

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION No:	DM/16/01957/FPA
FULL APPLICATION DESCRIPTION:	Change of use of ground floor only from A2 to A5 hot food takeaway and delivery unit, installation of extraction and odour control system and ground floor extension to house external chiller and freezer rooms and new shop front. (Amended plans).
NAME OF APPLICANT:	Miss D Andre
ADDRESS:	Lloyds Bank Plc, 28 New Elvet, Durham DH1 3AL.
ELECTORAL DIVISION:	Elvet and Gilesgate
CASE OFFICER:	Susan Hyde, Planning Officer, 03000 263961 susan.hyde@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

1 SITE: The application site relates to an unlisted building within the eastern part of Durham (City Centre) Conservation Area. It occupies a prominent position fronting the busy street of New Elvet forming part of a short run of commercial properties situated between Court Lane and Elvet Crescent. This part of Elvet has a strong relationship to the World Heritage Site as Durham Cathedral provides a key visual focal point located to the west of the site.

2. PROPOSAL: This application seeks consent for the change of use of the ground floor of a former bank to a hot food takeaway which involves replacing the existing shop frontage, the construction of a rear extension to house a chiller unit and a freezer. In addition the proposal involves inserting wall mounted ventilation grilles and internal modifications at No.28 New Elvet, Durham City.

3. The application is brought before members of the Planning Committee at the request of Councillor David Freeman who wishes to support Elvet Residents Association and their concern about the introduction of shutters on the property and the hours of opening.

PLANNING HISTORY

4. 4/08/00734/FPA - Erection of replacement shopfront and erection of 3 no. air conditioning units to rear elevation of existing building – approved.

5. 4/13/00259/AD - Replacement signage scheme – approved.

6. DM/16/01028/FPA - Alterations to the ground floor retail unit (A2) including new shopfront. Alterations to existing 2 bed first floor flat to form a 4 bed flat (C3) including first floor extension to rear and 3 no. rooflights - approved

NATIONAL POLICY

6. 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. 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'.

7. NPPF Part 1 - Building a Strong and Competitive Economy. The Government attaches significant weight on the need to support economic growth through the planning system. Local Planning Authorities should plan proactively to meet the development needs of business and support an economy fit for the 21st century.

8. NPPF Part 6 - Delivering a Wide Choice of High Quality Homes. Local Planning Authorities should use evidence bases to ensure that their Local Plan meets the needs for market and affordable housing in the area. Housing application should be considered in the context of the presumption in favour of sustainable development. A wide choice of homes, widened opportunities for home ownership and the creation of sustainable, inclusive and mixed communities should be delivered. Where there is an identified need for affordable housing, policies should be met for meeting this need unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified and such policies should also be sufficiently flexible to take account of changing market conditions over time.

9. 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.

10. NPPF Part 8 - Promoting Healthy 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.

The above represents a summary of the NPPF considered most relevant the full text may be accessed at:

<http://www.communities.gov.uk/publications/planningandbuilding/nppf>

RELEVANT EMERGING POLICY

The County Durham Plan

11. 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 (CDP) was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 18 February 2015, however that Report was quashed by the High Court following a successful Judicial Review challenge by the Council. In accordance with the High Court Order, the Council has withdrawn the CDP and a new plan being prepared. In the light of this, policies of the CDP can no longer carry any weight. As the new plan progresses through the stages of preparation it will begin to accrue weight.

LOCAL PLAN POLICY:

12. Policy T1 (Traffic Generation - General)- states that the Council will not grant planning permission for development that would generate traffic likely to be detrimental to highway safety and / or have a significant effect on the amenity of occupiers of neighbouring property.

13. Policy T10 (Parking - General Provision) states that vehicle parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.

14. Policy U8A (Disposal of Foul and Surface Water) - requires developments to provide satisfactory arrangements for disposing foul and surface water discharges. Where satisfactory arrangements are not available, then proposals may be approved subject to the submission of a satisfactory scheme and its implementation before the development is brought into use.

15. Policy H13: (Residential Areas - Impact upon Character and Amenity) states that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.

16. Policy S10: (Food and Drink) states that development for class A3 food and drink uses will be permitted provided there are no adverse effects on nearby occupants, adequate parking is provided, it is in scale and character with surrounds and does not compromise other policies in the plan.

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:

17. County Highway Officer- Raises no objections to the application.

INTERNAL CONSULTEE RESPONSES:

18. Police Architectural Liaison Officer – considers the hot food takeaway will result in more anti social behaviour and be detrimental to residential amenity.

19. Environmental Health Officers – Raise an objection to the proposal on the impact of the hot food takeaway on the residential amenity of nearby residents.

20. Conservation Officers – Note the extension is to the rear of the property and considers the amended plan for a brick extension is an improvement on the original submission. A further amendment is required for a parapet on the flat roof extension to improve its appearance.

PUBLIC RESPONSES:

21. The application was advertised by means of a press notice, site notice and by letter to neighbouring properties within the area.

22. 11 letters of objection have been received from neighbours and from the Elvet Residents Association. The main concerns raised are:

- a) The hot food takeaway will generate noise and smells until late into the night.
- b) The proposal will lead to people congregating outside the premises which is close to residents flats and houses late at night, and this will be detrimental to residential amenity.
- c) There is an over age 55 development at Orchard House nearby that will be disturbed by all the noise at night.
- d) The proposed delivery vehicle adjacent to the building will disturb people with all the comings and goings with the deliveries until late into the night.
- e) Concerned about the increase in litter associated with the hot food takeaway.
- f) The proposal is contrary to NPPF Part 8 on Healthy Communities as the proposal will encourage the consumption of unhealthy food and the location opposite the student union is appealing to students in particular.
- g) Concerned about the impact of aluminium shutters on the shop front elevation of the property.
- h) Concerned that inadequate publicity has taken place for the application.

APPLICANTS STATEMENT:

23. We have submitted this change of use application to bring a unit which has been empty back into use, Our proposed changes from A2 to A5 and rear extension we feel are in keeping within the local area and will make use of the building for a long time as our client is taking on a 20 year lease, The business will be an international recognised brand who specialise in developing staff and have a strong staff development ethos employing local people in full and part time roles on permanent contracts, they promote from within and have whole depts. Set up within their head office for the sole purpose of staff development. The unit is in a run of mixed use shops and we are proposing a new shopfront to be in keeping with the local area and also comply with the equality act, we are not proposing shutters and only wish to trade till 23:00 hours daily which the unit could do under its present classification at this time. The extension we are working with the local planners and conservation officer and are happy to further develop the plans to suit their requirements and wishes, we will be replacing existing air conditioning condensers with new smaller more quiet units and also installing in line odour control to satisfy EHO requirements, the units are running at levels higher than the local EHO requirements with quarterly inspections by the brand excellence teams.

24. In summary we would like to bring the brand into Durham, we would like to employ and develop local staff and we would like to work with the local planners, conservation officers and EHO's in bringing an empty unit back into use and developing it to benefit the local area and the local people.

25. 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, residential amenity, layout and design and highway safety.

Principle of Development

26. The site lies within the established predominantly residential area of New Elvet within a small local parade of shops. The site is located outside the allocated primary or secondary shopping centre and the small parade of shops has no commercial allocation in the Local Plan. As such the proposed hot food takeaway falls to be considered against Policy S10 which supports hot food takeaways subject to specific criteria that are discussed below. It is acknowledged that there are various elements included within the Town and Country Planning (General Permitted Development) Order 2015 that would allow change of use of the site without planning permission to alternative uses including Class A1 retail. Some of the changes of use are subject to a prior approval procedure and are on a temporary basis only. In this case the potential alternative uses would not be considered to outweigh the detailed assessment as per below.

Residential Amenity

a) Noise

27. The hot food takeaway is proposed to be open to 11pm seven days a week and has a flat in separate ownership to the hot food takeaway above the shop, and residential properties close to the application site. Policy S10 requires there to be no adverse effects on the amenities of nearby occupants and Policy H13 does not support applications that have a significant adverse effect on the character and appearance of the residential area. Although the property is located within a small parade of commercial properties these are all quiet uses and do not open particularly late at night. The parade consists of estate agents, a general store and a bakers. As such the shopping parade is currently quiet in the evening.

28. In this case the Environmental Health Officer has raised an objection to any application for a late night A5 use with residential properties above or in close proximity due to the inherent uncontrollable noise associated with this use due to late night visitors/commercial operations. The 11pm closing time would result in customers arriving and leaving the premises up until 11pm and with the possibility of congregating outside the shop after this time to consume the hot food purchased with associated noise disturbance. This will include vehicles parking with car doors slamming, and the takeaways delivery vehicles coming and going. This type of noise is difficult to control and there are no mitigation measures that can be put in place to reduce this noise impact. As there are residential properties in close proximity to the proposed site and due to the likely potential for noise disturbance Environmental Health Officers object to the application.

29. The Police and planning officers have noted at other hot food takeaways in the City Centre that the busiest period of operation for the hot food takeaway is in the late hours in the evening. As this also coincides with customers leaving public houses or other establishments the customers tend to be noisier and the Police have noted from the closing time of the takeaway until when the street is clear of people consuming hot food takeaways on the street is around one hour. So although the closing time of the hot food takeaway may be at 11pm the consumption of the hot food and dispersal of people may take significantly longer.

30. A second noise issue is raised about the transfer of noise from the shop into the residential flat above. The applicant has advised that they would be willing to carry out sound insulation works between the proposed site and the residential property above. This would reduce the direct noise transmission from the shop to the residential property. In addition the applicant has advised that they would install plant/machinery that will produce lower noise levels than the existing units. Again this would assist with the direct noise transmission to the residential property above and surrounding residential properties to the rear of the premises. If consent is granted then these two issues can be addressed by a planning condition.

b) Odour

31. With regard to odour the applicant has provided additional information in relation to odour at the request of the Environmental Health Officer. The applicant has advised that they would not be installing an external flue and would therefore ensure that odour treatment facilities are included within the odour extraction system in order to ensure that dispersal of odours is not required. This system does seem appropriate for this location however there is a requirement to ensure that these systems are appropriately maintained to guarantee continued satisfactory odour control. No objection is therefore raised with regard to odour and if consent was granted the continued management of the odour system could be conditioned.

Layout and Design

1 Proposed shop front

32. No objection is raised to removing the existing shop frontage as this is a modern introduction approved in 2008. As such there is no desirability for its retention. The submitted plan of the shop front lacks detail and would appear to be modelled with the existing plinth and end pilasters retained and the new door position and amount of glazing consistent with others in the parade. While the use of aluminium is generally resisted in favour of timber in the conservation area, the use of this modern material would not be contentious in this location with the dark colouring (RAL 7021) and matt finish neutralising the modern materials impact. The Conservation Officer requested an amendment to alter the main areas of glazing as these are presently too square and could be improved to have a stronger vertical emphasis by sub-dividing the same window space into 3 with the use of glazing bars. This would provide cohesion with the format of the glazing with that adjacent to the door. The agent has submitted an email agreeing in writing this alteration. This is a matter that could potentially be controlled through a planning condition in the event of planning permission being granted. However as no plan has been received and the application is recommended for refusal then this is included as a reason for refusal.

2 Proposed rear extension

33. The external alterations are assessed in accordance with the requirement in Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, Paragraph 131 of the NPPF and Policy E22 of the Local Plan that endorse the desirability to preserve and enhance heritage assets within the City of Durham Conservation Area. The flat roof extension is located to the rear on a site that is enveloped by existing built form of a far greater scale on three sides. As such in the context of views in the Conservation Area it would not be intrusive in any notable view and from the public perception of the heritage values of the area there would be little noticeable difference compared to the existing situation from the surrounding main streets of New Elvet, Court Lane, and Elvet Crescent.

34. The rear extension is 3.6 metres deep and set in from the existing rear elevation which would lead to 1 metre of the retaining wall being moved back into the site. This would take the form of a single-storey box-like structure with an amended plan showing this clad in brick. This would be attached to the ground floor of the existing building with consent recently having been granted for a first floor pitched roofed extension over the existing ground floor extension, approved under the provisions of DM/16/01028/FPA, yet to be implemented. A further amendment was requested for the brick single storey extension to include some detailing and a parapet to improve the appearance of the flat roof in the City of Durham Conservation Area. The agent has provided an email saying that he accepted this could be provided but no plans have been received. As with the shop front, this is a matter that could have been controlled by condition. However as no plan has been received and the application is recommended for refusal, and a flat roof extension without parapet detailing in the Conservation Area is not supported then this is included as a reason for refusal.

Highways and Parking

35. The County Highway Officer has raised no objection to the application. Parking within this area is controlled and there is a small car park to the front of the parade of shops.

Comments on neighbours objections:

36. Neighbours raised concerns about the height, scale and design of the proposed property, residential amenity and overshadowing. These issues are considered to be addressed above.

37. The concerns raised by residents about the noise and odour from the premises are also addressed above.

38. Residents raise concern that a property that specialises in the accommodation of people over the age of 55 is located close to the site. Planning Officers are aware that Orchard House which is located to the north of the site is for people within that age group. The planning issue here relates to the impact on residential amenity more generally, and this is considered to be addressed earlier in the report.

39. There is a concern that litter associated with the hot food takeaway would increase in the locality. There are litter bins outside the hot food takeaway that can accommodate local litter, and this is not considered to be an issue that would justify refusal of planning permission.

40. Residents also raise a concern that the proposal is contrary to NPPF Part 8 on Healthy Communities. This section of the NPPF does cover Healthy Communities and includes green spaces, schools and footpaths but does not specifically mention hot food takeaways.

41. Concern has also been raised about new aluminium shutters. However no aluminium shutters are proposed on the plan. The confusion may have arisen from the internal grilles being annotated on the plan.

42. Residents have also raised concerns about inadequate publicity having been undertaken; however a press notice, site notice and letters to neighbours have been sent and second letters to neighbours following the receipt of amended plans and additional information. The publicity undertaken has been in accordance with statutory requirements and also the Council's usual good practice on notification on applications.

CONCLUSION

43. In conclusion the planning application proposes change of use of the ground floor only from an A2 bank use to an A5 hot food takeaway and delivery unit, installation of extraction and odour control system and ground floor extension to house external chiller and freezer rooms and new shop front. The proposed alterations to the building including the new shop front are lacking in detail on the plans with regard to revisions to the glazing, and the single storey extension to the rear also lacks the detail of a parapet and brick detailing. As well as being contrary to Local Plan policies because of this, the development would also fail to satisfy the requirement in Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, as it would not be considered to preserve or enhance the character or appearance of the Conservation Area. Although such matters could normally be controlled through planning condition in the event of permission being granted, they are considered to constitute a reason for refusal in the context of an unacceptable proposal. ,

44. The principal issue in this case relates to the impact on residential amenity from the comings and goings to the hot food takeaway on foot and by vehicle, particularly at late hours. The Environmental Health Officer and the Police have carefully considered the proposals and raise concerns that the noise generated could not be controlled and have recommended that the application is refused planning consent. Planning officers consider these to be valid concerns to a degree that is unacceptable in the context of this location. The application is therefore recommended for refusal.

RECOMMENDATION

That the application be **Refused** for the following reasons:

1. The proposed A5 hot food takeaway with a closure time of 11pm 7 days a week would detract from the residential amenity of the area, and particularly the flat above the premises that is unrelated to the business, due to the noise and disturbance generated by the comings and goings from people, vehicles and delivery mopeds during late evening hours. This is considered to be contrary to the saved Policies S10 and H13 of the City of Durham Local Plan 2004.
2. The proposed single storey flat roof rear extension and replacement shop front are not considered to protect or enhance the character of the City of Durham Conservation Area due to the lack of satisfactory detail on the shop front plans and the glazing pattern and the lack of detailing of the parapet wall on the single storey rear extension. For these reasons the proposals are considered to be contrary to Policy S10 and E22 of the City of Durham Local Plan and Part 7 and Part 12 of the NPPF.

STATEMENT OF PROACTIVE ENGAGEMENT

45. 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. Unfortunately a positive outcome has not been achieved on this application. (Statement in accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015

BACKGROUND PAPERS

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

The National Planning Policy Framework (2012)

National Planning Practice Guidance Notes

City of Durham Local Plan 2004

Statutory, internal and public consultation responses



Planning Services

Change of use of ground floor only from A2 to A5 hot food takeaway and delivery unit, installation of extraction and odour control system and ground floor extension to house external chiller and freezer rooms and new shop front. (Amended plans).

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Comments

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