

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION No:	DM/21/01252/FPA
FULL APPLICATION DESCRIPTION:	Two shop units (Class E) and one hot food takeaway (sui generis) (opening hours for takeaway 9.00 - 22.00 Sunday - Thursday 9.00- 23.00 Friday and Saturday).
NAME OF APPLICANT:	Manjinder Jagpal
ADDRESS:	Adjacent to Spar Local, Unit, Jubilee Road, Shildon. DL4 2AL
ELECTORAL DIVISION:	Shildon and Dene Valley
CASE OFFICER:	Susan Hyde, Planning Officer, 03000 263961, susan.hyde@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

1. The application site is located in an established residential area some 750 metres to the south east, (915 metres on the road network) of the primary retail area of Shildon Town Centre. The area is characterised by residential estate housing dating back to the 1960's interspersed with areas of open space and playing fields.
2. The application relates to an open area of land on Jubilee Road situated between a single storey Spar local shopping unit to the east and community centre building to the west. At the eastern end of the small supermarket is an existing hot food takeaway (fish and chip shop). and to the north of the site is a communal parking area accessed from Jubilee Road. There is housing on the north side of Jubilee Road and to the south are open playing fields with further residential dwellings beyond.
3. The proposal involves the erection of 3 single storey commercial units of uniform size (approx.178 metres floorspace in total). Two units would be for general retail use falling within Class E of the use class order and the middle unit would form a hot food takeaway falling within a sui generis use. The submitted retail assessment clarifies that the proposed uses are likely to be a bakery, hair salon and hot food takeaway selling Chinese-style food. The proposed units would be linked to each other to form a detached terrace block. Pedestrian access to the recreation ground to the rear would be retained adjacent to the Community Centre. Each unit would have a shop front facing north onto the car park incorporating white aluminium windows and doors with roller shutters. The units would be constructed in red brickwork with pitched brown tiled roofing.
4. The application is being reported to the Planning Committee at the request of Councillor Townsend due to large number of takeaways in Shildon and also Shildon Town Council because of the potential impact on the health of residents, noise, odour and litter and the high number of takeaways already available in Shildon.

PLANNING HISTORY

5. In 2014 planning permission was granted for the change of use from education/training centre to 3 retail units and 1 storage unit (Amended Scheme) (DM/14/02130/FPA).
6. In 2015 planning permission was granted for the variation of condition 4 of Planning Permission DM/14/02130/FPA to allow deliveries between the hours of 08:00 to 18:00 Monday to Saturday only with no deliveries on Sundays/Bank Public Holidays (DM/14/02130/FPA)
7. Planning permission was granted for the Change of use from Retail (A1) to Hot Food Takeaway (A5) DM/15/01504/FPA on unit 3 (which forms the fish and chip shop to the east of the site). Condition 4 limited the hours of operation to 16:00 to 22:00 Sunday to Thursday or 16:00 to 23:00 Friday and Saturday inclusive of bank or public holidays.
8. In 2017 planning permission was granted for the variation of condition 4 of planning permission DM/15/01504/FPA to allow hot food takeaway to open during the hours 11:30 to 14:00 Monday to Saturday; 16:00 to 22:00 Sunday to Thursday and 16:00 to 23:00 Friday and Saturday (Ref DM/17/01129/VOC).

PLANNING POLICY

NATIONAL POLICY

9. A revised National Planning Policy Framework (NPPF) was published in July 2018 (with updates since). The overriding message continues to be that new development that is sustainable should go ahead without delay. 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. In accordance with Paragraph 213 of the National Planning Policy Framework, the following elements of the NPPF are considered relevant to this proposal.
10. *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.
11. *NPPF Part 4 Decision-Making* - Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
12. *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.

13. *NPPF Part 7 Ensuring the vitality of town centres* - Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation
14. *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.
15. *NPPF Part 9 Promoting Sustainable Transport* - Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
16. *NPPF Part 11 Making Effective Use of Land* - Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously developed or 'brownfield' land.
17. *NPPF Part 12 Achieving Well-Designed Places* - The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
18. *NPPF Part 14 Meeting the Challenge of Climate Change, Flooding and Coastal Change* - The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.

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

NATIONAL PLANNING PRACTICE GUIDANCE:

19. 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; climate change; determining a planning application; effective use of land; enforcement and post permission matters; flood risk; healthy and safe communities; land affected by contamination; land stability; natural environment; noise; town centres; use of planning conditions; and; water supply, wastewater and water quality.

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

LOCAL PLAN POLICY:

The County Durham Plan (CDP)

20. *Policy 9 – Retail Hierarchy and Town Centre Development.* This policy seeks to protect and enhance the hierarchy of Sub Regional, Large Town, Small Town, District and Local retail centres in the county.
21. *Policy 21 Delivering Sustainable Transport* - states that all development shall deliver sustainable transport by (in part) ensuring that any vehicular traffic generated by new development, following the implementation of sustainable transport measures, can be safely accommodated on the local and strategic highway network and does not cause an unacceptable increase in congestions or air pollution and that severe congestion can be overcome by appropriate transport improvements.
22. *Policy 29 Sustainable Design* - requires all development proposals to achieve well designed buildings and places having regard to supplementary planning documents and other local guidance documents where relevant, and contribute positively to an area's character, identity, heritage significance, townscape and landscape features, helping to create and reinforce locally distinctive and sustainable communities.
23. *Policy 30 Hot Food Takeaway* – seeks to control the proportion of hot food takeaway within identified centres to under 5% of the units. To promote healthy lifestyles in young people, proposals for A5 uses outside of defined centres but within 400 metres of an entry point of a school or college will not be permitted. Where a proposed A5 use is considered locationally acceptable, consideration will need to be given to the impact on amenity, particularly in relation to noise and odours.
24. *Policy 31 Amenity and Pollution* - development will be permitted where it can be demonstrated that there will be no unacceptable impact, either individually or cumulatively, on health, living or working conditions or the natural environment. Proposals which will have an unacceptable impact such as through overlooking, visual intrusion, visual dominance or loss of light, noise or privacy will not be permitted unless satisfactory mitigation measures can be demonstrated.

<https://www.durham.gov.uk/cdp>

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

25. *Shildon Town Council* – Raise no objection to the two A1 shop units but object to the third unit for A5 Hot Food Takeaway use which should only be approved on the basis of A1 use.
26. It is considered important that residents of Shildon should be enabled to lead healthier and more active lifestyles and there is a link between obesity and unhealthy food choices. One way to address obesity is to limit access to unhealthy food choices by managing the number of takeaways and their location in Shildon.
27. A further A5 hot food takeaway will create an additional harmful impact on noise, odour and litter and there is a need to protect the amenity of the neighbourhood from increased disturbances. Furthermore, the Town Council does not want to see a cluster of A5 uses in this area along with shutters being down during key retail hours. It is important to maintain active frontages and an additional hot food takeaway will

have a negative impact on the vitality of the area making it less appealing and could lead to further anti-social behaviour.

28. Over 8% of premises within the allocated commercial area are for the purpose of hot food takeaway use and the Town Council want to limit the amount of takeaways in Shildon as a whole.
29. *Highway Authority* – There is a large car park to the front which should be adequate to accommodate the additional usage generated by the new units. No objection on highway grounds subject to a condition that requires the submission and approval of a construction management plan prior to commencing works, in the interests of road safety

INTERNAL CONSULTEE RESPONSES:

30. *Environmental Health (nuisance)* – Satisfied based on further information submitted regarding the kitchen extraction facility for the hot food take away and the positioning of the fan motor within the fabric of the building and attenuators that the application complies with the thresholds stated within the Technical Advice Note. This would indicate that the development will not lead to an adverse impact subject to a condition regarding noise to ensure the rating level of noise emitted from fixed plant/machinery on the site shall not exceed the background (LA90) by more than 5dB LAeq (1 hour) between 07.00-23.00 and 0dB LAeq (15 mins) between 23.00-07.00.
31. *Environmental Health (Contaminated Land)* – No adverse comments given the location and nature of the proposal and following an assessment of historical maps and available information with respect to land contamination.
32. *Spatial Policy* – Requested a supplementary justification and rationale behind the proposal, in terms of why the town centre has not been considered first as a location for the retail units.
33. During the course of the application a 'Retail Statement' (RS) has been submitted on behalf of the applicant. This report states that the 3 units are likely to be occupied by a bakery, hair salon and hot food takeaway (likely to be selling Chinese-style food) respectively, and collectively would comprise just 180 sqm gross floorspace in total. It is recognised that there are a number of vacant units dispersed across Shildon Town Centre, but as the application proposals seek to serve a smaller catchment area focused upon the eastern side of the town where there are no defined local centres it is not considered appropriate for the new shops and hot food takeaway to be directed to locations within/on the edge of the town centre. It goes on to state that these new uses are best provided in locations which are conveniently accessible on foot from this core catchment area, where they can effectively meet some of the day to day needs of local residents. This would enhance the accessibility and availability of local level retail and service facilities on the eastern side of Shildon and would reduce the need for residents to travel elsewhere in the town and beyond, to meet these needs. It is further suggested that the impact on existing hot food takeaways within the town centre would be low.
34. The findings of the RS are broadly accepted by the Spatial Team, and in particular the case that the catchment which the units will serve is localised, and for that reasons, town centre locations have not been considered.

35. In light of this, the remaining consideration will be assessing the impact of the hot food takeaway element of the proposal (against Policy 30 of the CDP) and ensuring that this proposal will not cause disturbance to local residents.
36. *Police Architectural Liaison Officer* – No response received.

PUBLIC RESPONSES:

37. The application has been advertised by way of neighbour notification letters to the closest 17 properties and a site notice. No representations have been received (other than the Town Council objection highlighted above and the request for a committee consideration from Councillor Townsend).

APPLICANTS STATEMENT:

38. Mr Jagpal owns Ingleby Barwick Land and Property Developments, which is based in Stockton-on-Tees.
39. They are a successful business and have a large portfolio of properties ranging from takeaways, shop units, offices and domestic properties. Mr Jagpal runs this company efficiently and conscientiously and has broad experience of managing shops and takeaways, the fish & chip shop on Jubilee Road is a good example.
40. Mr Jagpal chooses tenants carefully in order that shops and takeaways are managed correctly.
41. Lichfields Uk were asked to produce a Retail Statement to show that there is capacity for an Indian or Chinese takeaway in this location, the completed survey proved this need.
42. Ingleby Barwick Land and Property Developments have proved that their properties are well maintained and we believe they will manage this proposed development in a diligent manner.

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 <https://publicaccess.durham.gov.uk/online-applications/search.do?action=simple&searchType=Application>

PLANNING CONSIDERATIONS AND ASSESSMENT

43. 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 relate to the principle of development, highways, amenity/noise and odour, impact on the street scene, flooding and drainage, ecology and land stability.

The principle of the development:

44. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise with the NPPF representing a material planning consideration in this regard. The County Durham Plan (CDP) was adopted in October 2020 and as such represents the up to date local plan for the area and the starting point for the determination of this planning application. Consequently, the application is to be determined in accordance with relevant policies set out within the CDP. Paragraph

11c of the NPPF requires applications for development proposals that accord with an up to date development plan to be approved without delay.

45. The proposal therefore needs to be assessed for conformity with the CDP unless material considerations dictated otherwise. One such material consideration is the National Planning Policy Framework (NPPF).
46. Part 7 of the NPPF seeks to support the vitality of the town centres to: 'create the conditions in which businesses can invest, expand and adapt.' It goes on to say 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.'
47. The NPPF seeks to support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation and advises Local Planning Authorities to pursue policies to support their viability and vitality (Para 85). Schemes should be located in town centres in the first instance, then in edge of centre locations and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered (para 86). Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale (Para 87). The accompanying Planning Practice Guidance (Paragraph: 011) notes that the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations, and a small convenience store catering for top up goods for nearby residents could potentially fall into this category.
48. Policy 9 (Retail Hierarchy and Town Centre Development) of the CDP seeks to protect and enhance identified retail centres and supports new town centre development across all of the County's centres that will improve choice and bring about regeneration and environmental improvements. With regards to the evening economy, Policy 9 supports proposals that would positively contribute to the evening economy provided that they contribute to the vitality and viability of town centres, promote public safety and accord with all relevant policies in the CDP. It also requires proposals for town centre uses not within a defined centre to provide a sequential assessment.
49. Paragraph 89 of the NPPF advises that retail schemes which are outside of town centres and not in accordance with an up-to-date Local Plan should be accompanied by an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500sqm). Policy 9 of the CDP specifies that proposals for retail in excess of 400 sqm (gross) convenience or comparison floorspace, outside of a defined centre, that could impact on Small Town or Local Centres, will be required to provide an impact assessment in accordance with the guidance within the NPPF and the PPG. In this case the floorspace proposed by this application (178 sqm gross) falls below this threshold, and the impact of the proposal on Shildon town centre does not need to be carried out.
50. Policy 30 (Hot Food Takeaways) of the CDP deals specifically with hot food takeaway uses. Aside from seeking to minimise the detrimental impacts of an over concentration of hot food takeaways within defined centres by imposing a 5% threshold to promote their vitality and viability, the Policy seeks to improve the wellbeing of residents in County Durham. In order to improve healthy lifestyles in

young people, proposals for hot food takeaways outside of defined centres but within 400m of an entry point of an existing school will not be permitted.

51. This proposal seeks to develop three relatively small retail units with a gross floor area of 178 sqm on land situated between an existing building containing a Spar Local and hot food takeaway and Jubilee Fields community centre. Two of the units are proposed to be for retail use (Class E), with the third to be used as a hot food takeaway (Sui Generis) and the proposed operators of the units are likely to be a bakery, a hair stylist and Chinese style hot food takeaway. The area of land is not situated within a defined centre (town, district or local centre) and the proposed siting on Jubilee Road is approximately 915m from the edge of the defined town centre of Shildon following the road network. This distance is more than double the acknowledged 400 metres distance for walking to conveniently access services. It is also relevant that there are no allocated local centres on the eastern side of Shildon.
52. Whilst the application for the two units has provided an indication of the likely end users as the units would remain within Use Class E this would provide the option of a range of services including a café, a professional institution such as a bank, a health service such as a dentist, or an office. Given the limited size of the units it is considered that these uses would serve the local area in Shildon and as such the generic use Class E is considered acceptable
53. Due to the limited floor area, distance from the town, and lack of defined local centres on the eastern side of Shildon it is accepted that the units would be focused upon meeting local need. The submitted Retail Assessment contends that it would not be appropriate for the new shops and hot food takeaway to be directed to locations within/on the edge of the town centre suggesting that these new uses are best provided in locations which are conveniently accessible on foot from this core catchment area, where they can effectively meet some of the day to day needs of local residents. This would also reduce the need for residents to travel to other facilities, elsewhere in the town and beyond, to meet these needs. It is also indicated that the impact on existing hot food takeaways within the town centre would be low.
54. The Spatial Policy team has carefully assessed the Retail Assessment and concurs with the view that the catchment which the units will serve is localised, and for that reason, town centre locations have not been considered. This is considered to accord with part 7 of the NPPF and Policy 9 of the County Durham Plan.
55. With regards to the hot food takeaway element of the application, and aside from seeking to minimise the detrimental impacts of an over concentration of hot food takeaways within defined centres, Policy 30 strives to improve the wellbeing of residents in County Durham. In order to improve healthy lifestyles in young people, the policy requires proposals for hot food takeaways outside of defined centres but within 400 metres of an entry point of an existing school to be refused consent. This proposed site is located some 480m from the nearest school (St. John's Church of England Primary School), with Greenfield Community College (Secondary School) further away. As such the minimum distance is met and this proposal is therefore compliant with this element of Policy 30 of the CDP regarding proximity to schools.
56. Where a proposed hot food takeaway is considered locationally acceptable Policy 30, goes on to state that consideration will need to be given to the impact that the development would have on the amenity of local residents with regard to noise, odour and disturbance. These issues are considered below in the section on residential amenity.

57. Accordingly, the principle of the development is considered acceptable with regard to Part 7 of the NPPF and Part 9 and 30 of the County Durham Plan subject to detailed consideration of the matters raised below.

Impact on the street scene/ Visual impact

58. Part 12 of the NPPF seeks high quality design, with paragraph 30 stating 'Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents' CDP policy 29 (Sustainable Design) seeks to ensure that all development proposals will achieve well designed buildings and places having regard to supplementary planning documents and other local guidance documents where relevant, and contribute positively to an area's character, identity, heritage significance, townscape and landscape features, helping to create and reinforce locally distinctive and sustainable communities; create buildings and spaces that are adaptable to changing social, technological, economic and environmental conditions.
59. The application relates to the development of three retail units on land situated between an existing Spar Local and hot food takeaway building and Jubilee Fields community centre. The proposal infill building would respect the building line on the front elevation of the existing units and the eaves ridge heights would align with the existing single storey elements on these buildings. The depth of the 3 units would also be in keeping with the existing structures as would the general materials and the front elevations that would include shopfronts that provide an appropriate vertical emphasis to the units. The mass scale and design of the proposed building is therefore considered to be in keeping with the existing units and appropriate to its setting.
60. It is noted that Shildon Town Council has raised an objection to the potential for shutters over the hot food takeaway during the daytime. Officers concur that hot food takeaways tend to be open in the afternoon and evening. However, in this case the unit has a small shop front that would be situated adjacent to two general retail units. Although there is reference to the provision of shutter boxes on the submitted elevations no details of these have been provided with the application. These can be made the subject of a condition, requiring a perforated design which would help to provide some view of the shop front when the use is closed.
61. With regard to the associated extraction system for the hot food takeaway it is proposed that this would extend internally through the building and exit the rear slope of the roof on the rear elevation facing the playing fields. The height of the extraction system is shown to be below the ridge level of the building and the appearance of the extraction system is considered visually acceptable within the street scene.
62. The proposed materials are brick with a tiled roof and during the course of the application the facing material has been amended from a buff brick to a red brick to reflect the local building material in the wider area. A condition requires further details of the materials to be submitted.
63. Bin storage is proposed to be internal to the rear of each of the three units with the bins being taken to the front elevation of the units when being collected.
64. In terms of the overall impact of the proposed development on the street scene the units would be viewed as part of the existing group of buildings set back from Jubilee

Road with the car park in the foreground The additional frontage is relatively small with the existing community centre and Spar local having a frontage of over 58 metres and the proposed infill unit being only 12 metres. Access to the playing fields to the south is also retained with surfaced paths being provided adjacent to the community centre.

65. The design, siting, mass and materials of the proposed building is therefore considered acceptable subject to a condition controlling precise details and would comply with Policy 29 of the CDP and Part 12 of the NPPF.

Access and Highway Implications

66. NPPF Part 9 seeks to ensure that development is only prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
67. Policy 21 of the CDP seeks to ensure that any vehicular traffic generated by new development, following the implementation of sustainable transport measures, can be safely accommodated on the local and strategic highway network and does not cause an unacceptable increase in congestion or air pollution and that severe congestion can be overcome by appropriate transport improvements. New developments should provide for appropriate, well designed, permeable and direct routes for walking, cycling and bus access, so that new developments clearly link to existing services and facilities together with existing routes for the convenience of all users.
68. Policy 29 also places great importance on safe sustainable modes of transport, in the following order of priority: those with mobility issues or disabilities, walking, cycling, bus and rail transport, car sharing and alternative fuel vehicles.
69. The existing vehicular access and communal parking arrangements serving the site would not change as a result of the proposed development. The Highway Authority has raised no objection to the application and consider that the access and parking is adequate for the additional units. One condition has been requested relating to the construction phase of the development to ensure that the existing access and parking is not impeded, and that highway safety is maintained.
70. Pedestrian access to the site would remain unaffected through the parking area. The site is also within 100 metres of 2 bus stops located on both sides of Jubilee Road. The site is therefore considered to be a locally sustainable site.
71. The proposal would satisfy the provisions of Part 7 and 9 of the NPPF and policy 21 of the CDP.

Residential Amenity / Amenity of neighbouring uses.

72. Paragraph 127 of the NPPF states that developments should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Para. 180 of the NPPF specifies that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.

73. Policy 29 of the CDP seeks to secure high standards of amenity and privacy and minimise the impact of development upon the occupants of existing adjacent and nearby properties. Policy 31 also states that where it is considered that the proposal would give rise to unacceptable impact, the application should be refused.
74. Shildon Town Council has raised an objection and considers that given the nature of the use and the hours of operation, the proposal would result in unacceptable disturbance from noise and odour, to the detriment of residential amenity and would also result in an increased risk of antisocial behaviour and crime arising from youths and young people congregating at the unit itself.
75. The main sensitive receptors in this case are the existing residential properties opposite the site on Jubilee Road to the north that would have a principal elevation facing the proposed building at a distance of 37 metres with a car park and road between. The proposed hours of operation of the hot food takeaway are between 9.00am – 11.00 pm. The retail units are proposed to open between the hours of 8.00am – 9pm As noted there is already an established convenience store and a fish and chip shop to the east of the site. The convenience store is currently advertised as being open from 6am – 10pm every day of the week and the fish and chip shop from 4pm - 10pm every day, with additional lunch time opening, except Sunday when it is closed. It is however noted that planning consent for the existing hot food takeaway allows hours of operation to 16:00 to 22:00 Sunday to Thursday or 16:00 to 23:00 Friday and Saturday inclusive of bank or public holidays. Given the above it is considered reasonable for the proposed hot food takeaway to adopt similar hours to the existing takeaway to reduce night time noise and for the two retail units to have maximum hours to align with the hot food takeaway, with an earlier start time of 8am.
76. The Environmental Health Officer has noted that there is odour relating to the existing hot food takeaway and noise from the existing refrigeration condensing units and extractor fans serving the existing buildings and businesses on site. Therefore, it is reasonable to assume the existing businesses are having an impact on the area from both noise and odour.
77. At the request of the Local Planning Authority the applicant has provided further details of the proposed kitchen extraction system including the positioning of the fan motor and attenuators to be installed within the fabric of the building. Having reviewed these details the EHO has advised that as the equipment is contained within the building this will mitigate against any additional noise in the locality.
78. Whilst further information on odour abatement is still required the EHO considers that this can be conditioned, so that the necessary details are provided based on the specifics of the proposed takeaway.
79. The Town Council has also raised concerns about the noise potentially arising from additional vehicle movements to and from the site. However, it is likely that any increase in this regard would be heard in the context of the existing establishments on the site and Jubilee Road that forms an arterial estate road and route between Spout Lane and Albert Street which is used by a range of vehicles including buses. In addition, the level of use proposed is likely to be comparable to that which would be generated through the permitted use of the site as a hot food takeaway and retail unit – especially if the hours of operations coincide. Consequently, any increase in noise is likely to be limited and not sufficient in this instance to sustain a reason for refusal of the application.

80. As regards to antisocial behaviour, it is accepted that in some cases small parades of shops can become a focal point where groups of young people may congregate. Whilst this can be intimidating, particularly for older residents, there is no evidence to suggest that a takeaway would be any more likely to generate behaviour of this nature than the permitted take away use on site or the retail use. It is noted however that the site benefits from street lighting to its northern boundary and has an open aspect in the wider area that may help to deter such behaviour. (The Police Architectural Liaison Officer was consulted on the application, but no comments were received.) Despite the concerns raised it is not considered that issues of antisocial behaviour and the fear of crime form sufficient material planning grounds to sustain refusal of the application.
81. Subject to the conditions stated relating to hours of operation and the submission and the agreement of extraction equipment it is considered that the proposal would therefore satisfy Policy 29 and 31 of the CDP and Part 15 of the NPPF.

Other Matters

82. With regard to Policies 35 and 36 in the CDP on drainage and water management the application site is not located in a flood risk area and the retail units are proposed to be connected to the mains systems for foul and surface water. Given the limited area of land ownership the applicant is not able, in this case, to undertake sustainable drainage within his land ownership.
83. The application site is not located in an area of high-risk former coal mining and the Environmental Health Officer (Contaminated land) has raised no objection. There are therefore no issues relating to land stability or contamination in accordance with Policy 29 of the CDP and Part 15 of the NPPF.
84. Shildon Town Council has also raised concerns about the hot food takeaway potentially creating litter in the area. It is noted on site that there are litter bins in the vicinity of the retail units and whilst litter can be an issue around food establishments at times there is no certainty that this will arise. This is affected by a number of variables including personal behaviour and the food produced. For instance, should a Chinese style takeaway occupy the unit this is more likely to produce food to be eaten at home rather than consumed on the street. As such it is not considered that litter raises a material concern that would sustain a reason for refusal.

CONCLUSIONS

85. The application is to be determined in accordance with relevant policies set out within the CDP and therefore the application falls to be determined in accordance with Paragraph 11c of the NPPF which requires applications which accord with an up-to-date development plan to be approved without delay.
86. The principle of development has been carefully considered having regard to the location of the site and relevant policy context including the submitted Retail Assessment. This has led to the conclusion that the small-scale retail units (combined floor area below 180m²) would serve a predominantly local area in East Shildon, and would not have a material impact on Shildon town centre.
87. The scale, mass, materials and design of the single storey units are considered satisfactory and in keeping with the existing buildings on site and the wider area. Details of materials and shutters form the subject of planning conditions.

88. A careful assessment of the impact on residential amenity has been undertaken and the hours of operation have been reduced on the proposed hot food takeaway to align with the existing hot food takeaway on site. Further details of the extraction system have also been received during the course of the application to demonstrate that neighbouring occupiers would not be detrimentally affected by noise. With regard to odour a condition is proposed to require full details of the extraction system to be submitted and agreed. No concerns have been raised by the nearest residents with regard to the impact of the development.
89. Adequate vehicular access and parking is available on site, which can be adequately drained, and is not considered to be unstable for construction purposes.
90. The proposals are therefore considered to satisfy the provisions of Parts 2, 4, 6, 7, 8, 9, 11,12, and 15 of the NPPF and in particular Policies 21, 29, 30, 31, 35, 36, of the CDP. The application is recommended for approval subject to the following conditions.

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.

Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall be carried out in strict accordance with the following approved plans:

Location plan Drawing no. 20841 – 04 Received on the 9th April 2021

Proposed site plan Drawing no 20841 - 01A Received on the 13th September 2021

Proposed floor plans Drawing no 20841 - 02A Received on the 13th September 2021

Proposed elevations Drawing no 20841 - 03A Received on the 13th September 2021

Reason: To define the consent and ensure that a satisfactory form of development is obtained.

3. Before the development commences a construction management plan shall be submitted to the Local Planning Authority and approved in writing. The details shall clarify how the construction phase of the development shall be managed to ensure that the impact on parking, highway safety and residential amenity is minimised.

Reason: In the interests of residential amenity and road safety in accordance with Policy 29 and 31 of the County Durham Plan and Part 9 and 15 of the NPPF.

4. The use of the hot food takeaway use shall not commence until details of the odour extraction system have been submitted to the Local Planning Authority and approved in writing. The odour extraction system shall then be implemented in accordance with the agreed details. The submitted details shall include the requirement to maintain the odour extraction system, ensure it is in use whenever the hot food takeaway is in operation and switched off at all times the use is closed, and the maintenance of the system. The approved noise attenuation scheme shall then be implemented in

accordance with the approved details including the retention and maintenance of the system.

Reason: In the interests of the amenity of the neighbouring residents and properties in accordance with Policy 29 and 31 of the County Durham Plan and Part 15 of the NPPF.

5. Before the use of the hot food takeaway commences details of noise attenuation of the extraction system shall be submitted to the Local Planning Authority and approved in writing. As detailed in the agents email of the 2nd August 2021 the submitted details shall include the position of the fan motor and attenuators in the proposed extraction system within the roof space of the hot food takeaway. The submitted details shall also include the requirement to maintain noise attenuation, ensure it is in use whenever the hot food takeaway is in operation and the maintenance of the system. The approved noise attenuation scheme shall then be implemented in accordance with the approved details including the retention and maintenance of the system.

Reason: In the interests of the aural amenity of residents and neighbouring properties in accordance with Policy 30 and 31 of the County Durham Plan and Part 15 of the NPPF.

6. The rating level of noise emitted from fixed plant/machinery on the site shall not exceed the background (LA90) by more than 5dB LAeq (1 hour) between 07.00-23.00 and 0dB LAeq (15 mins) between 23.00-07.00. The measurement and assessment shall be made according to BS 4142: 2014+A1: 2019. On written request by the planning authority the operator shall, within 28 days, produce a report to demonstrate adherence with the above rating level.

Reason: In the interests of the amenity of the neighbouring residents and properties in accordance with Policy 29 and 31 of the County Durham Plan and Part 15 of the NPPF.

7. Notwithstanding the submitted details the hours of operation of the hot food takeaway (sui generis use) shall not take place outside the hours of 09.00 to 22:00 Sunday to Thursday and 09:00 to 23:00 Friday and Saturday inclusive of bank or public holidays.

Reason: In the interests of residential amenity in accordance with Policy 31 of the County Durham Plan and Part 15 of the NPPF.

8. Before the development is above damp-proof course level details of the external building materials shall be submitted to the Local Planning Authority and approved in writing. These shall include a red brick for the walling and perforated shutters in front of any shop window. The building shall then be constructed in accordance with the approved details.

Reason: In the interests of visual amenity in accordance with Policy 29 of the County Durham Plan and Part 12 of the NPPF.

9. Notwithstanding the submitted details, the hours of operation of the 2 Class E units shall not take place outside the hours of 08.00 to 22:00 Sunday to Thursday and 08:00 to 23:00 Friday and Saturday inclusive of bank or public holidays.

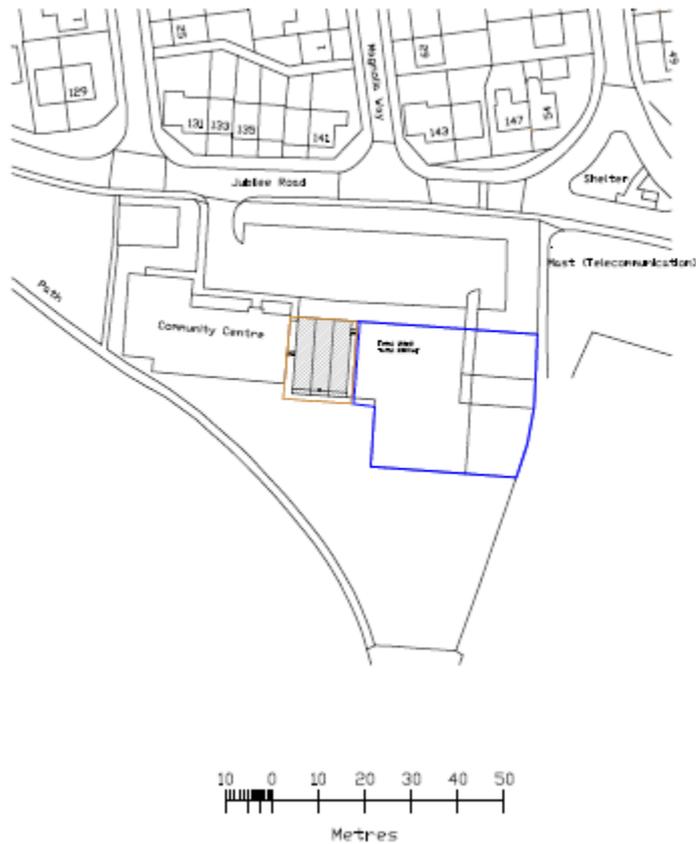
Reason: In the interests of residential amenity in accordance with Policy 31 of the County Durham Plan and Part 15 of the NPPF.

STATEMENT OF PROACTIVE ENGAGEMENT

In accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority 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.

BACKGROUND PAPERS

Submitted Application Forms, Plans and supporting documents
National Planning Policy Framework
The County Durham Plan (CDP)
Statutory consultation responses
Internal consultation responses
External consultation responses



<p>Planning Services</p>	<p>DM/21/01252/FPA Two shop units (Class E) and one hot food takeaway (sui generis)</p>	
<p>This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of Her Majesty's Stationary Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceeding. Durham County Council Licence No. 100022202 2005</p>	<p>Comments</p>	
	<p>Date September 2021</p>	