

# COMMITTEE REPORT

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### APPLICATION DETAILS

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<b>APPLICATION NO:</b>	DM/19/01295/FPA
<b>FULL APPLICATION DESCRIPTION:</b>	Change of use from greengrocers (use class A1) to mixed use as a sandwich shop/hot food takeaway (sui generis).
<b>NAME OF APPLICANT:</b>	Mr Matthew Elves - Tastebuds
<b>ADDRESS:</b>	55A The Avenue Seaham SR7 8NS
<b>ELECTORAL DIVISION:</b>	Deneside
<b>CASE OFFICER:</b>	Lisa Morina Planning Officer Telephone: 03000 264877 <a href="mailto:Lisa.morina@durham.gov.uk">Lisa.morina@durham.gov.uk</a>

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### DESCRIPTION OF THE SITE AND PROPOSALS

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#### The Site

1. The application site is a mid terraced property located within a group of commercial properties located on the Avenue, which is one of the main roads running through Seaham. Other businesses in this group include a funeral directors and post office. Residential properties are located in front and behind the property as well as to both sides of the small group of commercial premises with residential properties also located within this grouping.
2. The property in question was previously used as a greengrocers and for around the past year has been trading as Tastebuds which provides hot and cold sandwiches, hog roasts, cream cakes and hot meals, for example lasagne. A delivery service and catering service is also provided.

#### Proposal

3. The proposal seeks retrospective consent for full planning permission for the change of use of the property from a shop use class A1 to a mixed use as a shop/hotfood take thereby obtaining a sui generis use (a one-off use not falling fully within one of the specified use classes).
4. The application is referred to Committee at the request of Cllr Bell on the grounds of highway safety concerns.

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## **PLANNING HISTORY**

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5. There is no relevant planning history on this site.

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## **PLANNING POLICY**

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### **NATIONAL POLICY**

6. The following elements of the National Planning Policy Framework (NPPF) are considered relevant to this proposal:
7. NPPF Part 2 Achieving Sustainable Development - The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives - economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
8. NPPF Part 6 Building a Strong, Competitive Economy - The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and a low carbon future.
9. NPPF Part 8 Promoting Healthy and Safe Communities - The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.

<https://www.gov.uk/guidance/national-planning-policy-framework>

### **NATIONAL PLANNING PRACTICE GUIDANCE:**

10. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite. This document provides planning guidance on a wide range of matters. Of particular relevance to this application is the practice guidance with regards to; conserving and enhancing the historic environment; design; and use of planning conditions.

<https://www.gov.uk/government/collections/planning-practice-guidance>

### **LOCAL PLAN POLICY:**

#### The District of Easington Local Plan

11. Policy 1- Due regard will be had to the development plan when determining planning applications. Account will be taken as to whether the proposed development accords with sustainable development principles while benefiting the community and local economy. The location, design and layout will also need to accord with saved policies 3, 7, 14-18, 22 and 35-38.

12. Policy 35 - The design and layout of development should consider energy conservation and efficient use of energy, reflect the scale and character of adjacent buildings, provide adequate open space and have no serious adverse effect on the amenity of neighbouring residents or occupiers.
13. Policy 102 – Local and neighbourhood shopping centres states that retail development will only be approved outside of the main defined town centre providing it is located within a local shopping centre and does not adversely affect the amenity of residents in respect of privacy, visual intrusion, noise , other pollutants and traffic generation.
14. Policy 111 - Hot Food Takeaways will only be approved in the town, local or neighbourhood shopping centres and on prestige and general industrial estates providing no serious problems of noise, disturbance, smell, litter and traffic hazards would arise or where the proposal would not adversely affect the vitality or character of the area.

#### **RELEVANT EMERGING POLICY:**

15. Paragraph 48 of the NPPF states that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. Following consultation at 'Issues & Options', 'Preferred Options' and 'Pre Submission Draft' stages, the CDP was approved for submission by the Council on 19 June 2019. The CDP was submitted to the Planning Inspectorate on 28 June 2019. Although the CDP is now at a relatively advanced stage of preparation, it is considered that it is not sufficiently advanced to be afforded any weight in the decision-making process at the present time.

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

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## **CONSULTATION AND PUBLICITY RESPONSES**

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#### **STATUTORY RESPONSES:**

16. The Highways Authority comment that the proposal is situated in a row of mainly non-residential type uses with on-street car parking to the front and as such there would be no highway objection to the change of use.
17. Durham Constabulary raise no objection to the proposal

#### **INTERNAL CONSULTEE RESPONSES:**

18. Environment, Health and Consumer Protection (Nuisance Action Team) raise no objection to the proposal.

#### **PUBLIC RESPONSES:**

19. The application has been advertised by means of site notice on site and by notifying neighbouring residents by letter. 3 letters of objection have been received, (two from

one neighbour) and including one from the local ward members, raising the following points:

- Traffic Problems – There has been a substantial increase in nuisance and dangerous parking since this premises opened, for example, parking in bus stops, pavement blocking etc. This happens all weekend as the shop is open Sunday also so there is no respite.
- There has been three serious road traffic accidents in two years and this proposal will only increase the dangerous and inconsiderate parking.
- The police have been called on 4 separate occasions to have vehicles removed that have blocked driveways.
- This has been reported to Strategic Traffic Department and added to the scheme list.
- Smells from the property lasts from early morning to late afternoon
- Increase in litter
- The quality of life as a direct consequence of this takeaway being allowed to operate is in sharp decline.
- There are approximately 14 takeaways in a one mile radius with the nearest being only 200m away.
- A previous application was refused reference 5/PLAN/2008/0408 only two shops away.

#### **APPLICANT'S STATEMENT:**

20. None received.

*The above is not intended to list every point made and 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 <https://publicaccess.durham.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=P8X9C0GDL8J00>*

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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21. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the principle of the development, residential amenity and highways issues.

#### Principle of development

22. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material planning consideration. The District of Easington Local Plan remains the statutory development plan and the starting point for determining applications as set out in the Planning Act and reinforced at Paragraph 12 of the NPPF. However, the NPPF advises at Paragraph 213 that the weight to be afforded to existing Local Plan policies will depend upon their degree of accordance with the NPPF.

23. The District of Easington Local Plan was adopted in December 2001 and was intended to cover the period 2001-2006. The NPPF Paragraph 213 advises that Local Plan policies should not be considered out-of-date simply because they were adopted prior to the publication of the NPPF. Notwithstanding this, it is considered

that a policy can be out-of-date if it is based upon evidence which is not up-to-date/is time expired.

24. On this basis, given the age of the Local Plan and information provided that informed the creation of specified shopping areas, the policies are considered out-of-date, and the weight to be afforded to the policies reduced as a result and paragraph 11(d) of the NPPF also engaged. However, this does not make out of date policies irrelevant in the determination of a planning application. Nor do they prescribe how much weight should be given to such policies in the decision, this being a matter for the decision maker, having regard to advice at Paragraph 213 of the NPPF.
25. Policy 111 of the Local Plan states that hot food takeaway shops will be approved in local and neighbourhood centres providing no serious problems of noise, disturbance, smell, litter or traffic hazards would arise and they do not affect the vitality and viability of the centre.
26. Paragraph 80 of the NPPF states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.
27. Paragraph 11 of the NPPF establishes a presumption in favour of sustainable development.
28. For decision taking this means (unless material considerations indicate otherwise):
  - approving development proposals that accord with an up to date development plan without delay; or
  - where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
    - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
    - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
29. As such in this case planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
30. The application is for retrospective consent to change the use of the property from the previous retail use to a mixed use as a sandwich shop and a hot food takeaway. The building is located within a block of a mix of both residential and commercial properties and the site is located within a neighbourhood shopping centre. The proposal does include the loss of an existing A1 use however, it is not felt that this undermines the existing local centre given the mix of uses within the area.
31. The impacts of the use on the surrounding area are discussed in the sections below however in principle it is considered that the use of the premises as a mixed use commercial development is acceptable in this location given developments of this nature are typical of a shopping parade. In addition to this, the proposal is considered to be in a sustainable location.

## Impact on visual amenity of the area

32. The proposal results in the addition of a new advert to the existing shop front and does not result in any other external alterations to the property. Advertisement consent has been applied for and granted separately. Given this, the proposal is not considered to have a detrimental impact on the character or appearance of the street scene.
33. The proposal therefore, is considered acceptable in respect of policies 1, 35 and 102 111 of the District of Easington Local Plan.

## Residential amenity

34. Policy 111 of the local plan states that hot food takeaways would not be granted where residential accommodation is situated above, on either side, immediately behind or immediately opposite the premises. In addition to this policy 102 states development will only be considered acceptable providing it does not have an adverse impact on neighbouring residents.
35. Residential properties are located to both the front and rear of the premises however, those to the front sit across a busy main road and those to the rear back on to the site with the rear of these properties facing the rear of the site. Therefore, it is considered that they are suitably located and orientated away from the premises so as to not be adversely affected by the activities associated with the use.
36. A flat sits above the property, however, this is within the same ownership of the applicant and is currently occupied by his son and will remain within the same ownership. A condition will, therefore, be added to require that the flat should only be occupied by a person associated with the business to prevent any conflict from arising between the business and the occupants of the flat.
37. In respect of other properties within the block, these are located within a local shopping centre and as such some noise and disturbance would be expected however this is to be discussed in more detail below.
38. Objections have been raised regarding smells, litter and general disturbance being created as a result of the proposal. In addition to this, concerns are raised over the use of the premises 7 days a week and that these issues are occurring constantly.
39. With regard to noise, the premises are open Monday – Friday 07.30- 15.00, Saturday 07.00 – 15.00 and Sundays 08.00 – 14.30. Policy 111 states that there should be no serious problems of noise. Whilst the property is open 7 days a week, it is not considered that the proposal would have a significant detrimental impact on the residential amenity of neighbouring properties in respect of noise issues given the proposal is only open during day time hours and a condition can be added to restrict the hours of operation to these times to prevent a night time use occurring in the future. This shopping parade is located on a busy traffic route with other commercial uses operating nearby, so it is not considered that the activity generated by the current use is significantly above what occurs overall in the vicinity.
40. In addition to this, the previous use of the property as an A1 use had no restrictions over opening hours, therefore the previous use potentially could give rise to longer opening hours to that which is currently advised on this application. The proposal is for a mixed use development constituting a sui generis use, therefore, the use of the property cannot be changed unless a further planning permission is submitted. On this basis, the planning department will have control over future changes of use

taking place on this site. In addition to this, the environmental health team are not aware of any complaints being received regarding noise issues.

41. Regarding odour, the use is already running, and the impact of odour can be considered on site. An appropriate system has been installed at the property and although not directly compliant with the guidance (due to its low level discharge point) it appears generally sufficient to manage odour based on the current operation of the site. This is supported by the 15 months that the site has been operating and the fact that there is no record of any complaints or concerns having been raised by neighbouring properties. Furthermore, should the system be upgraded so as to be fully compliant with guidance, this would require external plant which, although reducing the risk associated with fugitive odour, is likely to change the acoustic climate to some extent and as such lead to an increased noise level.
42. Therefore, based on the information above, in respect of the type of food served, the operational hours and existing extraction systems, it is not considered that the proposal would result in a significant detrimental impact on the residential amenity of surrounding neighbours that would warrant a refusal of this application. A condition will be added regarding opening hours to prevent a night time use from occurring.
43. As stated above the proposal is for a mixed used development, therefore, is not fully a hot food takeaway and the associated issues which usually occur with a hot food takeaway are not considered to occur in this instance. On this basis the proposal is considered acceptable in respect of residential amenity as referenced in policy 111 and 102 of the Local Plan.
44. Concerns have been raised that a neighbouring property had been refused and this was refused on the basis of impact on residential amenity. Having checked the details of that case, it was particularly related to the night time element which is not proposed in this instance due to the opening hours proposed therefore, it is not felt that a refusal based on the impact on neighbouring properties could be sustained in this instance.

## Highway Issues

45. The county highway officer has confirmed that they have no objection to the proposal from a highways view point. Objections have been raised that the proposal has resulted in disturbance to local residents through the blocking of driveways and footpaths and inconsiderate parking as well as serious accidents occurring outside the property and that the proposal would only increase this danger.
46. In respect of the 3 'serious' road traffic collisions, or RTCs, there have been 4 no. recorded 'Slight' personal injury road traffic collisions in the last 5 years, which is the timescale the Highways Team would use to assess the highway safety characteristics of a particular location in relation to a planning application.
47. From those recorded with Durham Constabulary, there would only appear to be RTC No. 2 above that may have had any direct link with the shops and possibly the existing hot food takeaway at no. 49a and the cause of the RTC was presumably driver error not an issue with the design of the on-street car parking.
48. Given this and on the basis of a single RTC that could be linked to the existing shops in the last 5 years there would not be a highway safety issue in the vicinity of these shops that would flag up requiring some intervention by the Highway Authority.

49. The indiscriminate parking of motor vehicles in the vicinity of the site is not considered to be a material planning consideration. The Council is not able to control how people park and this would be a matter for Durham Constabulary. Durham Constabulary have raised no objection to this proposal however and it is not felt that there is sufficient evidence for the proposal to be refused on highway grounds.
50. In respect of the request for a car parking restrictions scheme, the Major Traffic Projects Team Leader has confirmed that he is aware of the request but due to lack of funding this has not been progressed.
51. It has been suggested that the applicant should fund this scheme however, given there is no highway objection raised to the proposal, it is considered unreasonable to ask the applicant to fund these works.
52. Taking all the above into account, the property is situated in a row of mainly non-residential type uses with on-street car parking to the front and as such there would be no highway objections to the change of use in accordance with Policies 1, 35 and 36 of the District of Easington Local Plan.

#### Other Issues

53. Appropriate space is available within the yard area to the rear of the site for bin storage.

#### Planning Balance

54. As the relevant policies of the Local Plan are considered to be out of date, the presumption in favour of sustainable development as contained in paragraph 11 of the NPPF is engaged and in this regard a summary of the benefits and adverse impacts of the proposal are considered below:

#### Benefits

55. The development would provide direct and indirect economic benefits within the locality in the form of expenditure in the local economy and will provide 3 full time jobs. Such benefits can be afforded some limited weight.

#### Adverse Impacts

56. Notwithstanding the objections received, it is not considered that any significant adverse impacts have been demonstrated.

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## **CONCLUSION**

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57. When applying the planning balance contained in paragraph 11 of the NPPF it is considered that the adverse impacts of the development would not significantly and demonstrably outweigh the benefits and as such planning permission should be granted.
58. The site occupies a sustainable location within an established local centre and subject to conditions, is considered acceptable in land use terms, and in terms of the impact on the residential amenity of the neighbouring properties. The proposal is also considered to be acceptable in terms of highways safety and parking. This

application is therefore considered to satisfy the requirements of the NPPF and Local Plan Policies 35, 102 and 111.

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## **RECOMMENDATION**

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That the application be **APPROVED**, subject to the conditions detailed below:

1. The development shall not be open for business outside the hours of 07:30 to 15:00 Monday to Friday, 07.00 to 15.00 Saturday and 08:00 - 14:30 on Sundays and Bank Holidays.

Reason: In order to protect neighbouring amenities in accordance with policies 102, 111 and 112 of the District of Easington Local Plan.

2. The residential flat above the sandwich bar/hot food takeaway located at 55a The Avenue, Seaham shall only be occupied by a person/s associated with the business, and by any resident dependents.

Reason: In the interests of residential amenity in accordance with Policy 35, 102 and 111 of the District of Easington Local Plan and Parts 9 and 15 National Planning Policy Framework.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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The Local Planning Authority in arriving at its decision to approve the application has, without prejudice to a fair and objective assessment of the proposals, issues raised and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF. (Statement in accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.)

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## **BACKGROUND PAPERS**

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Submitted application form, plans, supporting documents and subsequent information provided by the applicant

The National Planning Policy Framework (2018)

National Planning Practice Guidance Notes

District of Easington Local Plan

Statutory, internal and public consultation responses



**Planning Services**

Change of use from greengrocers (use class A1) to mixed use as a sandwich shop/hot food takeaway (sui generis).

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**Comments**

**Date** September 2019

**Scale** NTS