

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	4/10/00582/FPA
FULL APPLICATION DESCRIPTION:	Change of use to delicatessen/café (mixed use A1/A3)
NAME OF APPLICANT:	Mr Rory Handy
ADDRESS:	57 Claypath, Durham, DH1 1QS
ELECTORAL DIVISION:	Elvet
CASE OFFICER:	Colin Harding, Planning Officer 0191 301 8712 colin.harding@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

1. The site is a currently vacant retail unit on Claypath in Durham City. The property lies within Upper Claypath and the former use of the property was as a bathroom showroom, although it is likely that historically the property was used for residential purposes.
2. The property dates from the early 19th Century and sits amongst a terrace of similarly aged and styled properties, most of which remain in residential use although further down the hill towards the city centre the use of properties on Lower Claypath become increasingly mixed.
3. The property lies firmly within Durham (City Centre) Conservation Area and although unlisted itself, lies adjacent to the Grade II listed house at no.56. The property is somewhat unusual in its remoteness from other non residential uses on this side of Claypath.
4. It is proposed to change the use of the ground floor of the property in order to accommodate a delicatessen. The premises would sell a variety of cold delicatessen products for consumption both on and off the premises. The applicant indicates that no cooking will take place at the premises. It is indicated that the premises would open between 08:30 – 18:30, Monday to Friday and 09:00 – 17:00 on a Saturday. The submitted plans indicate that the delicatessen would provide 23 covers for eating within the premises, a servery and a toilet.
5. The application is being reported to committee at the request of Cllr Freeman, the local Ward Councillor.

PLANNING HISTORY

6. The property has been subject to a number of applications in recent years;

4/06/00587/FPA - Change of use of ground floor of existing property from shop to cookery school involving alterations internally - Refused 21.08.2006

4/01/00938/FPA - Change of use and conversion from retail shop (Class A1) to restaurant and hot food takeaway (Class A3) – Refused 19.03.2002 and a subsequent appeal was dismissed.

4/81/00777/FPA – Change of use of 1st and 2nd floors from residential to office – Refused.

PLANNING POLICY

7. NATIONAL POLICY:

Planning Policy Statement 1: Delivering Sustainable Development sets out the Governments overachieving planning policies on the delivery of sustainable development through the planning System.

Planning Policy Statement 4: Planning for Sustainable Economic Growth outlines the Government's objectives to help achieve sustainable economic growth including the positive approach to be taken to development that helps to build prosperous communities, promote regeneration and tackle deprivation.

Planning Policy Guidance note 13: Transport seeks to integrate planning and transport at the national, regional, strategic and local level and to promote more sustainable transport choices both for carrying people and for moving freight.

8. LOCAL PLAN POLICY:

Policy E6 seeks to protect the special character, appearance and setting of Durham (City Centre) Conservation Area.

Policy E22 seeks to protect the character and appearance of Conservation Areas within Durham City.

Policy S10 states that A3 uses will be permitted where there is no adverse effect on amenities of nearby residents, that there is adequate parking provision, it is scale and character with the surrounding area and that it does not compromise levels of A1 provision in shopping areas.

Policy H13 states that planning permission will not be permitted for changes of use that will have a significant adverse affect on the character or appearance of residential areas, or the amenities of residents within them.

Policy T1 states that planning permission will not be granted for development which would be detrimental to highway safety.

Policy T10 states that parking provided as part of a development should be limited in amount so as to promote sustainable transport choices.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at:-

National Planning Policy

<http://www.communities.gov.uk/planningandbuilding/planning/planningpolicyguidance/planningpolicystatements/>

Local Plan Policy

<http://www.cartoplus.co.uk/durham/text/00cont.htm>

CONSULTATION AND PUBLICITY RESPONSES

9. STATUTORY RESPONSES:

The Highway authority has no Objections - This retail property is situated on Claypath where car parking is controlled by residents permits or pay and display. There is a high demand for parking spaces but, due to restrictions, the use of these spaces turns over frequently. An area of double yellow lines extends between the land adjacent to no.59 Claypath across the junction with Bakehouse Lane. This area is available for vehicles to load and unload for a limited period only. The proposal to use the site for food sales would not cause any change to the parking demand within the area whereas the proposal to create a café could increase the demand. Pressure for on-street parking within Durham is high and customers of this facility would be expected to walk from the city centre or park elsewhere, as most other users of the city centre must do. I do not consider that there this is sufficient grounds to refuse this application due to increased pressure on parking spaces.

The deliveries to the site, which would probably be small in scale albeit on a regular basis if fresh food is involved, would have to be accommodated either on parking areas, if free, or within the double yellow lines. This situation already exists and would not alter. The temporary parking of vehicles within the restricted area is accepted and it does not cause an excessive risk to safety.

10. INTERNAL CONSULTEE RESPONSES:

Environmental Health – No objection – A condition should be attached that no cooking of hot food is allowed without further consent. The present application states that no cooking will take place. Arrangements must be made to ensure that refuse is not put out on the pavement for any length of time. A bin could be used to store bagged rubbish at the rear of the shop and the bags taken out when the contractor calls. The applicant should also make provision for the toilets to be accessible to both staff and customers.

11. PUBLIC RESPONSES:

St Nicholas Community Forum: Objects – Concerns are raised with regards to the impact of the proposal upon the amenity of nearby residential occupiers as a result of traffic, parking, noise, disturbance and odours. The forum also questions how refuse will be managed with no external access to the rear yard.

13 no. further letters of objection have been received from local residents raising concerns with regards to the nature of the business being more A3 than A1, increase in footfall in a residential area, potential for extended opening hours, parking and deliveries, odours, management of refuse, disturbance, potential for the property to become a hot food takeaway in the future, lack of toilet facilities, increase in litter as well as the viability and need for the business.

12. APPLICANTS STATEMENT:

The Claypath delicatessen will provide local, continental and speciality foods. Our main aim is to provide a friendly, relaxed and contemporary eatery that is not yet catered for in the area. We will provide a menu that is based around specially selected ingredients from award winning producers who have been awarded great taste awards, by royal appointment and the Guild of Fine Food etc. We also will be providing ingredients from small local producers and freeholders alike. The specially selected produce used in our menu is also available in the delicatessen for our customers to take home and prepare themselves. The ethos for the Claypath delicatessen is to promote the best local and continental produce within our menu to provide a unique dining experience but also allow the locally produced – cheese, smoked and cooked meat, fresh and preserved vegetables, preserves, desserts, dried products etc.

Our menu is a cold menu including sandwiches, platters, salads etc.... as a result of this we will not need to cook on site therefore lessening the impact on the local community with smells and noise. The current use is A1, we propose a mix of A1 and A3 so that we can serve people to sit in and this restricts the chance of it becoming a hot food takeaway at any point in the future.

The above represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at http://publicaccess.durhamcity.gov.uk/publicaccess/tdc/DcApplication/application_detailview.aspx?caseno=L6OK72BN5B000

PLANNING CONSIDERATIONS AND ASSESSMENT

13. In accordance with Policies E6, E22, S10, H13, T1 and T10 of the City of Durham Local Plan 2004, the main planning issues are considered to be the principle of the use in this location, its potential impact upon the character of Durham (City Centre) Conservation Area, its potential impact upon residential amenity and highway safety.

Issue of Principle

14. The property lies on one of the main thoroughfares into the city which is characterised by a mix of uses, particularly towards Lower Claypath. As the street climbs the hill towards Gilesgate, the properties become increasingly residential, especially on the northern side of the street, where this property lies. Although a number of these residential properties are in occupation by students and are thus empty at certain times of the year, Upper Claypath/Lower Gilesgate retains a strong permanent community.

15. Over recent years the property has been subject to various interests from potential occupiers and currently stands empty, its previous use being as a bathroom showroom (A1).

16. Policy S10 of the City of Durham Local Plan states that development for A3 uses within settlement boundaries will only be permitted provided that there are no adverse effects on the amenities of nearby occupants, that adequate provision is made for parking, that it is in scale and character with its surroundings and it does not compromise the level of A1 provision identified in Policy S2 and S3.

17. The property is unusual in that it represents an existing A1 unit that is somewhat divorced from others in the city centre, with the property lying outside of Primary and Secondary Retail Areas identified in Policies S2 and S3. Accordingly the A1 element of the proposal could operate in this location without the need for further consent. Equally, as the property is outside identified retail areas, the introduction of the A3 element would not lead to a loss of retail provision within the city centre. Given the previous use of the property and its location at the edge of the city centre, it is considered that this proposal would preserve the general character of the area. Accordingly, the proposal is considered to be acceptable in principle.

Impact upon Durham (City Centre) Conservation Area

18. Durham (City Centre) Conservation Area is characterised by definition by a mix of uses, as such this change of use should not alter its character unreasonably. At this time no external alterations to the property are proposed and any physical changes and signage that are required would be subject to further consents. Accordingly, it is considered that the change of use in itself would not compromise the character of the property, its listed neighbour or the character of the Conservation Area, in accordance with Policies E6 and E22 of the Local Plan.

Impact upon Residential Amenity

19. Policies H13 and S10 of the City of Durham Local Plan 2004 both state that non-residential/food and drink uses in residential areas should not have a significant adverse impact upon the level of residential amenity enjoyed by nearby occupants.

20. The location of the premises means that it is almost surrounded by residential properties. Clearly, there is potential for cooking odours to have a significant impact upon the level of amenity that these residents enjoy and this is a potential problem that has been raised by many of the objectors. Indeed, this issue has been addressed at this site previously with applications for a hot food takeaway and a cookery school both being resisted for this reason.

21. However, it is considered that the details of the current proposal differ from those previously refused at this site as the applicant has made it clear within the submission that no food is to be cooked on the premises. The business would be selling delicatessen products which include cold meats, preserved vegetables, fresh vegetables and cheese. Whilst it is intended that the business will provide an eat-in service, this would reflect the range of products on offer in the retail element and would include salads and platters. Although soup may be kept warm in a soup urn, it would not be cooked on site.

22. Consequently, it is considered that the potential for odours would be minimal, a view shared by the Environmental Health Officer. However, having regards to the potential impact and the sensitive location of the premises then it is considered appropriate to attach a suitable condition preventing the cooking of food on the premises.

23. It is also possible that the comings and goings to and from the property may give rise to disturbance to nearby residents and this would certainly have potential to be a major issue if a night time use were proposed and again this is an issue that has been raised by many of the objectors. Indeed, the Inspector in determining the appeal for the hot food takeaway at this site dismissed the appeal for this very reason. However, again, it is considered that this latest proposal is materially different to those previously made as the opening hours are stated as being 08:30 – 18:30 Monday – Friday, 09:00 – 17:00. These are daytime hours and as such it is considered not to be the case that the level of activity during these hours would be so significant so as to justify the refusal of the application.

24. Claypath is a busy street during the day and the level of activity would not be considered to be more than would be expected during these hours than a regular A1 use. The proposed opening hours remove the possibility of disturbance being caused at night in terms of loss of sleep when the level of ambient noise is much lower. Accordingly, the application is considered to be acceptable in this regards, subject to a condition on to the opening hours being attached.

25. It is noted that bin storage is proposed to be in the rear yard of the property. At present there is no access from the rear of the property to the front other than through the premises itself. Concerns have been raised with regards to the storage of waste at the premises; however it is considered that provided that the waste is bagged and stored in the rear then excessive loss of amenity to neighbouring properties should not occur. The waste would then have to be brought through the shop to be left on the pavement for collection by contractor. Any amenity problems which occur as a result of the inappropriate storage/disposal of waste can be addressed through Environmental Health legislation.

26. It is thus considered that the application is in accordance with the requirements of Policies H13 and S10.

Highway Safety

27. Several of the objectors have provided detailed correspondence with regards to the issue of highway safety. Policies T1, T10 and S10 all state that proposed uses should provide adequate parking and should not compromise highway safety. The County Highways Authority recognise that the only parking available at this premises is either at city centre public car parks or utilising on-street parking spaces which are subject to charges.

28. It is acknowledged that the proposal will increase demand for the pay and display bays on Claypath and that customers of the premises will most likely have to use city centre public car parks or the Park and Ride service. The pay and display bays are controlled and well policed by the County Council and if all are used, it is considered unlikely that the proposed use would increase the level of illegal parking on Claypath as Civil Enforcement Officers can issue Penalty Charge Notices for such offences. The pay and display system operates 0800 – 1800 and is enforced during this period with regular patrols. These hours are commensurate with the opening hours of the business.

29. It should also be noted that even when the pay and display bays are not in operation that Civil Enforcement Officer do continue to patrol, sometimes until 2200 and will enforce illegal parking. Parking Services have advised that in recent weeks at least 1 no. after hour patrol per week has taken place on Claypath.

30. Therefore, although no off-street parking is proposed at the premises, it is considered that the city centre location of the property, its accessibility by a variety of forms of transport and the controlled on street parking system that exists results in a situation whereby this change of use should not lead to excessive levels of dangerous and/or illegal parking.

31. Regarding deliveries, it is noted that there would be deliveries to the business and that they would have to use either free parking bays or park temporarily on restricted areas. While this is not an ideal situation, it is not uncommon in city centre locations. Such deliveries do not result in vehicles being parked in restricted areas for extended periods and as the opening hours of the premises are commensurate with parking enforcement hours it is reasonable to suggest that this issue can be adequately controlled. The application is thus considered to be in accordance with Policies S10, T1 and T10 of the City of Durham Local Plan 2004.

Other Issues Raised

32. Some of the objections received make reference to the viability of the business in this location. The potential for a business to succeed is a matter for the applicant alone to consider and the Local Planning Authority plays no role in advising the applicant in such matters. It would be entirely unreasonable for the application to be refused on the basis that it might not succeed.

33. Reference is also made by several objectors to the toilet facilities to be provided for customers. The level of necessary toilet provision is a matter to be addressed through Environmental Health legislation and is considered not to be strictly a planning matter. Such an issue can be addressed through discussions between the applicant and the Council's Environmental Health Officers and it would be unreasonable to refuse the application on this issue alone. Indeed, Environmental Health Officers have indicated that the single toilet proposed should be sufficient providing that it is made available for both customers and staff.

34. Some correspondents also raise concern over the possibility of this proposal forming "the thin end of the wedge" with regards to the premises becoming a full scale restaurant or takeaway. The conditions proposed can only be varied by application and any move to open the premises into the evening/night, offer cooked food or takeaway facilities would involve further application to the Local Planning Authority and can be taken on their merits at that time. The Local Planning Authority must consider this application on its merits at this time. Any breach of the proposed conditions can be addressed through enforcement action.

CONCLUSION

35. It is considered that this proposal represents a change of use that is acceptable in principle with regards to Policy S10 and that given the specific nature of the business and its proposed opening hours that it should not result in a significant loss of residential amenity to nearby occupants in accordance with Policies S10 and H13 or have a harmful impact on the character and appearance of the Conservation Area in accordance with Policies E6 and E22. Equally, it is considered that as a result of the managed on-street parking system that the proposed change of use would not lead to a situation whereby highway safety would be compromised in accordance with Policies S10, H13, T1 and T10 of the City of Durham Local Plan 2004.

RECOMMENDATION

That the application be **APPROVED** subject to the following conditions;

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby approved shall be carried out in strict accordance with the following approved plans unless otherwise agreed in writing with the Local Planning Authority. Plan Reference No: Proposed site plan.
3. The premises shall only be open to the public between the hours of 08:00 - 18:30 Monday to Friday and 09:00 - 17:00 on Saturday and at no other times.
4. There shall be no hot food cooked, prepared or served on the premises other than previously prepared food which may only be reheated in a microwave oven or other sealed unit.

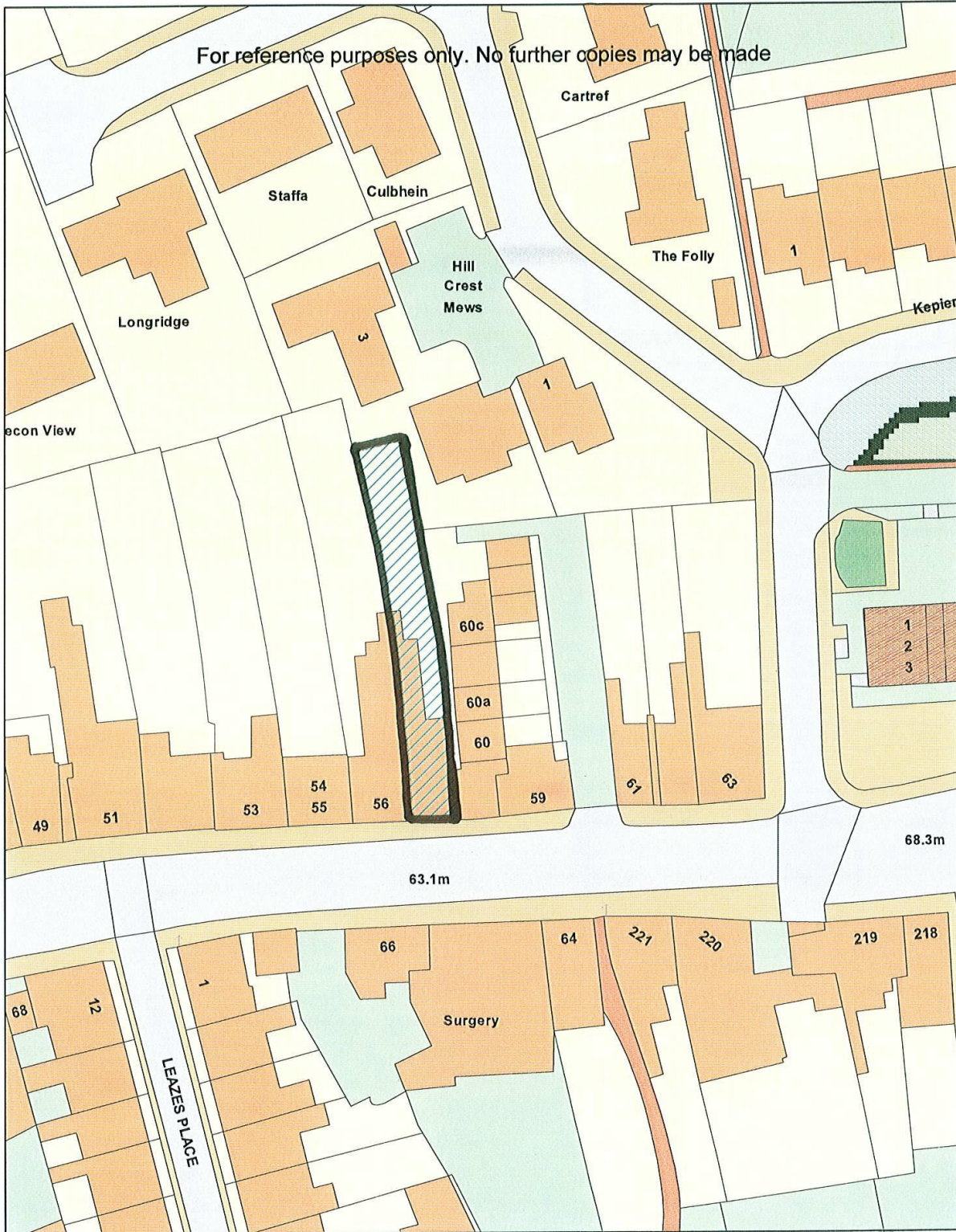
REASONS FOR THE DECISION

1. The proposed change of use to a mixed A1/A3 delicatessen is considered acceptable having regard to policies E6, E22, S10, H13, T1 and T10 of the City of Durham Local Plan 2004.
2. In particular the development was considered acceptable having regard to consideration of issues of impact upon Durham (City Centre) Conservation Area, principle, impact upon residential amenity and highway safety.
3. The stated grounds of objection concerning the nature of the business being more A3 than A1, increase in footfall in a residential area, potential for extended opening hours, parking and deliveries, odours, management of refuse, disturbance, potential for the property to become a hot food takeaway in the future, lack of toilet facilities, increase in litter as well as the viability and need for the business were not considered sufficient to lead to reasons to refuse the application because there is adequately controlled parking in the immediate area, the business will only be serving cold food and will only open during daytime hours. Any future alterations would be subject to further consents. Issues of viability or need for the business are not considered to be material to the decision making process.

BACKGROUND PAPERS

Submitted Application Forms and Plans
Design and Access Statement
City of Durham Local Plan 2004
Planning Policy Statements / Guidance, PPS1, PPS5,
Responses from County Highways and Environmental Health
Public Consultation Responses

For reference purposes only. No further copies may be made



Planning Services

4/10/00582/FPA - 57 Claypath

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Comments

Date

22 September 2010

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