. Existing montage plan drawing 2018/4/1 dated 3rd May 2019
- c. Proposed Montage plan drawing 2018/4/1A dated 3rd May 2019

Reason: To ensure a satisfactory form of development and for the avoidance of doubt.

3. Noise Assessment

A BS: 4142 noise assessment shall be submitted to and approved in writing by the Local Planning Authority before the use hereby approved commences. The assessment shall identify noise levels at the site along with the noise which will be generated by the proposed use and its impact upon neighbouring premises. The assessment shall identify noise from sources such as deliveries being made and noise from fixed plant and machinery at the development. The assessment should include details of any measures identified to protect neighbouring premises from noise. Any measures identified in the assessment to protect residents from noise generated due to the use of the site shall be implemented on site prior to the use hereby approved being brought into use, and shall be maintained in perpetuity.

Reason; In the interests of the amenity of the neighbouring premises and to accord with Core Strategy Policy DC1.

4. Noise Assessment

Prior to the commencement of the use hereby approved, a noise assessment from a noise consultant detailing the level of attenuation that is created by the existing structure of the building and a scheme detailing the noise levels that residents are likely to be exposed to from the adjoining commercial premises together with a scheme designed to protect these dwellings from any noise transference, shall be submitted to and approved in writing by the Local Authority. The levels required to be met in habitable rooms of the proposed accommodation are those set in BS 8233(2014) measured when the neighbouring commercial business is in use. The approved scheme of noise mitigation shall be implemented prior to the approved use being brought into operation.

Reason: In the interests of the amenity of the neighbouring premises and to accord with Core Strategy Policy DC1.

5. Ventilation and Fume Extraction

Details of a ventilation and fume extraction system suitable for uses within class A5, including a full technical specification by a suitably qualified technical professional person, specifying the position of ventilation fume or flue outlet points and the type of filtration or other fume treatment to be installed and used at the premises shall be submitted to and approved in writing by the local planning authority prior to the commencement of the use hereby approved. The approved scheme of extraction shall then be installed on site prior to the proposed use being brought into operation and thereafter shall be retained in full accordance with the approved details. The ventilation and extraction system referred to in this condition shall be operated and maintained in accordance with the manufacturers recommendations including the frequency of replacement filters.

Reason; In the interests of the amenity of the neighbouring premises and to accord with Core Strategy Policy DC1.

6. Hours of opening

The hours of opening/use shall be restricted to between the hours of 11:00hrs and 21:00hrs Monday to Sunday, unless otherwise agreed in writing with the Local Planning Authority.

Reason: To ensure the amenity of the neighbouring residential premises and to accord with Core Strategy Policy DC1.

7. Delivery/Collection Hours

The deliveries and collections to the premises shall only take place between the hours of 8:00am and 8:00pm Monday to Saturday, and between the hours of 10am and 8pm Sunday.

Reason: To ensure the amenity of the neighbouring residential premises and to accord with Core Strategy Policy DC1.

REASON FOR APPROVAL

This application is satisfactory in that the change of use from a retail unit to an A5 hot food takeaway use accords with the principles of the National Planning Policy Framework (NPPF) and the local policy requirements (Policy DC1, CS4, CS5, CS13 of the Council's Local Development Framework). Where appropriate, the Council has worked with the applicant in a positive and proactive way in line with paragraph 38 of the NPPF (2018).

In particular, the change of use from a retail unit to an A5 hot food takeaway use will not prejudice the character and function of the area and does not significantly affect any landscaping or prevent adequate and safe access to the site. The change of use from an A1 retail unit to an A5 Hot food takeaway unit use will be consistent with the existing uses of this location and it will not be detrimental to any adjoining or surrounding properties. The traffic generated, car parking and noise associated with the change of use will not be of a level likely to result in an unacceptable impact on nearby premises.

The application is therefore considered to be an acceptable form of development, fully in accordance with the relevant policy guidance and there are no material considerations, which would indicate that the development should be refused.

INFORMATIVES

None

Case Officer: Debbie Moody

Committee Date: 7th June 2019

