

# Planning Services

# COMMITTEE REPORT

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## APPLICATION DETAILS

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<b>APPLICATION NO:</b>	DM/17/01132/FPA
<b>FULL APPLICATION DESCRIPTION:</b>	Construction of drive-thru Burger King and Papa Johns with associated parking
<b>NAME OF APPLICANT:</b>	Burney Estates Ltd.
<b>ADDRESS:</b>	Tesco Extra, Abraham Enterprise Park, St Helen Auckland, Bishop Auckland, Co Durham
<b>ELECTORAL DIVISION:</b>	West Auckland
<b>CASE OFFICER:</b>	Mark O'Sullivan, Planning Officer, 03000 261056, mark.o'sullivan@durham.gov.uk

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## DESCRIPTION OF THE SITE AND PROPOSALS

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1. The application relates to the construction of 2no. Class A5 Hot Food Takeaway units (Burger King and Papa John's Pizza) within the existing customer car park serving the Tesco Extra superstore at Tindale Crescent, Bishop Auckland. Both units would be detached from one another, located to the south western extent of the Tesco car park, to the immediate northwest of the C42 (Manor Road), occupying existing customer parking spaces.
2. The proposed Burger King would be located at the south west corner of the car park, and be served by 8no. dedicated parking bays (including 2no. disabled bays) and a drive-thru lane. The building would measure 16m x 9.5m in area, and 4.2m in maximum (single storey) height and would include an enclosed refuse compound to the south facing elevation.
3. The proposed Papa John's unit would be located some 30m to the north east of Burger King, close to the main Tesco car park entrance at its junction with Manor Road. This A5 unit would also be served by dedicated customer parking (5no. bays including 1no. disabled). No drive-thru would serve this unit which would measure 15.5m x 6.5m in area and a maximum monopitch ridge height of 4.7m. An enclosed bin store compound would be located to the east of the unit.
4. Small areas of incidental carpark landscaping comprising low level planting and shrubs are to be removed to facilitate the proposed development.
5. Details of site signage/advertisement as shown on submitted plans is indicative only and would be a matter to be controlled under a separate advertisement consent application.
6. The application is being reported to the Planning Committee at the request of Cllr Rob Yorke who expresses concern over the possible adverse impact of increased traffic flow which may result from the development if approved.

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## PLANNING HISTORY

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7. Outline planning permission was granted on 18 September 2009 for the demolition of a former factory on this site and the erection of new Tesco Superstore with Petrol Filling Station, parking and associated highway alterations (Planning approval ref: 3/2008/0723). Subsequent reserved matters approval was granted on 20 May 2010 for these works (Planning Approval ref: 3/2010/0074).

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## PLANNING POLICY

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### NATIONAL POLICY

8. 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 dependent.
9. 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'. The following elements of the NPPF are considered relevant to this proposal;
10. *Part 1 – 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 of a low carbon future.
11. *Part 2 – Ensuring the vitality of Town Centres.* Planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period.
12. *Part 4 – Promoting sustainable transport.* Transport policies have an important role to play in facilitating sustainable development but also in contributing to wider sustainability and health objectives. Smarter use of technologies can reduce the need to travel. The transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel. However, the Government recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas.
13. *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.
14. *Part 11 – Conserving and enhancing the natural environment.* The planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity.

## **LOCAL PLAN POLICY:**

15. The development plan is the Wear Valley District Local Plan saved policies:
16. *GD1 - General Development Criteria* – requires new development to be designed and built to a high standard which contributes to the quality and built environment of the surrounding area.
17. *S1 – Town Centres* - seeks to maintain and protect Bishop Auckland Town Centre as delineated on the Proposals Map Inset 1 forming part of the WVLP as a major retail centre in the former District.
18. *I5 – General Industrial Sites* – details acceptable site uses within designated general industrial areas.
19. *S11 – Hot Food Takeaways* – permits hot food takeaways within existing shopping areas where they do not adversely affect the amenity of neighbouring properties, create unacceptable levels of traffic which exceed the capacity of the local road network, do not undermine the vitality and main function of the existing retail area and do not conflict with other relevant plan policies.
20. *T1 – General Policy* – seeks to ensure that all developments which generate additional traffic be required to fulfil Policy GD1, providing for adequate access, capable of access by public transport networks, without exceeding the capacity of the local road network.

## **RELEVANT EMERGING POLICY:**

The County Durham Plan

21. 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.

*The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.cartoplus.co.uk/durham/text/00cont.htm>.*

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## **CONSULTATION AND PUBLICITY RESPONSES**

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### **STATUTORY RESPONSES:**

22. *Bishop Auckland Town Council* – have made no comment on this application.
23. *The Highway Authority* – raise no objections to the proposals having viewed the Transport Statement submitted with the application and having also undertaken a separate car park survey on Saturday 15 April 2017.

24. *The Coal Authority* – confirm the site to be located outside of any Development High Risk Area and therefore offer no comment with respect the proposed works.

**INTERNAL CONSULTEE RESPONSES:**

25. *Ecology Section* – raise no objections to the proposals.

26. *Environmental Health (Contaminated Land)* – agree with the findings of the submitted Phase 1 Desk Study (Lustre Consulting, February 2017) and have undertaken a site walkover. Due to the fact that this development would constitute a change of use to a more sensitive receptor, a contaminated land condition should apply to any planning approval.

27. *Environmental Health (Noise)* – The granting of planning permission for the development may potentially result in a statutory nuisance being created. However the imposition of conditions relating to control over operational hours and details of a fume extraction system and subsequent adherence would remove any objections to the development.

28. *Spatial Policy Section* – raise no objections. Officers are unaware of any circumstances in regard to this scheme that directly relate to policies within NPPF that would indicate that the scheme would be significantly harmful in principle and should be resisted. The development of the site would have potential to contribute to the economy in terms spend and employment which would bring to the area the potential to benefit complementary retail and leisure operators. The potential for impacts arising from an intensification of use of the site within the local area in terms of loss of existing parking, effect on local highway network and air pollution need to be assessed.

29. *Drainage* – consider the proposals would not affect the current situation with respect to surface water discharge rate, with little opportunity for betterment. Proposals are acceptable with regards surface water flood risk and management.

**PUBLIC RESPONSES:**

30. The application has been publicised by way of site notice and notification letters to neighbouring residents. 1no. letter of objection has been received in response to this exercise from a local resident who expresses concerns over the existing volume of traffic using the adjacent highway and the amount of litter in the area from existing hot food takeaways.

31. In addition, 1no. email has been received from Cllr Christine Wilson who raises no objections to the application.

**APPLICANTS STATEMENT:**

Employment

32. The most significant economic benefit of proposing new business in this area would be the local job creation. With a new Burger King Restaurant on site the company will employ over 40 members of staff of which 20 will be full-time and 20 part-time. The restaurant will operate from 08.00 to 23:00 as a standard, within a structure of 3 shifts a day, 7 days a week. As part of their employment, Burger King train staff in various roles including management and transfer staff to manage other restaurants in the locality.

33. Additionally, Papa John's new takeaway unit will create 20 jobs, split 40% full-time, 60% part-time. They seek, where possible, to operate standard opening hours for all of their stores and the typical closing time at 23:00.
34. The restaurant and takeaway will offer good employment opportunities for the key 16-25 year old demographic and generate jobs for the local community. The average crew member spends 2.6 years with the Burger King business. The restaurant and takeaway will provide opportunities for local jobseekers to take the first steps on a long career path and also to those who are in the market for something a little more flexible and fit around other commitments, such as parental responsibilities or a student lifestyle.

#### Local economic role

35. The businesses proposed to operate in both new buildings will contribute to the economy of local food supply with a demand for vegetables, dairy produce, meat and baked goods. Burger King Restaurants receive 50 – 60% of all their products from UK suppliers. Never frozen ingredients are the guiding principle at Papa John's therefore it is apparent that the takeaway will utilise local sources and distributors. Furthermore, the emergence of new supply links within the local economy will also create more intermediate demand on services such as delivery and management jobs to achieve the intended daily operation.

#### Highways

36. Adequate parking and access for delivery vehicles are proposed in order to minimise the impact on local traffic. The current application site has provision for parking for passing vehicular trade and delivery of goods. 8 car parking spaces are provided for the Burger King Unit and 5 car parking spaces are allocated for the A5 Papa John's Unit. All parking bays are 2.5m by 5.0m in size and meet the quantity provision standards of local planning guideline.
37. The site is located on the Retail Store parking area where people make trips to do their shopping. Having this in regard, it is highly likely they will also be customers for the restaurant and the takeaway and add no additional vehicular trips to the local transport network. Unlike a large retailer of varied goods from different suppliers the proposed businesses will utilise a single source supply which will give them the flexibility and opportunity to adjust to the site and receive only single sized delivery vehicles. In terms of the suitability and benefits of the development in the proposed location, it will provide local residents and users of the Tesco's Express Supermarket and Petrol Station with convenient access to refreshments and meals that are within walking or cycling distance.

#### Environment

38. Burger King Business complies with all existing sustainability regulations and aims to introduce above and beyond initiatives where possible including recycled cardboard, LED lighting, biodiesel usage and creation, and responsible recycling of cooking oil. Therefore, this is a very sustainable development to the local area.

#### Nutrition of the goods

39. In addition to offering lower-fat menu item such as salads, the company has updated its nutrition guides to include dietary guidelines, nutritional information and calories count in their restaurants and online.

40. To address concerns over the increase in childhood obesity in Western nations and accusations of unhealthy offerings for children the company created a nutritional program called "BK Positive Steps" and a new low-fat Kid's Club Meal. According to a statement by Burger King, the new Kid's Club meals contain no more than 560 calories per meal, less than 30 percent of calories from fat, less than 10 percent of calories from saturated fat, no added trans fats, and no more than 10 percent of calories from added sugars.
41. Papa John's have also reacted to the current obesity and unhealthy diet issues that have evolved into major health problems of the modern day. The company's official website along with the menu options to order provide a nutritional information, guidance to the better dietary options and customers are encouraged to make an informed choice. A variety of low fat, low carb non-meat options have also been introduced into the menu.

## Conclusion

42. It is apparent that a new Burger King restaurant would be a significant employer, employing over 40 members of staff. This is a very high employee intake per sq. ft. compared to other commercial units and also offers good promotional prospects for the staff. Papa John's takeaway unit will create 20 more roles and more demand for local food suppliers, intermediate services, utilities and management will benefit the economy.
43. Both new businesses proposed on-site support charitable organisations that have been involved with disaster relief, international education and local charities including Cancer Research and Children in Need. Franchised from a company that complies with all existing sustainability regulations and with a notable ambition to pioneer in environmentally better fast food business, expansion for Burger King Restaurants in this area would set a better standard for local high street businesses of similar trade. The Papa John's own Responsible Growth Policy states the store is always a welcome and positive addition to the local community. Through the Franchise system, they represent not only a well-run business providing employment and structured career paths for local people but also a business that is actively involved in supporting the local community.
44. As a takeaway business model – Papa John's would produce no litter from its customer's onsite and very little customer traffic. In terms of the suitability and benefits of the development in the proposed location, it will provide local residents and users of the Tesco's Express Supermarket and Petrol Station with convenient access to refreshments and meals that are within walking or cycling distance. A good amount of journeys to the restaurant or takeaway would be spared because the businesses discussed are already on same destination as large retail store.
45. In terms of fast food industry's influence on current social and public health issues, the proposed restaurant and takeaway are in the foreground of promoting and advocating healthier choices.
46. Taking into the regard the benefits of created employment, economic addition to the local industries and proposed businesses ethical conduct as well as advantages of site location discussed in this report the development proposed Burger King Restaurant and Papa John's takeaway is most likely to contribute to the local community with a positive significance.

*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>*

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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47. 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, Scale/Design, Impact on neighbouring uses, Highways, Ecology and Land Contamination.

The principle of the development:

48. The application relates to the erection of 2no. Class A5 Hot Food Takeaways within the Tesco Superstore Customer Carpark at Tindale Crescent, Bishop Auckland. This site is located approximately 1km to the south west of the main Bishop Auckland Town Centre on an existing retail park occupied by a number of large retail units including Tesco and Sainsbury's Superstores, M&S, Next, Home Bargains, McDonalds, Subway, Dominos, KFC and a Public House.

49. Historically this site fell within the St Helens Industrial Area. However, the granting and subsequent implementation of the Tesco Superstore planning permission saw the general use of this land change from industrial to retail with saved Policy I5 (General industrial sites) of the Wear Valley District Local Plan no longer applicable to this site.

50. The application site is located outside of the defined Bishop Auckland Town Centre where uses such as those proposed (as defined by Annex 2 of the NPPF) are normally to be directed. However, these 2no. units would be located within a retail park environment which already contains a broad range of Class A retail and hot food takeaway related uses which would complement those proposed here.

51. The application has been submitted alongside a detailed sequential assessment in accordance with Paragraph 24 of the NPPF which states that applications for main town centre uses should be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. It also states that when considering out of centre proposals, preference should be given to accessible sites that are well connected to the town centre.

52. The report identifies 13no. alternative sites which have been assessed in terms of their availability, suitability and viability and concludes that these are unsuitable in terms of size, layout, lack of parking provision or an opportunity for drive-thru provision. The chosen site therefore represents the best site which can comfortably accommodate the needs of the applicant. The submission is considered to be comprehensive and represents a fair assessment of each of the sites considered.

53. Taking into consideration the content of the sequential assessment and siting of the units within an established retail park environment containing a number of other town centre related uses that have previously been deemed acceptable, no objections are raised to the principle of development in this case. It is further noted that these A5 units would be located in a sustainable and accessible location which benefits from excellent public transportation linkages without any overreliance upon private vehicle usage.

54. Such works if approved would also provide additional leisure facilities for users of the retail park, with improved choice for retail consumption, whilst supporting economic investment, public spending and job creation. Such benefits would be viewed in the context of the three dimensions of sustainability set out within Paragraph 7 of the NPPF

and satisfy the provisions of Part 1 of the NPPF in terms of promoting economic development. Locating on this site would not come at the direct detriment of the nearby Town Centre but rather supplement the existing retail services on offer in this location for existing users.

55. For the above reasons, the principle of developing this site for further retail related uses in an out of centre, albeit retail park environment is considered to be acceptable, subject to the other material planning considerations set out within this report.

#### Scale / Design:

56. Part 7 of the NPPF and saved policy GD1 of the Wear Valley District Local Plan together seek to ensure good design in new developments. Development proposals should in their scale and form have regard to a sites natural and built features and the relationship to adjacent land uses and activities.

57. The application site is not located within a Conservation Area or other area of special control, but instead forms part of a retail park setting (and former industrial designation) that is characterised by large industrial style superstores to the north, east and south, all set within large areas of open hardstand used for customer parking.

58. The proposed A5 units would be of a relatively standard contemporary design and would reflect similar A5 premises in the area in terms of scale and appearance. Details of materials and finishes are specified on submitted drawings comprising different coloured composite panels on a brick plinth, and would be of an appearance commensurate to their function and surroundings. Furthermore, the layout of the proposed units provides for potentially unsightly bin store areas to be suitably enclosed by boundary fencing.

59. Works would involve the removal of small areas of incidental car park landscaping around the border of the car park. However none of this is significantly established, with all planting low level and contributing little to the amenity of the area. Submitted plans do show the retention of the large verge area to the south of the car park where adjacent to the main road and the retention of existing tree planting in this area.

60. The proposed works would be considered in accordance with the overarching principles of Part 7 of the NPPF and saved policy GD1 of the Wear Valley District Local Plan with no objections raised.

#### Impact on neighbouring uses:

61. Saved policy GD1 of the Wear Valley District Local Plan requires new development to avoid any disturbance or conflict with adjoining uses. Although not strictly within a defined retail centre, Saved policy S11 of the Wear Valley District Local Plan also seeks to permit hot food takeaways within existing shopping areas where they do not adversely affect the amenity of neighbouring properties.

62. The application site is located within a retail park environment surrounded by the Tesco superstore to the north and Sainsbury's superstore to the south east with additional retail units to the east and west, all set amongst spacious customer parking areas. Within close proximity are a number of other A5 hot food takeaway uses.

63. The proposed development would be constructed within the existing customer car parking area with the nearest residential properties located some 100m away to the south west on Maude Terrace and Grange Court. As such, the key issues relating to the



perceived impact on neighbouring uses in terms of the proposed development relates to noise and odour.

64. With regards to noise, the development has a number of potential impacts associated with its use, including noise from deliveries, fixed plant and drive through areas etc. The applicant has provided a very detailed and robust assessment of all the aforementioned noise sources which is compliant with current guidance and is considered compliant with the Councils TANS. The assessment demonstrates that noise from the above sources, when compared against the existing noise climate, would not breach the levels stated within the TANS. This is dependent on plant and the drive through etc. being installed as stated within submitted document MM440/17009.
65. Whilst there would inevitably be some change in the local noise climate extending into the night time, provided the hours of operation of the site for customer use be strictly controlled, it is considered that any noise from the site could be satisfactorily regulated so as to mitigate any significant adverse impact on surrounding residential amenity. The proposed hours of operation as confirmed by the applicant are reasonable and at a time when the road network and nearby commercial properties are likely to be in use and therefore the noise climate is high. It is recognised that the noise directly from the development would not be significant and even on a Sunday the surrounding road network is still likely to be the dominant noise source. For this reason, approval is recommended subject to a condition controlling opening hours and strict adherence to the noise impact assessment submitted.
66. Regarding deliveries, given the nature of the surrounding retail park environment and the lack of control on deliveries for these neighbouring retail uses, it would be difficult to impose any restriction of deliveries relating to the 2no. proposed A5 units. The majority of surrounding retail type units will benefit from unregulated delivery times throughout the day, with the applicant having confirmed that deliveries for these 2no. A5 units will take place outside of normal opening hours, thereby minimising disturbance to customers and stress on the adjacent highways. However given other neighbouring uses will likely adopt similar delivery patterns, it would be unreasonable to control deliveries to this development only, particularly given the distance to nearby sensitive uses which would unlikely be significantly affected by nighttime delivery noise when the adjacent roads will be at their quietest.
67. With regards to odour, the application provides no detail in relation to the extraction system to be used at either site. Considering the nature of the businesses proposed and their location within an existing retail environment, further details of this can be controlled by condition, these to be provided and agreed in advance of development.
68. Subject to strict adherence to the above conditions, and given the nature of the proposed works in the context of surrounding uses, as well as the distance to nearby sensitive uses, it is not considered that the proposed works would result in any significant adverse impact upon the residential amenities of nearby residential property or statutory nuisance. In view of the foregoing, the proposed development is considered to satisfy the provisions of saved policy GD1 and S11 of the Wear Valley District Local Plan.

#### Highways:

69. Saved Policy T1 of the Wear Valley District Local Plan seeks to ensure that new developments which generate additional traffic fulfil Policy GD1 highway requirements, whilst providing for adequate access to the development including access for public transport, as well as not exceeding the capacity of the local road network. Part 4 of the NPPF requires that new developments achieve a safe and sustainable access. NPPF

paragraph 32 states development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are considered to be severe.

70. A detailed Transport Statement has been submitted in support of the application, prepared by Icen Projects Ltd (May 2017) confirming the proposed A5 units to provide a combined 13no. designated parking spaces for customers (including 3no. disabled bays) and provision for 10no. cycle parking spaces, in accordance with standards set out within the Durham County Council Accessibility and Parking Guidelines. Access into the site would be retained via the existing Tesco car park entrance to the south, which is considered to be of sufficient size and layout to accommodate any increase in vehicles associated with the use of the 2no. A5 units. Furthermore, all delivery and servicing of these units would take place outside of normal operational hours, with associated vehicles only utilizing the existing empty customer parking spaces as designated on plans.
71. Concerns have been expressed by an elected member on highway grounds, with 1no. local resident having also raised concern over the impact of the proposed development on the volume of existing road traffic in the area.
72. The aforementioned Transport Statement includes a detailed analysis and Car Parking Assessment which explores the potential of the existing Tesco car park to support a reduction in parking provision and an increase in use as a direct result of the 2no. A5 units. Findings confirm that the application site is located in a sustainable and accessible location served by excellent public transportation links to the surrounding area thereby reducing reliance on private vehicle usage. For private vehicle users, the perceived level of trips specifically to these A5 units alone would be low, with it likely that those using these facilities would more likely be generated from those using existing services in the surrounding area. As such the proposed works would unlikely have any significant impact on the existing highway network to a level where a refusal could genuinely be sustained.
73. With regards the parking assessment, two separate surveys of the existing car park were undertaken at peak times, identifying low stress levels relating to the full capacity of the car park. The survey identifies a total of 504no. vehicle parking spaces across the wider Tesco site, with the proposed development to result in a loss of 70no. of these spaces (14% of the total number). Despite a loss of 70no. spaces, the proposed A5 uses would be served by an additional 13no. spaces, resulting in a net loss of 57no. spaces (11% of the total number). Although the parking stress of the entire car park would fluctuate (understandably increasing during peak periods), this car park could still comfortably accommodate any increase in vehicular movement or parking demand.
74. DCC highway engineers conducted a separate survey of the site to supplement the findings of Icen Projects Ltd. Officers visited the site on Saturday 15 April over the Easter Bank Holiday Weekend at a time when trading in this location would be expected to be at its busiest. This survey was carried out between the hours of 11:00 – 14:00 at a peak lunchtime where it was estimated that the car park offered at least 200no. free car parking spaces. Even at its busiest (around midday) there was still estimated to be around 150+no. parking spaces available in the car park.
75. Video recordings of the car park were also taken by highway engineers at 11:00 and 13:00 on this day demonstrating the car park around the proposed development area to be almost entirely empty. Such findings concur with those of the planning case officer who when undertaking an initial site visit on 10 April 2017 was presented with an almost empty car park at lunchtime of that day. Subsequent journeys past the site throughout

April and May during working hours confirmed this end of the car park to be largely empty.

76. In view of the foregoing, it is concluded that the development of this southern section of the Tesco car park would not result in any significant loss of essential car parking provision in an area where there is a clear and visible surplus of underused spaces. The subsequent loss of a section of this car park would retain a large parking area to the north which could more than comfortably accommodate any displacement of vehicles and increase in parking demand.

77. In accordance with paragraph 32 of the NPPF, the residual cumulative impacts of the proposed development are not considered to be severe. Although the immediate public highway network surrounding the site is known to be experiencing capacity issues at peak periods, in particular to the east and south of the application site, the proposed A5 units are modestly sized with capacity for some associated vehicle trips to be linked or pass-by trips (i.e. linked to a Tesco visit or already passing on the adjacent highway network). Furthermore, the site is located in a sustainable and accessible location, well served by existing public transportation modes with no sole reliance upon private vehicle usage. For these reasons, and notwithstanding the highway network capacity issues, it is not considered that a highways refusal could be sustained at appeal, with no highway objections raised.

Ecology:

78. The Ecology Section have considered the proposals, raising no objections. There would be no conflict with the requirements of the Habitat Regulations and Part 11 of the NPPF.

Land Contamination:

79. Part 11 of the NPPF seeks to ensure that new development is appropriate for its location, preventing unacceptable risks from pollution and land instability. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

80. The application has been submitted alongside a Phase 1 Desk Study (Lustre Consulting, February 2017) with officers from the Councils Environmental Health section having also undertaken a site walkover. Taking into account the findings of this report, and given the proposed development would constitute a change of use to a more sensitive receptor, it is recommended that any approval be granted subject to an appropriately worded contaminated land condition. The applicant is also advised to adhere to YALPAG guidance by informative. Subject to the above, the application would be considered to satisfy the principles of Part 11 of the NPPF with regards ground contamination.

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## **CONCLUSIONS**

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81. The proposal represents a sustainable form of development that would deliver economic, social and environmental benefits in accordance with the core principles of the NPPF. The redevelopment of this land from surplus, underused car parking to A5 uses would improve service provision and support job creation, public spending and economic competition between businesses within an established retail park environment, surrounded by similar class A uses.

82. Consideration has been given to the scale and design of the proposed works, impact on neighbouring uses, highways, ecology and contaminated land. Any adverse impact

in terms of noise or odour can be effectively mitigated and controlled. Finally, no highway objections are raised over the scheme which would occupy an area of underused car parking without resulting in any significant and detrimental increase in use of the adjacent road network.

83. The views of objectors is carefully acknowledged however on this occasion it is not considered that there are significant adverse impacts that would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies of the NPPF as a whole, or the other relevant policies of the Sedgfield Borough Local Plan. In view of the foregoing, the application is recommended for approval.

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## **RECOMMENDATION**

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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:  
3547\_PL01B (Existing location plan), received 11 May 2017  
3547\_PL02B (Existing site plan), received 11 May 2017  
3547\_PL04F (Proposed site plan), received 15 May 2017  
3547\_PL05 (Proposed floor plan, Burger King), received 31 March 2017  
3547\_PL06 (Proposed elevations – Burger King), received 31 March 2017  
3547\_PL07C (Proposed plan, A5 Papa Johns), received 10 May 2017  
3547\_PL08C (Proposed elevations, A5 Papa Johns), received 10 May 2017  
Noise Impact Assessment (report ref: MM440/17009 rev.0) received 31 March 2017  
*Reason: For the avoidance of doubt and in the interests of proper planning.*
3. The customer car parking areas shown on approved plan ref: 3547\_PL04F (received 15 May 2017) shall be constructed, marked out and made available for use prior to the development hereby approved being brought into operation, in accordance with details to be agreed with the Local Planning Authority. Thereafter the car parking spaces shall be used and maintained in such a manner as to ensure their availability at all times for the parking of vehicles in association with the approved development.  
*Reason: In the interests of highway safety and to comply with saved policies GD1 and T1 of the Wear Valley District Local Plan.*
4. The development hereby permitted shall not commence until a pre-commencement scheme to deal with contamination has been submitted to and agreed in writing with the Local Planning Authority. The full scheme, both pre-commencement and completion shall include the following, unless the Local Planning Authority confirms in writing that any part of sub-sections a, b, c or d are not required.

Throughout both the pre-commencement and completion phases of the development all documents submitted relating to Phases 2 to 4 as detailed below shall be carried out by competent person(s) and shall be submitted to and agreed in writing with the Local Planning Authority.

Pre-Commencement

(a) A Phase 2 Site Investigation and Risk Assessment is required to fully and effectively characterise the nature and extent of any land and/or groundwater contamination and its implications. Prior to the Phase 2 a Sampling and Analysis Plan is required.

(b) If the Phase 2 identifies any unacceptable risks, a Phase 3 Remediation Strategy detailing the proposed remediation and verification works is required. If gas protection measures are required a verification plan is required detailing the gas protection measures to be installed, the inspection regime and where necessary integrity testing programme. The installation of the gas membrane should be carried out by an appropriately qualified workforce and the verification of the installation should be carried out by an appropriately competent, experience and suitably trained person(s) (preferably independent to the installer) to ensure mitigation of the risk to the buildings and the people who occupy them. No alterations to the remediation proposals shall be carried out without the prior written agreement of the Local Planning Authority.

#### Completion

(c) During the implementation of the remedial works (if required) and/or development if any contamination is identified that has not been identified pre-commencement; it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be carried out in accordance with part b of the condition and where necessary a Phase 3 Remediation Strategy shall be prepared in accordance with part c of the condition. The development shall be completed in accordance with any amended specification of works.

(d) Upon completion of the remedial works (if required), a Phase 4 Verification Report (Validation Report) confirming the objectives, methods, results and effectiveness of all remediation works detailed in the Phase 3 Remediation Strategy shall be submitted to and agreed in writing with the Local Planning Authority within 2 months of completion of the development. If integrity testing of the membrane(s) was required a verification pro forma should be included.

*Reason: The site may be contaminated as a result of past or current uses and/or is within 250m of a site which has been landfilled and the Local Planning Authority wishes to ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems in accordance with NPPF Part 11.*

*Note: Following the submission of a preliminary ground gas risk assessment, for some developments the Local Planning Authority may agree in writing to the installation of Gas Protection Measures as a precautionary measure without first carrying out ground gas monitoring.*

*Note: Further information is available under the policy documents YALPAG Development on Land Affected by Contamination, YALPAG Verification Requirements for Cover Systems, YALPAG Verification Requirements for Gas Protection Systems.*

5. No development shall commence until details of the fume extraction system, serving Burger King and Papa Johns, to include a risk assessment, design schematic, details of any odour abatement measures, details of noise levels and any other documents considered necessary to demonstrate accordance with the current DEFRA guidance on the control of odour and noise from commercial kitchen exhaust systems have been submitted to and approved in writing by the Local planning authority. The approved scheme shall be installed prior to the use commencing and shall be operated at all times when cooking is being carried out on the premises.

*Reason: In the interests of residential amenity in accordance with saved policy GD1 of the Wear Valley District Local Plan.*

6. The A5 premises hereby approved shall not be open to customers outside the hours of 07.00am to 00.00am Monday to Saturday and 08.00am to 23.00pm on a Sunday.

*Reason: In the interests of residential amenity in accordance with saved policy GD1 of the Wear Valley District Local Plan.*

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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The Local Planning Authority in arriving at its decision have, 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. The Local Planning Authority have sought to ensure that this application has been determined within the statutory determination period.

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## **BACKGROUND PAPERS**

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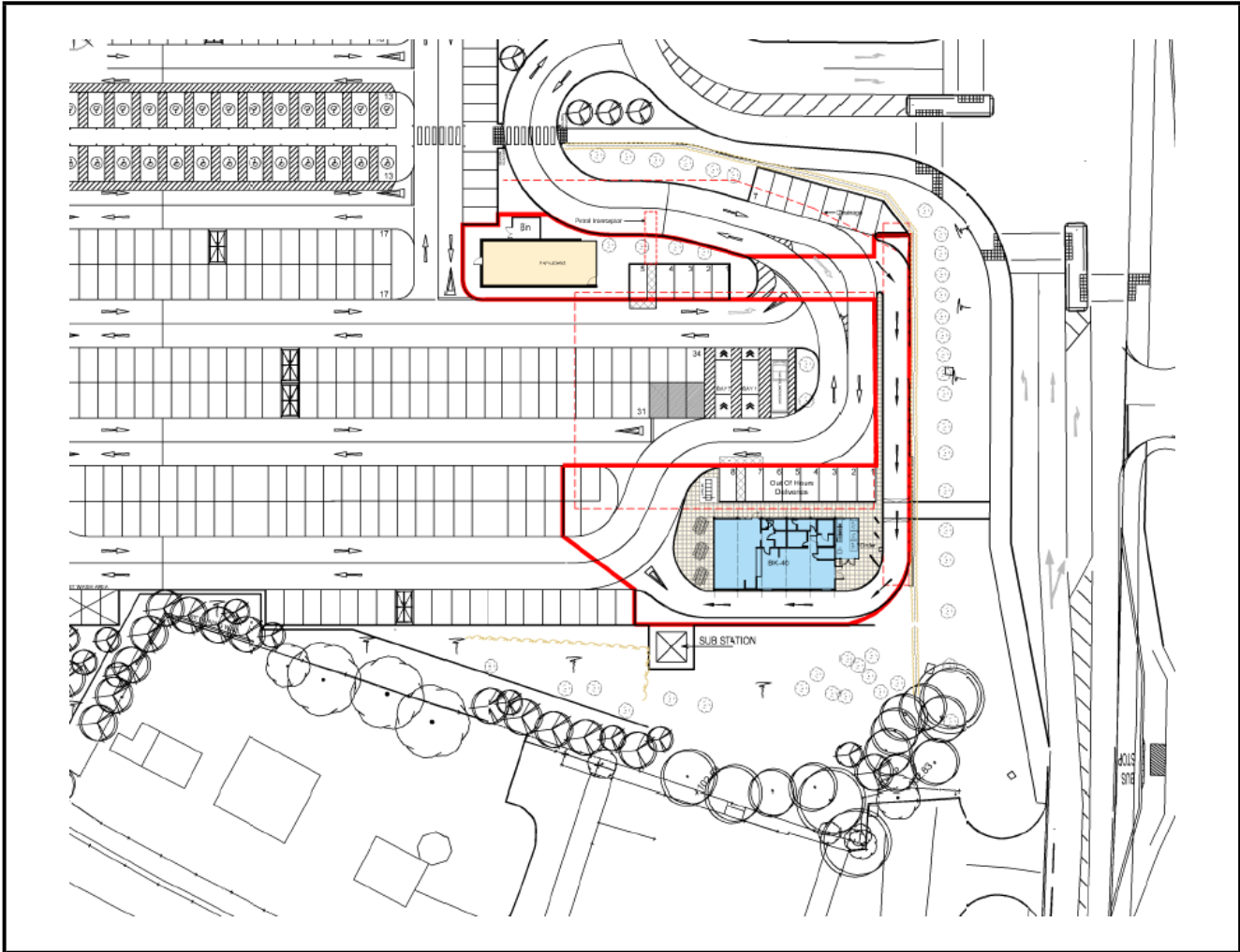
Submitted Application Forms, Plans and supporting documents

National Planning Policy Framework

Wear Valley District Local Plan

Statutory response from the Highway Authority and The Coal Authority

Internal responses from Ecology, Environmental Health, Contaminated Land, Spatial Policy and Drainage



**Planning Services**

Construction of Drive-Thru Burger King and Papa John's Pizza with associated parking

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**Comments**

**Date** 22 June 2017