
APPLICATION DETAILS

Application No:	19/0441/COU
Location:	106 Russell Street Middlesbrough TS1 2AD
Proposal:	Change of use from mixed use, retail with ancillary kitchen on ground floor and sunbed shop on first floor (A1,Sui Generis) to hot food takeaway (A5) with extraction flue/chimney to rear
Applicant:	Mr Terence Agiadis
Agent:	Mr Fahim Farooqui
Ward:	Central
Recommendation:	Approve Conditionally

SUMMARY

Planning permission is sought for the change of use of 106 Russell Street from a retail use with ancillary kitchen with sunbed shop above (A1/sui-generis 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 chimney/flue to be placed on the rear elevation.

Following a consultation exercise there have been four objections received which are made up of three Councillor objections and one from the Elder and Hazel Grove Residents Association. In summary the objections relate to the number of takeaways in the area, concerns on public health, highways safety issues, litter, and anti-social behaviour.

The development is within the town centre boundary and is considered to be an appropriate use for the unit and is of an appropriate design which will not unduly impact on the amenities of the neighbouring properties taking into account the impact of the existing use and general nature of the area. Furthermore, it is considered that the character and appearance of the area and highway safety will not be significantly or adversely affected. 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 located within the Central Sector of the Town Centre Boundary of the Middlesbrough Proposals Map (adopted November 2014). The site is a two storey, end-terraced commercial property located to the western side of Marton Road at the junction with Russell Street.

The application seeks planning approval to change the use to a hot food takeaway (A5) with storage above. The application has been submitted with a supporting document (Health Impact Assessment). The assessment advises how negative impacts have or will be mitigated as follows -.

Noise

Opening hours have been restricted (8am - 9pm Monday to Thursday and 8am - 10pm Friday to Sunday) which will limit the coming and going to the premises which can be controlled by condition. This will limit noise generated in the area as a result of the proposed use operating and therefore limit the impact on residential amenity.

Odour/Air quality

The proposed use includes provision for odour abatement equipment to be installed which is intended to satisfy the Councils Environmental Health Unit to prevent cooking smells and odours from unduly polluting the surrounding area.

Litter

The applicant has indicated that they will install a refuse litter bin outside the premise and will clear up any litter from the premises. Private contractors will collect the main food waste from the premises via the rear alleyway as is presently the case. It is suggested this will reduce the likelihood of vermin and street clutter whilst maintain a more positive environment.

Contaminated land/disposal of oil

Private contractors will arrange delivery supported by odour abatement specification of used cooking oil and dispose of under Licencing permit and conditions to ensure no drainage issues or contamination of existing mains drains.

Anti-social behaviour

The submission indicates that the applicant will not allow gathering of persons at the premises and highlights that the previous mixed use sandwich shop / tanning salon did not result in any record of anti-social behaviour in the past.

Healthy Eating

A menu was provided to illustrate that applicant's assertion that the foods to be sold are not typical unhealthy fast food products but are intended to be Greek food which will be cooked and adhered to strict food hygiene and allergy guidelines.

PLANNING HISTORY

M/FP/0951/13/P Change of use from shop (A1) to tattoo & beauty parlour (sui-generis)
Approve with Conditions
26th November 2013

18/0004/COU Part retrospective change of use from tattoo parlour (sui generis) to protein supplement shop (A1) with single storey extension to rear and tanning salon to first floor.
Approve with Conditions
8th March 2018

19/0186/COU Change of use from mixed use, retail with ancillary kitchen on ground floor and sunbed shop on first floor (A1, Sui Generis) to hot food takeaway (A5) on ground floor and associated storage on first floor

Refuse and enforce

18th June 2019

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
 CS13 - Town Centre's etc Strategy
 DC1 - General Development
 REG20 - Principal Use Sectors
 UDSPD - Urban Design SPD

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

Councillor Storey

The Local Plan has a provision for restricting the number of hot food takeaways and I believe that we have more than enough capacity in terms of takeaway options in the Town Centre. Central Ward has some of the worst public health outcomes in the town and an increase in takeaways will only exacerbate these issues putting further strain on already stretched local public services including the Council.

Councillor Lewis

Central ward has far too many hot food takeaways which cause great distress to nearby residents. Not to mention the late night noise from customers and their cars and also added litter that would ensue. We have elderly residents who live nearby on Russell Street and Elder/Hazel court, they are dreading the premises opening up as a takeaway. Residents from this area have voiced their concerns to me and my fellow Councillors regarding this and we feel that 106 Russell Street isn't suitable for this type of establishment.

Councillor Uddin

I totally agree with my colleagues Cllr Linda Lewis and Cllr Matt Storey that we have in Central Ward too many hot food take-aways, as a result our residents are suffering from Massive difficulties including anti-social behaviours, fly-Tipping, late night noises, traffic and parking Problems, above all they are also facing health problems. Therefore I am objecting to this unwanted development of 106 Russell Street change of use from A-1 to A-5 hot food takeaway

Secretary for Elder and Hazel Residents Association.

I once again wish to object to the change from A1 to A5 use for the above address as Secretary for Elder and Hazel Residents Association. Nothing has changed since the last objection was put in. There are already too many food outlets in the area causing problems with litter and noise. The estate has many elderly residents and disabled residents who would be affected by this change.

MBC - Planning Policy -

The application site lies within the Central Sector of the Town Centre, as defined under Policy CS13. Policy Reg20, Principal Use Sectors, identifies the Central Sector of the Town Centre as a location for leisure, culture and the evening economy, with other uses acceptable provided they are complementary and will not harm the principal function of the sector. Hot food takeaways, under national planning policy, are a town centre use that should be located within our centres and therefore this is considered an appropriate location. However, following the recent approval of the Interim Hot Food Takeaway Policy there are a number of criteria that must be considered. Given the location of this application it does not exceed the 10%, is not adjacent to another similar use, is not in a designated shopping frontage and is not located within 400m of a secondary school. However a Health Impact Assessment is required and if it is established that there will be an unacceptable adverse impact on health, it would be contrary to policy.

MBC Waste Services –

No Comment

MBC - Highways -

The proposed change of use will not have a material impact in demand for car parking, nor will it in terms of the level of traffic generation when considering the fall back use of the property as a retail unit, which could continue without the need for further planning consent.

Public Responses

Number of original neighbour consultations	11
Total numbers of comments received	4
Total number of objections	4
Total number of support	0
Total number of representations	0

PLANNING CONSIDERATION AND ASSESSMENT

1. The property last operated as a mixed use unit consisting of retail with ancillary kitchen on ground floor and sunbed shop on first floor (A1, Sui Generis). This application seeks to change the use to a hot food takeaway (A5) with storage above. The scheme also proposes the installation of an extraction flue/chimney to rear of the property.

Principle of Development

2. Local Plan Policy CS13 encourages and supports proposals for retail, leisure, commercial and cultural uses that assist in maintaining and enhancing the role of Middlesbrough Town Centre whilst Policy REG20 identifies the site as being within the town centre's 'Central Sector', which is defined as a location for leisure, culture and the evening economy, identifying other uses may be acceptable provided they

are complementary and do not harm the principal function of the area. Hot food takeaways, under national planning policy, are a town centre use that should be located within town centres. In view of these matters the proposal is considered to be in accordance with the general principles of both local and national policies and guidance.

3. In addition, the council has developed an 'Interim Hot Food Takeaway Policy'. This interim policy recognises the potential for takeaways to create problems within town centres in relation to noise, odours, traffic, parking and litter as well potentially resulting in frontages being closed during daytime hours. The interim policy further highlights that Middlesbrough has an evidenced higher than national average, child obesity level and that in order to improve this, amongst other measures, specific locations of hot food takeaways should be carefully managed. The interim policy advises that Hot food Takeaways will not be permitted outside of a defined centre and, for those within a defined centre, advises that an A5 use will only be permitted where the proposed use would not;
 - a. result in the proportion of the total units in the centre in A5 uses exceeding 10%;
 - b. result in more than two adjacent hot food takeaway A5 uses; or
 - c. be located within designated Shopping Frontage; or
 - d. be within 400m walking distance of an entry point to a secondary school.

Assessing the application against the interim policy, the proposal would not result in A5 uses exceeding 10% of units within the Town Centre and is not adjacent to an existing Hot Food Takeaway and therefore does not result in a proliferation of such uses within this area. Furthermore, the application site is not within the designated Shopping Frontage areas of the town centre, thereby preventing it unduly affecting the vitality and viability of the core retailing area within the centre. In relation to the final criteria of the interim policy, the site is not within 400m of a secondary school, thereby limiting the likelihood of the takeaway being attractive to school children, notwithstanding the applicant's comments that the menu will be of a healthier nature to more common takeaway options given the precise type of food being sold is not within the control of an approval were permission to be granted. In view of all these matters, the proposed use is considered to accord with the Interim Policy criteria.

4. The application property has been used for a number of commercial operations over recent years including a cafe, shop, tattoo/beauty parlour and more recently as a protein supplement shop with sunbed shop to the upper floor. The application site is located within a mixed use area containing several commercial and residential uses nearby with unrestricted opening hours and it is therefore considered that the proposed takeaway would complement the local businesses and would not be considered to unduly alter the present mixed commercial and residential character of this area

Sustainability

5. Policy CS4 states 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. The proposal would allow for the re-use of a vacant building within a town centre, at a relatively prominent position, fronting Marton Road which is a main thoroughfare and bus route. The proposal would therefore support the re-use of the existing building, preventing it from potentially being vacant long term. Whilst the site is located within walking distance of the main bus and rail stations and the services within the town centre, its scale means this is of limited relevance as it is unlikely to benefit from access via such means. Notwithstanding this, the proposed use has the ability to assist in serving the needs of this area of the town centre and the associated surrounding commercial and other uses. In view of these matters, the position of the premises is

considered to be a sustainable location and therefore satisfies Local Plan Policy CS4 in this regard.

Design and Appearance

6. In line with Local Plan Policy CS5 the development should demonstrate high quality design with the layout and form of development contributing to the character and appearance of the area. Whilst the change of use of a premises such as this has very limited new built development to consider against this policy, the proposal does include for the installation of an extraction flue. The property sits on a relatively prominent corner and the flue which will be required to extract odours from the kitchen area would be relatively visible within the streetscene. Officers initially raised concerns with the applicants agent on this matter and the flue has been designed so that it is now enclosed, presenting itself as a chimney breast which is a relatively common feature for a property of this age. The proposed chimney breast will be able to utilise a brick to match that of the host property and therefore be in keeping with this and the surrounding properties in accordance with policy requirements.

Other Matters

7. As the proposal is for a change of use to hot food takeaway, Local Plan Policy DC1 is relevant, specifically in respect to the effect of the use on the surrounding environment and amenities of occupiers of nearby properties.
8. The application site is attached to and adjacent to residential properties. It is recognised that takeaways can result in a relatively high number of pedestrian / vehicular movements and that these can, through peoples voices, closing of vehicle doors and waiting around the premises generally, result in negative impacts on residential amenity, particularly where opening hours are into the late evening / early morning.
9. Consideration needs to be given to the site being situated on a main thoroughfare into the town, located opposite and near to Middlesbrough Retail Park where there are a number of restaurants, a cinema and a large public car park. It is considered that any residents within this area are already subject to a higher level of commercial activity and coming and goings of vehicles / pedestrians on a daily basis than may be expected elsewhere in the wider town and that it is accepted that, within a town centre location such as this, residential use is likely to achieve reduced amenity to that which is normally associated with residential properties in locations away from the town centre.
10. Whilst it is likely the use will have some impact on surrounding residential dwellings, it is considered that the level of activity associated with the use will not be too dissimilar to that of its current and previous uses or some of those in the immediate surroundings. There are parking restrictions along Marton Road and Russell Street which should encourage the use of the public car parks off Bright Street and France Street, which are within walking distance of the unit and which should therefore prevent the parking of vehicles directly outside of the premises or outside immediately adjacent residential properties. In addition, it is considered necessary to restrict the opening hours of the premises (by condition) to be between the hours of 8am - 9pm Monday to Thursday and 8am - 10pm Friday to Sunday which is earlier than would normally be the case in more centrally located premises.
11. The submission indicates the proposed use would be open predominately through the day time which should prevent the negative impact of a shuttered frontage on the character of the immediate area and which would contribute to footfall within this part

of the town centre and thereby support the vitality and viability of the area. Whilst it is not possible to control this through planning conditions, it is recognised as being a positive element to the proposal.

12. With regards to odour abatement, this application has been submitted with technical details for the proposed extraction flue which the council's Environment Health team have considered and consider will be adequate to mitigate the impacts of the commercial kitchen to an appropriate level. A condition is recommended to ensure compliance with this requirement.
13. Whilst there is no parking associated with the unit the proposed change of use will not have a material impact in demand for car parking, nor will it, in terms of traffic generation when considering the fall back use of the property as a retail unit. It should also be taken into account that this is a town centre location with excellent public transport connections, public parking is also available in close proximity to the site.

Conclusion

14. The proposed use is considered to be appropriate within this location in terms of both local and national planning policies and meets the criteria of the interim policy for hot food take-away's in that it does not group or result in hot food takeaways dominating this location and is not within close proximity to any secondary school. Furthermore, the A5 use would support the vitality and viability of the area, particularly if it were to be open during the day time as indicated and subject to the mitigation of odour abatement and the limitation of opening hours, should not have an undue impact on surrounding residential and other amenity. The proposal would bring back into use a vacant unit which would be considered beneficial for the local area and economy and the proposed chimney/flue addition to the rear elevation would not be considered an incongruous feature within the streetscene.
15. In view of the above, the proposal is considered to be an acceptable form of development fully in accordance with National and Local policy and is therefore recommended for approval.

RECOMMENDATIONS AND 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 plans and specifications below and shall relate to no other plans.

Existing and proposed (Drawing No. 001A) received 25th July 2019.

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

3. **Materials**

The materials to be used in the construction of the rear chimney of the development hereby permitted shall match those used in the existing building.

Reason: To ensure the use of satisfactory materials.

4. **Hours of operation**

Hours of opening shall be restricted to between the hours of 8am - 9pm Monday to Thursday and 8am - 10pm Friday to Sunday.

Reason: To ensure the amenity of the neighbouring premises

5. **Noise/Odour Abatement**

The approved use shall be developed in accordance with Noise Assessment Reference - 19-51-686 and the Odour Abatement Assessment submitted to the local planning authority. Any deviations from the recommendations made in the report shall be submitted to the local planning authority for approval.

Reason: To ensure the amenity of the neighbouring premises and for the avoidance of doubt.

REASON FOR APPROVAL

This application is satisfactory in that the change of use accords with the principles of the National Planning Policy Framework (NPPF) and the local policy requirements (Policy DC1, CS4, CS5 of the Council's Local Development Framework).

In particular, the change of 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 will be consistent with the existing commercial 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

Case Officer: Joanne Lloyd

Committee Date: 6th September 2019

