

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/16/00759/FPA
FULL APPLICATION DESCRIPTION:	Change of use from shop (use class A1) to restaurant and takeaway (mixed use A3 and A5) and erection of awnings
NAME OF APPLICANT:	Jace Dashamir
ADDRESS:	1A Arcadia Ouston Chester-le-Street DH2 1RF
ELECTORAL DIVISION:	Pelton
CASE OFFICER:	Nick Graham Planning Officer Telephone: 03000 264 960 nicholas.graham@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1. The application site is comprised of 1A Arcadia, Ouston, a two storey end of terraced building with a dual pitch roof. The last known use of the site was as a convenience store (use class A1).
2. The site is located within a parade of shops with residential flats above. Other residential properties surround the site. The parade of shops includes another takeaway, dog groomers and hairdressers.
3. To the west of the site is a small piece of recreational land, with approximately eight non-designated parking spaces; no designated car parking spaces are within the curtilage of the site. Ouston Junior School lies further to the west, approximately 100 metres away. The closest bus stops lies at the Red Lion public house approximately 400 metres from the site, with six-time hourly services to Chester-le-Street and twice hourly services to Newcastle and Gateshead.

The Proposal

4. Permission is sought for the change of use of the building from a shop (use class A1) to a mixed use restaurant and hot food takeaway (use classes A3 and A5). The restaurant plan submitted indicates up to 50 covers could be accommodated, whilst the proposed operating hours would be 12noon – 11.30pm Monday to Friday, 12noon – 12midnight Saturday, and 12noon – 10.30pm Sundays and Bank Holidays. All works at the building are proposed to be internal, with minimal external changes proposed, aside from awnings, the insertion of a side window, and an external flue

and extraction system to the rear. The flue would be a metal material, would protrude approximately 40cm beyond the roof plane, and would be a 'capped' design on the eastern roof plane of the building. The extraction system would continue through the centre of the upstairs flat to reach the flue. A separate application seeking Advertisement Consent for the two illuminated signs and awnings is found at application DM/16/00760/AD which is considered elsewhere on the agenda.

5. The application is presented to Committee at the request of the Divisional Member.

PLANNING HISTORY

6. There is no relevant planning history at the site.

PLANNING POLICY

NATIONAL POLICY:

7. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependant.
8. The presumption in favour of sustainable development set out in the NPPF requires local planning authorities to approach development management decisions positively, utilising twelve 'core planning principles'.
9. In accordance with paragraph 215 of the National Planning Policy Framework, the weight to be attached to relevant saved local plan policy will depend upon the degree of consistency with the NPPF. The greater the consistency, the greater the weight. The relevance of this issue is discussed, where appropriate, in the assessment section of the report below.
10. The following elements of the NPPF are considered relevant to this proposal;
11. *NPPF Part 1 – Building a Strong, Competitive Economy* – reinforces the Government's commitment to securing economic growth to create jobs and prosperity, ensuring the planning system supports this aim – 'significant weight' is to be placed on this aim. Planning policies should seek to address potential barriers to investment, setting out clear economic vision and strategy which proactively encourages sustainable economic growth, identifies sites and inward investment, and identifies priority areas for economic regeneration. There is no specific advice on decision making.
12. *NPPF Part 3 – Supporting a Rural Economy* – requires planning policies to support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development, supporting all types of business and enterprise, promoting development and diversification of agricultural and rural business and supporting tourism and leisure activities that benefit rural businesses, communities and visitors whilst respecting the character of the countryside.
13. *NPPF Part 7 – Requiring Good Design* – 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. Planning policies and decisions must aim to ensure developments; function well and add to the overall quality of an area over the lifetime of the development, establish a strong sense of place, create and sustain an appropriate mix of uses, respond to local character and history, create safe and accessible environments and be visually attractive.

LOCAL PLAN POLICY:

14. *Policy R18 – Retention of Existing Local Shops* – in Local Retailing Centres, the change of use away from use class A1 will not be permitted unless the proposals would not affect the predominant retail function of the shopping area; alternative facilities are available within reasonable walking distance for residents who live within the pedestrian catchment area of the existing shop; or a retail use is no longer economically viable or required by the local community.
15. *Policy R19 – Food and Drink* – these uses will be considered appropriate in principle within the boundaries of Local Retailing Centres and where there is no detrimental impact on the amenity of the occupants of residential properties in terms of noise, fumes, smell, lighting, activity levels or hours of operation; no overriding highway objections; provision made for waste disposal; no adverse impact on the rural character of the countryside; and satisfies other policies in the plan.
16. *Policy T15 – Access and Safety Provisions in Design* – Development should have safe access to classified roads, should not create high levels of traffic exceeding capacity, have good links to public transport, make provision for cyclists and service vehicles and have effective access for emergency vehicles.

RELEVANT EMERGING POLICY:

17. *The County Durham Plan* – Paragraph 216 of the NPPF says 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. The County Durham Plan was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 15 February 2015, however that report was Quashed by the High Court following a successful Judicial Review challenge by the Council. As part of the High Court Order, the Council has withdrawn the CDP. In the light of this, policies of the CDP can no longer carry any weight.

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>.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

18. The *Highways Engineer* has noted the site benefits from an existing parking layby nearby which serves visitors to the businesses at Arcadia, and the parking arrangement for the proposal is considered acceptable. Further detail was requested with respect to the head clearance for the awnings. This was subsequently provided and exceeded the requirements of the Engineer.

INTERNAL CONSULTEE RESPONSES:

19. The *Environmental Health Officer* originally requested additional information with respect to hours of operation, the type of food prepared the proposed extraction system, and the link between the ground floor use and the upstairs flat. This was subsequently provided by the applicant and the Officer confirmed no concerns regarding noise or vibration levels given the proposed siting of the extraction system, and subject to the occupancy of the flat being linked to the business, and the hours of operation not exceeding 12noon – 11pm. On this basis no objection has been raised in terms of the Environmental Health impact, and the development is not considered to have the potential to cause a Statutory Nuisance.

EXTERNAL CONSULTEE RESPONSES:

20. None.

PUBLIC RESPONSES:

21. Neighbours have been consulted by way of direct notification, and a site notice was posted on Arcadia. Ninety six letters of objection and a petition with 86 signatures have been received. The majority of the objectors have requested for their correspondence not to be made public in any way, however these are largely consistent with the comments made by objectors who have not made this request. The objections are as follows -

-The increase and generation of traffic would not be suitable for the residential type road, which is already in poor condition combined with extra traffic from Ouston Junior and Infants School. Road safety would also be of some concern.

-Adequacy of parking is also of some concern as there is only parking bays for residents at Arcadia flats/shops – where would the customers of the said property be parking? Along the only road in and out of the estate; I hope not because of all problems that would incur.

-Being on a residential estate which is inhabited mainly by elderly residents, the expected noise and disturbance caused by customers if the said property coming and going possibly late at night would be of great concern to most of the residents. These residents are of retirement age who wish to live in a quiet and peaceful environment. Also looking at the plans there is a bar inside the said property; this would add to the problem.

APPLICANTS STATEMENT:

22. The partners of the proposed business presently run a successful Italian restaurant in central Newcastle and each have many years' experience in running similar family orientated businesses, involving their own families and encouraging a regular family prioritised customer base.
23. The menu provided is extensive traditional Italian cuisine including top end a-la-carte fish and meat dishes, the expected pizza and pasta selection, and a surprisingly interesting selection of healthy traditional vegetable and salad dishes.
24. The interior would be simple and clean with a slight rustic Italian character, creating a warm, comfortable and welcoming environment.

25. Kitchen and extraction installations would be top specification and with the proposed internal route would have minimal visual impact on the surrounding area and residents. Odour control has been fully addressed with the top specification of the proposed extraction system.
26. Having worked on similar installations in similarly sensitive locations of combined residential and commercial aspects, we can assure all parties that existing problems regarding odour pollution have previously been fully resolved with the installation of the same system proposed to this scheme.
27. We do feel that the proposal would provide an exciting facility to the local community both practically and visually, would create a facility for social interaction, and would stimulate and encourage local people to use the adjacent group of retail businesses.
28. This proposal is for the extension of an existing successful family run business which would without doubt provide a great, positive and exciting facility to the local residents. The business would be ran by good families with good values and a smile for everyone.
29. You just can't have enough sunshine and smiles in your life.

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://82.113.161.89/WAM/showCaseFile.do?action=show&appType=planning&appNumber=10/00955/FPA>

PLANNING CONSIDERATIONS AND ASSESSMENT

30. 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 development, impact upon the surrounding area, impact on neighbouring amenity and privacy, and access and highway safety.

Principle of development

31. The application site is located within the defined settlement boundary of Ouston and Urpeth, as designated on the Chester-le-Street District Local Plan Proposals Map. It is however noted the site is out with the area classed as a Local Retailing Centre on the Proposals Map, which supports commercial uses only within such areas. The most relevant, which can be attributed some weight in the decision making process is Local Plan Policy is R19. This policy prescribes where food and drink outlets would be acceptable in principle and the environmental factors that would need to be taken into account.
32. The first strand of Policy R19 of the Chester-le-Street District Local Plan directs new food and drink (A3 uses) to Chester-le-Street Town Centre, established Local Retailing Centres, or as part of local shopping provision in new housing or mixed-use development. In this instance, although it is considered that the site is within a parade of shops that would likely have been built for the residents of the newly built estate at Ouston in the 1970s and it continues to function as such, this would have been prior to the Local Plan period. Therefore, the first strand of Policy R19 does not apply and no support can be given to the proposal in principle by virtue of its location geographically outside of the areas noted above. Nevertheless, the second strand of

Policy R19 would apply, and this is considered further in the neighbouring amenity section.

33. It is noted the proposal would facilitate the re-use of an existing dis-used building, with minimal alterations including a slightly altered shopfront and window to the gable end, and flue and extraction systems to the rear. The re-use of an existing building is noted as one of the twelve planning principles within Paragraph 17 of the NPPF. The proposal would also result in much needed investment in the premises with a scope for job creation, strongly supported by Paragraphs 18 and 28 of the NPPF.
34. Policy R18 sets out a requirement for the change of use away from A1 uses for Village Shops, which the proposal site is also considered to fall under. Under this Policy, it must be demonstrated either; alternative facilities are available within reasonable walking distances for nearby residents, the facility is no longer viable, or the proposal would not affect the predominant retail function of the shopping area.
35. The application form indicates the unit has been empty since January 2015, whilst it is noted a convenience store is located at the petrol station on Ouston Lane, approximately 350 metres away from the application site. It is therefore considered there is an adequate facility within a reasonable walking distance for residents, and the proposal is considered to accord with Policy R18 of the Chester-le-Street District Local Plan.
36. It is also noted the site is located within approximately 150 metres of Ouston Junior School, to the west. A Judicial Review decision (reference CO/7061/2009) relating to a hot food takeaway near a school (the Cable Street case) noted that health eating and proximity to a school was capable of being a material planning consideration. In this instance, given the school is a Junior School, it is not considered likely students would leave the site for lunch and as such limited weight can be afforded to this issue.
37. Given all of the above, in principle the proposal is not supported by the first strand of Policy R19 of the Local Plan which sets out where such uses are acceptable in principle. As a 'town centre use' proposed to be located away from such a centre, the proposal derives no support from the development plan in terms of its location in principle. However, as a re-use of an existing building it does derive some support from the NPPF and it accords with policy R18. This is however subject to the amenity of neighbouring residents, highway safety, and waste management all being to a satisfactory manner, which is further outlined below,

Impact on neighbouring amenity

38. The second strand of Policy R19 of the Local Plan outlines what material considerations new food and drink uses should be assessed against, and is considered to be compliant with the NPPF. One of these is that a proposal should not have a detrimental impact upon the amenity of residential properties from noise, fumes, smell, lighting, activity levels or hours of operation. Paragraph 123 of the NPPF states that development should avoid noise that would give rise to significant adverse impacts upon health and quality of life. Additionally, the NPPG outlines how Local Planning Authorities should assess such impacts, including that potential pollution and other environmental hazards, which might lead to an adverse impact on human health, are accounted for in the consideration of new development proposals.
39. The Council's Environmental Health Officer has commented upon the proposals, noting the proposed extraction and ventilation system is acceptable, as the ground floor business and upper floors residential accommodation would be linked. It is

considered appropriate to condition the occupier of the upstairs flat is directly linked to the business below as part of any approval granted. The proposed hours of operation have also been queried however from an Environmental Health perspective, were these to be limited to 12noon – 11pm daily, the Environmental Health Officer would not be opposed to the proposal and would not consider a Statutory Nuisance would be created.

40. It is acknowledged the proposal site is surrounded by residential properties, and the proposal would undoubtedly have an effect on the amenity of neighbouring properties by virtue of its use and operating hours. A neighbouring unit within the parade of shops is also a hot food takeaway, with operating hours of 5pm to 10.30pm daily. This unit operates without restrictions on operating hours and could in theory operate 24 hours a day as a hot food takeaway.
41. Nevertheless, it is considered the proposal would increase the number of comings and goings to the area, with customers visiting the restaurant and collecting takeaways, and potentially deliveries of hot food. It is noted from the ground floor plan, the restaurant would have in excess of 50 covers, which if full, would increase the numbers of customers to the area substantially based on the previous use.
42. The supporting text of Policy R19 states that within “residential locations...hot food takeaways and other class A3 uses will be considered unacceptable because of the likely detriment effect of smell and general disturbance to residents.” Although the nearby residents live within an urban environment, the site is not located in a town centre or edge of town centre location where there might be a reasonable expectation of noise and activity later into the evening.
43. In this instance, although the Environmental Health Officer has raised no objection in regard to a Statutory Nuisance at the site, there is considered to be a detrimental impact to the amenity of neighbouring properties, by virtue of the increase in late evening noise, disturbance and general activity, including people visiting the premises, smoking outside the premises on Arcadia, and slamming of car doors late into the evening seven days a week.
44. It is noted that although the threshold for a Statutory Nuisance is higher than the ‘residential amenity’ test employed under planning, it is still considered the proposal would lead to an unacceptably harmful effect on the living conditions and amenity of these residents. In particular, the properties located within closest proximity to the site, at Arcadia, Arisaig, Aberdeen, and Aberfoyle, would be subject to the greatest impact. This would be further exacerbated by the other takeaway which is already located at Arcadia, adding to the noise and disturbance to these residents particularly.
45. Based upon the above, the proposed use as a restaurant and hot food takeaway is considered to bring adverse impacts upon the quality of life and amenity of neighbouring nearby residents.

Visual impact upon the surrounding area

46. Policy R11 of the Local Plan requires new commercial properties to have shop frontages in keeping with the character and appearance of the surrounding area, being proportionate to the host building. The application does not propose significant alteration to the frontage of the property, asides from the proposed awnings which are considered acceptable. It is noted the illuminated signs are covered within the advertisement consent application. It is therefore considered the proposed changes to the shopfront accord with Policy R11 of the Chester-le-Street District Local Plan.

Highway safety and access

47. Policy T15 of the Local Plan requires new development to respect the safety of other highway users. The application site falls within an area earmarked for local shopping provision, and given the non-designated provision of parking to serve the shop units, no objection has been raised from the parking aspect from the Highways Engineer. The applicant has clarified the head clearances for the proposed awnings and these are deemed acceptable as they exceed the standards.
48. It is considered likely cars would be displaced from the designated parking areas to nearby residential streets, to the detriment of residential amenity, however more broadly the proposal is considered to be in accordance with Policy T15 of the Chester-le-Street District Local Plan.

CONCLUSION

49. Proposed as a mixed-use A3 restaurant and A5 hot food takeaway, the change of use would take place within a predominately residential area that would re-use vacant commercial premises, whilst the proposed awnings are considered an acceptable and appropriate addition to the premises frontage. The re-use of the vacant building and job creation add weight in favour of the proposals, whilst the highways and parking arrangement and Environmental Health statutory requirements are considered to be met. However, the impacts on the amenity and quality of life of nearby residents of a hot food takeaway being located in close proximity are considered to significantly outweigh the aspects in favour of the development.
50. As such, the proposal is considered to be contrary to Part (i) of Policy R19 of the saved Chester-le-Street District Local Plan on the basis of an unacceptable impact upon the amenity of neighbouring residents.

RECOMMENDATION

That the application be **REFUSED** for the following reason:

1. The proposed restaurant and hot food takeaway is considered to have an adverse impact upon the amenity of nearby residential properties through disturbance brought by late evening noise, disturbance and general activity. The proposal is therefore contrary to Point (i) of Policy R19 of the saved Chester-le-Street District Local Plan and Paragraph 123 of the NPPF.

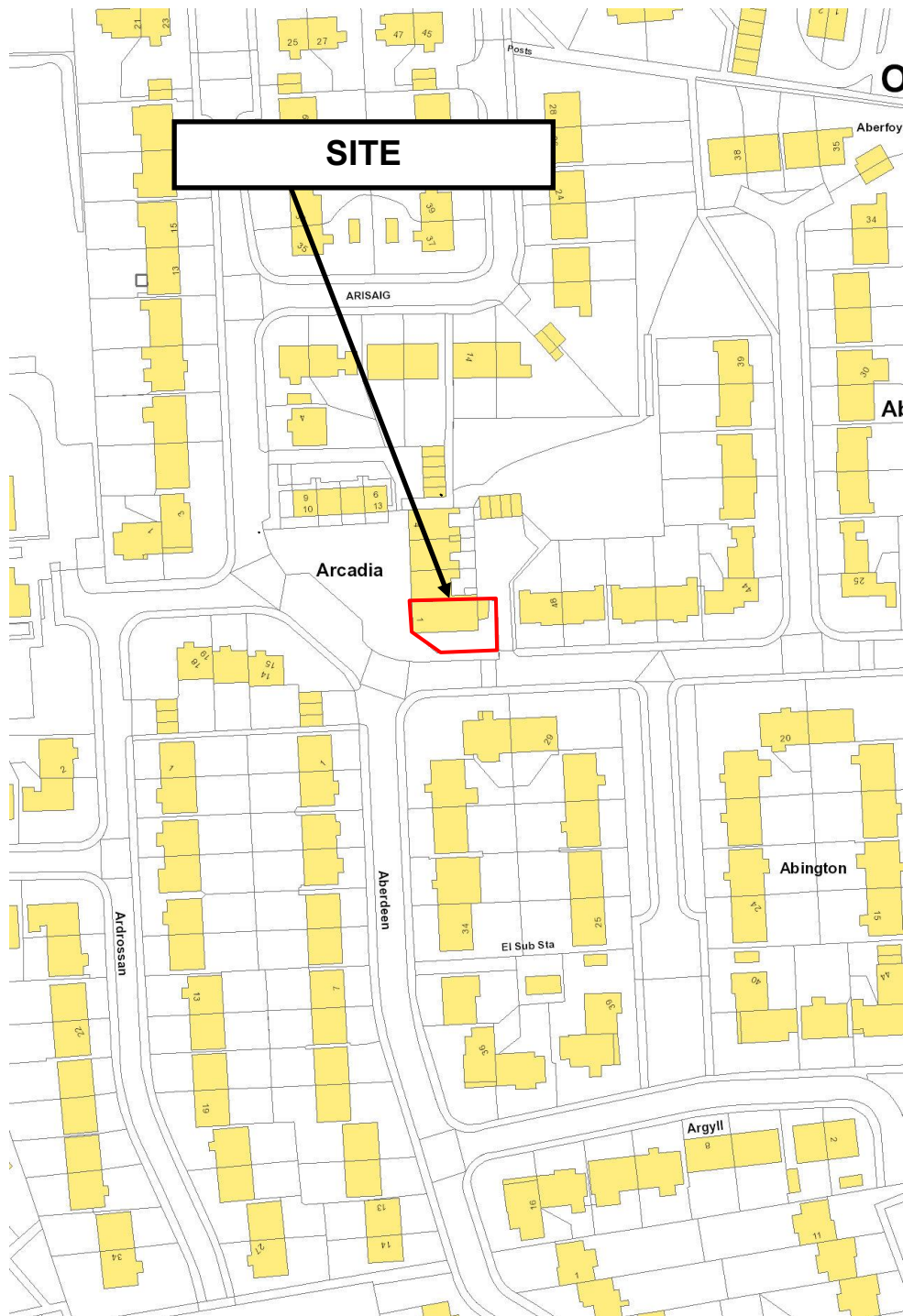
STATEMENT OF PROACTIVE ENGAGEMENT

The Local Planning Authority in arriving at the decision to refuse the application were unable to seek solutions with the applicant in order to resolve those matters which failed to deliver high quality sustainable development in accordance with the NPPF, due to the form of development being unacceptable in principle.

BACKGROUND PAPERS

- Submitted application form, plans supporting documents and subsequent information provided by the applicant.
- The National Planning Policy Framework (2012)

- National Planning Practice Guidance Notes
- Chester-le-Street District Local Plan (saved Policies 2009)
- Statutory consultation responses



Planning Services

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1A Arcadia, Ouston, Chester-le-street, DH2 1RF

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Comments

Date 28th July 2016

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