

Committee Report

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| Application No: | DC/17/00899/COU |
| Case Officer | Lois Lovely |
| Date Application Valid | 13 August 2017 |
| Applicant | Mr Afshin Pouresmaileh |
| Site: | Da Vincis 10 Harraton Terrace Durham Road Birtley Chester Le Street DH3 2QG |
| Ward: | Birtley |
| Proposal: | Change of use from A3 (food and drink) to A3/A5 to allow for home delivery (amended 05/09/17). |
| Recommendation: | REFUSE |
| Application Type | Change of Use |

1.0 The Application:

1.1 DESCRIPTION OF THE SITE

The application site is the ground floor only of a two-storey red brick mid-terrace property that features a pitched tiled roof and is located on land that slopes gently downwards from north to south. The ground floor unit operated as a café from 1996 until June 2017, when a new planning permission DC/16/00343/FUL was granted for a cafe/sandwich bar with extended opening hours, 07:00 hours and 23:00 hours only Monday to Saturday and to between 11:00 hours and 23:00 hours only Sunday. The new café is known as Da Vincis.

1.2 The Applicant sells food which is predominantly freshly made pizza, but he also offers a selection of burgers, kebabs, wraps, pasta, chips and salads. There is a 25sqm space for twenty customers to sit down to consume the food on the premises. However the Applicant has indicated that currently 80% of the number of meals provided is through home delivery of the food and 2% is from traditional take-away sales of food from the premises. Consequently, under 18% of the meals are served on site as part of the A3 (café/restaurant) use. This indicates that the premises is currently trading as an A5 (hot food takeaway) and not as the authorised A3 (café/restaurant) use at present.

1.3 The building forms part of Harraton Terrace and is located within Birtley District Centre. The applicant is also in possession of the flat above the ground floor unit and the shop manager lives there. The character of the streetscene is varied, consisting of retail, commercial, industrial and residential uses of differing sizes and styles.

1.4 There is a rear lane that gives access to the rear of the application property and a parking area behind the application site.

1.5 The application form gave the site address as 10A Harraton Terrace. This is the address of the flat above the ground floor unit. The address on this planning application has been confirmed by the applicant as 10 Harraton Terrace.

1.6 DESCRIPTION OF THE APPLICATION

The proposal as described on the application form is a change of use from A3 (café/restaurant) to a mixed A3/A5 (hot food takeaway) to allow for home delivery. For the avoidance of doubt, the application is not being made to regularise or grant retrospective consent for how the premises currently trades as the current business is A5 use, not a mixed use, due to the small proportion of A3 activity currently taking place. The Applicant has not provided any information about how the operation would change to accommodate the proposed use.

1.7 The application form describes the existing use as a pizza restaurant and states that the existing floorspace is 75sqm; there is no change to the size of the premises proposed in this application.

1.8 The seating area is set out in accordance with the approved layout of DC/16/00343/FUL and comprises 5m x 5m, a total of 25sqm with a further 50sqm of food preparation area.

1.9 PLANNING HISTORY

DC/16/00881/FUL Installation of new fully glazed shop-front with central door, and installation of internal extraction flue with the exception of a high velocity cowl that exits the rear roof plane close to ridge height and exhausts above ridge height (amended 28/11/16). Granted 13.01.2017

DC/16/00343/FUL: VARIATION OF CONDITION 3 of permission 62/96 (Change of use from shop (use class A1) to cafe/sandwich bar (use class A3)) seeking extension of business opening hours from 7am until 11pm Mondays to Saturdays and 11am to 11pm Sundays, with deletion of Conditions 4 (other uses in A3 use class) and 5 (ventilation scheme). Granted 29.06.2016

140/01: Planning permission refused for variation of condition 3 of planning permission 62/96 to allow opening hours of 8am to 2am Monday to Sunday instead of 8am to 6pm Monday to Saturday only (as previously restricted).

62/96: Planning permission granted for change of use from a shop (use class A1) to a cafe/sandwich bar (use class A3).

376/91: Planning permission refused for change of use from a shop (use class A1) to a hot food take-away (use class A3).

24/84: Planning permission refused for change of use from a shop to a hot food take-away shop (ground floor only).

2.0 Consultation Responses:

None received

3.0 Representations:

- 3.1 Neighbour notifications were carried out in accordance with formal procedures introduced in the Town and Country Planning (Development Management Procedure) Order 2015.
- 3.2 A further round of Neighbour notifications were carried when it became apparent to the LPA that the applicant had provided the incorrect address.
- 3.3 A Ward Member objection has been received. The concern is that the business is trading as a hot food takeaway contrary to Council policy.
- 3.4 Seven letters of representation have been received, two from the same objector. The concerns relate to:
- Council Policy is that no new hot food takeaways would be granted due to health issues.
 - Da Vincis has permission to operate as a cafe not to deliver food but is offering a delivery service and food is being collected and delivered from the premises
 - Increase in traffic with inadequate car parking
 - Highway safety - customers and Da Vinci delivery drivers park in front of shop on double yellow lines, opposite Co-op car park access causing congestion particularly as there is a pedestrian refuge in the middle of road
 - Disturbance to residents by increase in car visits - engine noise and doors opening and closing
 - During lunchtimes Da Vincis sit in area is used but rarely used in the evening
 - Applicant sold business in Swalwell to move to Birtley
 - Address incorrect is 10 Harraton Terrace the flat above is 10A Harraton Terrace
 - Neighbours not consulted
 - Will attract vandals
 - Competition with other Hot Food Take-Aways
 - Enforcement record no longer visible online
- 3.5 A petition bearing 13 signatures has been received objecting on the grounds that the proposal is contrary to policy.

4.0 Policies:

ENV61 New Noise-Generating Developments

NPPF National Planning Policy Framework

NPPG National Planning Practice Guidance

CS7 - Retail and Centres

CS13 Transport

CS14 Wellbeing and Health

DC2 Residential Amenity

RCL5 - District and Local Centres

RCL6 Food and Drink Uses

HFTSPD Hot Food Takeaway SPD

5.0 Assessment of the Proposal:

- 5.1 The main planning considerations are the principle of the proposal as submitted, the actual operation of the business, wellbeing and health, highway safety issues, residential amenities and other matters.
- 5.2 **PRINCIPLE**
Policy RCL5 of the Unitary Development Plan (UDP) and policy CS7 of the Core Strategy and Urban Core Plan (CSUCP) set out the retail hierarchy in Gateshead and based on these policies it is determined that the proposal would lead to the retention of a town centre use in a town centre location (Birtley District Centre). Therefore, in retail policy terms, the change of use would have a neutral impact on the existing district centre.
- 5.3 Policy RCL6 states that A3 and A5 uses can be located in an existing centre provided:
a) they do not have an unacceptable impact on road safety, the environment, amenity, the character of the surrounding area or the vitality and viability of an existing centre; and
b) they would not lead to an over-concentration of such uses in any one location.
- 5.4 This policy recognises that in retail policy terms, A3 and A5 uses can be provided where they help to meet the needs of a particular locality or neighbourhood. This is supported at a broad level by the National Planning Policy Framework (NPPF) in terms of conversion of existing buildings (paragraph 17) and planning positively for local services to enhance the sustainability of communities and residential environments (paragraph 70).
- 5.5 Paragraph 9.27 of the CSUCP states that "the success of our centres is strongly influenced by the variety and choice of shops, services and other uses within them. In addition to Class A1 retail uses, a range of non-retail services will be considered provided these other uses would not harm the centres overall vitality and viability".

- 5.6 The proposal concerns the change of use of the existing ground floor of the building to a mixed café and take-away use with no alterations to the frontage of the building. The proposal can be said to retain the building's commercial use and character.
- 5.7 Furthermore, the property already has planning permission to operate as an A3 use. The change to a mixed A3 and A5 use would, in terms of policy RCL6 a), have either a negligible impact, or whatever impacts arose could be subject to appropriate conditions. However, the introduction of the A5 use would result in an overconcentration of that use contrary to RCL6 b); the Birtley ward average for A5 establishments is 1.68 per 1000 population, compared to a national average of 0.86 per 1000 population and in Birtley District Centre the percentage of A5 uses is already 11.6% of the total commercial uses. It therefore follows that this application is also contrary to CS7 as it would result in an overconcentration of A5 uses in the District Centre to the detriment of its vitality and viability.
- 5.8 Consequently, whilst this application is for a town centre use in a town centre location, it is considered to be unacceptable in retail policy terms and not in accordance with the NPPF, policy CS7 of the CSUCP and policy RCL6 b) of the UDP, as a result of the overconcentration of A5 uses that would arise.
- 5.9 Paragraph 7 of the NPPF states that the social role of the planning system in achieving sustainable development is:
"Supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being."
- 5.10 One of the twelve core planning principles at paragraph 17 is that planning should:
"Take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs."
- 5.11 Further, paragraph 69 of the NPPF states that the planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities.
- 5.12 Planning Practice Guidance (PPG) (Health and Wellbeing) also stresses the importance of the planning system in promoting healthy lifestyles:
Paragraph 001 states:
"The link between planning and health has been long established. The built and natural environments are major determinants of health and wellbeing."

And paragraph 002 states:

"The range of issues that could be considered through the plan-making and decision-making processes, in respect of health and healthcare infrastructure, include how [amongst others]:

- development proposals can support strong, vibrant and healthy communities and help create healthy living environments which should, where possible, include making physical activity easy to do and create places and spaces to meet to support community engagement and social capital;
- the local plan promotes health, social and cultural wellbeing and supports the reduction of health inequalities;
- the local plan considers the local health and wellbeing strategy and other relevant health improvement strategies in the area;
- opportunities for healthy lifestyles have been considered (e.g. planning for an environment that supports people of all ages in making healthy choices, helps to promote active travel and physical activity, and promotes access to healthier food, high quality open spaces and opportunities for play, sport and recreation)."

5.13 Finally, at paragraph 005, the PPG defines a healthy community as:

"a good place to grow up and grow old in. It is one which supports healthy behaviours and supports reductions in health inequalities. It should enhance the physical and mental health of the community and, where appropriate, encourage:

- Active healthy lifestyles that are made easy through the pattern of development, good urban design, good access to local services and facilities; green open space and safe places for active play and food growing, and is accessible by walking and cycling and public transport.
- The creation of healthy living environments for people of all ages which supports social interaction. It meets the needs of children and young people to grow and develop, as well as being adaptable to the needs of an increasingly elderly population and those with dementia and other sensory or mobility impairments."

5.14 Planning for the Future Core Strategy and Urban Core Plan 2010-2030 for Newcastle and Gateshead (CSUCP) was adopted by Gateshead Council on 26th March 2015.

Policy CS14 of CSUCP relates to the health and wellbeing of communities being maintained and improved by (amongst other things) "3. Controlling the location of, and access to, unhealthy eating outlets".

5.15 Gateshead Council's Hot Food Takeaway Supplementary Planning Document (the SPD) was adopted by Cabinet on 2 June 2015. The SPD sets out the Council's priorities and objectives in relation to planning control of hot food takeaways and elaborates upon policies relating to health and wellbeing. The SPD can be afforded full weight.

5.16 In response to national policy and guidance, policy CS14 (Wellbeing and Health) of the CSUCP states that the 'wellbeing and health of communities will be maintained and improved by:

"3. Controlling the locations of and access to unhealthy eating outlets."

- 5.17 Given the nature of the proposed mixed use and the significant element of A5 hot food takeaway, this proposal is considered to be an unhealthy eating outlet and as such should be assessed against policy CS14.
- 5.18 The Hot Food Takeaway Supplementary Planning Document (SPD), provides clarity on the CSUCP in relation to the locations in which hot food takeaway (A5) premises are not appropriate. In this case, the development in respect of which permission is sought comprises the change to or increase in significance of the hot food takeaway element of use. Accordingly, Planning consideration 1 of the SPD states that A5 uses will not be granted within a 400m radius of an entry point to secondary schools, youth centres, leisure centres and parks. The application site is located less than 400m from Lord Lawson School and Joseph RC Schools and is therefore not considered an appropriate location.
- 5.19 Planning consideration 2 of the SPD states that A5 uses will not be granted in wards where more than 10% of year 6 pupils are classified as obese. Birtley ward has a year 6 obesity level of 25% (2015/16), which is higher than the aspirational target of 10% set by the Council.
- 5.20 Planning consideration 3 of the SPD states that planning permission will not be granted for an A5 use where the number of approved A5 establishments, within the ward, equals or exceeds the UK national average, per 1000 population.
- 5.21 The current national average for A5 establishments is 0.86 per 1000 population and, for Birtley ward, the number of A5 uses per 1000 population is 1.68. This is almost double the national average and as referred to above, UDP Policy RCL6 states that planning permission will be granted for A3 and A5 uses where it would not lead to an overconcentration of such uses.
- 5.22 Planning consideration 4 of the SPD states that an A5 use will not be permitted where, in Local Centres the percentage of A5 uses exceeds 5% of commercial uses, and there should be no more than two consecutive A5 uses in any one length of frontage. Where A5 uses already exist in any one length of frontage, a gap of at least two non A5 use shall be required before a further A5 use will be permitted in the same length of frontage.
- 5.23 In Birtley District Centre the percentage of A5 uses is already 11.6% of the total commercial uses. Therefore any mixed use which includes an A5 element should not be permitted on these grounds. In terms of clustering, Yummy Yummy (an A5 use) is the end terrace business and there are six units between this business and Da Vinci's along this frontage. The position of the premises in relation to neighbouring A5 premises therefore complies with the 'clustering' criteria referred to above.
- 5.24 It is considered that the application complies with planning consideration 11 (transport), and that the issues raised in planning considerations 5 - 10 (residential amenity, hours of opening, extraction and noise, anti-social behaviour, waste disposal, and litter) could be dealt with by conditions, should the application be approved.

- 5.25 Planning consideration 12 states that applications for A5 uses will be required to include a health impact assessment, as part of the application. Where an unacceptable adverse impact on health is established, permission should not be granted. No such assessment has been submitted as part of this application.
- 5.26 It is considered that the change of use is contrary to the objectives of maintaining and improving the health and wellbeing of local communities and is contrary to the SPD, policy CS14 of the CSUCP and the NPPF. Additionally, it is considered that planning conditions could not overcome the objections to the development.
- 5.27 Even if it were argued that as this is an application for a mixed use i.e. a sui generis use and therefore that the application should not be tested against the SPD criteria, it is reasonable for the LPA to consider the evidence base of the SPD when deciding whether the impact of the proposed development in terms of "access to unhealthy eating outlets" is unacceptable in accordance with Saved Policy CS14 of CSUCP. The evidence of obesity levels, the proximity to schools and the concentration of A5 premises already in Birtley coupled with the added convenience of a home delivery option for hot takeaway food leads, the LPA to conclude that this development would result in increased access to an unhealthy eating outlet, contrary to CSUCP policy CS14 and the NPPF.
- 5.28 MATERIAL CONSIDERATIONS
The Town and Country Planning Act 1990, s70 requires a LPA dealing with a planning application to have regard to the provisions of the development plan, if it is material to the application, as well as any other material considerations. The Planning and Compulsory Purchase Act 2004, s38(6) requires that if the LPA refers to the development plan for the purpose of any determination to be made under the planning acts, then the LPA's decision must be made in accordance with the plan unless there are material considerations that indicate otherwise.
- 5.29 The Applicant argues that there are special circumstances to his proposal which amount to the 'material considerations' mentioned in these Acts.
- 5.30 Firstly, the Applicant states in his application that his A5 request is only to allow him to offer a home delivery service.
- 5.31 The Applicant has said that if planning permission is approved, then the sit in dining area (the A3 element) would be preserved. The Applicant does not want to offer a takeaway service in the traditional sense of customers entering the shop, ordering food, and then consuming it off site.
- 5.32 The Applicant considers that the change of use to allow the provision of a delivery service would not cause harm to residential amenities or highway safety for the following reasons:
- the LPA has already accepted the principle of the consumption of pizza and similar hot food on the premises by virtue of planning permission DC/16/00343/FUL, with the sale of such food being permitted until 11pm at

night. The Applicant states that the LPA has concluded that there would have been no harmful impact on neighbouring occupiers' amenity during the evening, or any unacceptable effect on any environmental concerns arising from the operation of the business as a café. The Applicant feels that the addition of a delivery service would not create an additional material impact in relation to these points.

- the Applicant states that unlike other eateries in the area his café opens at lunchtime from 11am which would encourage passing trade during the day and help support the retail district. There would be no dead frontage for the majority of the day.

- the Applicant has said his three delivery drivers would collect ordered pizzas in batches at the car park to the rear of the site. The van would not be parked on Durham Road. The Applicant therefore feels that any additional traffic generated by these actions would therefore be minimal and it would not compromise highway safety or create issues such as significant noise from car doors opening and closing, engines being started and so on which would be above the typical background noise levels for the area.

- the Applicant believes the delivery service would ensure that additional problems over littering, anti-social behaviour or disturbances would not occur.

- the Applicant has said he would be selling the same type of food as at present and as the current range is presumably acceptable to the LPA, then it would be inequitable to prevent a delivery service of such foodstuffs.

5.33 Officers are of the opinion that the business as it is operating currently does not reflect the description of the proposal for which this application is seeking permission.

5.34 However, regardless of the actual current operation this planning application is seeking a mixed A3/A5 use to allow for delivery only which means that at least a quarter of trade should come from each use. The proposal under consideration therefore has to be that proposed by this planning application. If permission were granted for the proposed mixed use, then the Applicant would be required to ensure that the operation complied with the uses granted. As in any situation, if premises are used without the necessary planning permission, then the LPA has the option of using its enforcement powers.

5.35 In the opinion of the LPA, the material considerations put forward by the Applicant do not outweigh the harm identified above and consequently the application is to be determined in accordance with the relevant development plan policies.

5.36 HIGHWAY SAFETY

The proposed change of use is not considered to pose any concerns in terms of harming highway safety. Durham Road has double yellow lines in front of the premises. Therefore, it is considered that the proposal accords with the NPPF and policy CS13 of the CSUCP in that regard. Should planning permission be

granted a condition could be imposed to ensure that delivery drivers collected the meals for delivery from the rear of the premises.

5.37 BIN STORAGE

The property has a rear yard that would provide adequate bin storage for the proposed development. Therefore, the proposal would accord with the NPPF and saved policy DC1h of the UDP in that regard.

5.38 RESIDENTIAL AMENITY

Whilst the application property is located within Birtley District Centre, it is located in close proximity to residential properties, such as the upper floor flats of the application site and adjacent properties either side. The potential impacts on the amenity of residents are likely to be through general comings and goings to the premises additional to the café use for example the drivers collecting food orders for delivery. The effect of cooking odours and the visual impact of the extraction equipment was considered previously under planning approval DC/16/00881/FUL.

5.39 The hours are not proposed to be extended beyond those already approved for the café use by DC/16/00343/FUL Monday to Saturday 7am to 11pm, Sunday 11am to 11pm and therefore it is considered there would be not be a significant increase in the impact on amenity.

5.40 It is considered residential amenity could be maintained to a reasonable level through appropriate mitigation by way of attenuation of noise from delivery vehicles and retention of odour mitigation equipment and appropriate conditions if planning permission was to be granted. This would accord with the NPPF, policy CS14 of the CSUCP and policies ENV61 and DC2 of the UDP in that regard.

5.41 OTHER MATTERS

The address as submitted by the Applicant was given as 10A Harraton Terrace which is incorrect as this is the upper floor flat. However neighbour notifications were sent out prior to this error being realised. Further letters were sent out with the correct address as 10 Harraton Terrace.

5.42 In addition, neighbours complained that they had not received letters. This was as a consequence of letters being returned by the Post Office. Replacement letters were sent to the nearby businesses.

5.43 Owners of nearby similar businesses have objected on the grounds of additional competition although this would not be a material planning consideration.

6.0 CONCLUSION

6.1 Taking all the relevant issues into account, it is therefore recommended that planning permission be refused, as the proposal would represent inappropriate development given that it would lead to increased access to an unhealthy eating outlet, and an overconcentration of such uses in an area where there is

already a significantly greater number of such outlets per thousand people than the average for England and where there are significant local obesity issues.

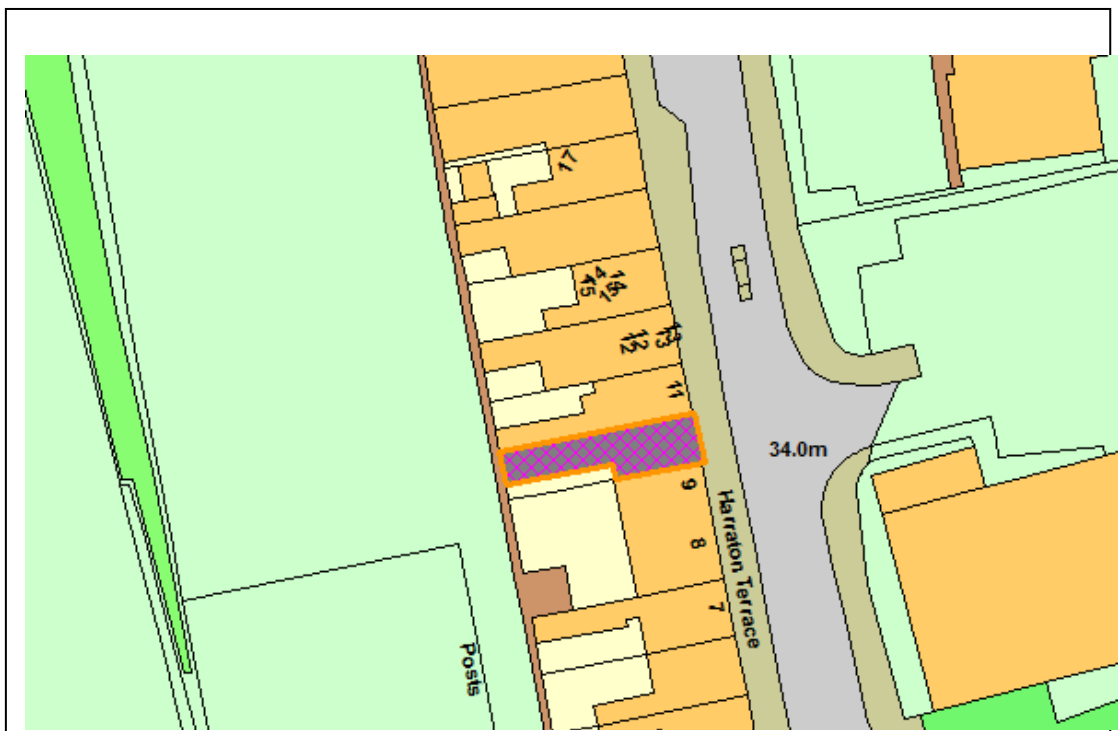
6.2 It is considered that the proposed mixed A3 and A5 use does not accord with national and local planning policies and as a result it is recommended that planning permission be refused. In coming to this conclusion, whilst the mitigating factors put forward by the applicant have been taken into account, they are insufficient to outweigh the harm identified above.

7.0 Recommendation:

That permission be REFUSED for the following reason(s) and that the Strategic Director of Communities and Environment be authorised to add, vary and amend the refusal reasons as necessary

1

The proposal would represent inappropriate development given that it would lead to increased access to an unhealthy eating outlet and an overconcentration of such uses, and is therefore contrary to the NPPF, Core Strategy and Urban Core Plan policy CS14, Saved Unitary Development Plan policy RCL6 and the Hot Food Takeaway Supplementary Planning Document



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