

DEVELOPMENT PLAN

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “where in making any determination under the planning Acts, regard is to be had to the development plan; the determination shall be made in accordance with the plan unless material consideration indicates otherwise.

Unitary Development Plan - current status

The Unitary Development Plan for Sunderland was adopted on 7th September 1998. In the report on each application specific reference will be made to those policies and proposals, which are particularly relevant to the application site and proposal. The UDP also includes a number of city wide and strategic policies and objectives, which when appropriate will be identified.

STANDARD CONDITIONS

Sections 91 and 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 require that any planning application which is granted either full or outline planning permission shall include a condition, which limits its duration.

SITE PLANS

The site plans included in each report are illustrative only.

PUBLICITY/CONSULTATIONS

The reports identify if site notices, press notices and/or neighbour notification have been undertaken. In all cases the consultations and publicity have been carried out in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

LOCAL GOVERNMENT ACT 1972 – ACCESS TO INFORMATION

The background papers material to the reports included on this agenda are:

- The application and supporting reports and information;
- Responses from consultees;
- Representations received;
- Correspondence between the applicant and/or their agent and the Local Planning Authority;
- Correspondence between objectors and the Local Planning Authority;
- Minutes of relevant meetings between interested parties and the Local Planning Authority;
- Reports and advice by specialist consultants employed by the Local Planning Authority;
- Other relevant reports.

Please note that not all of the reports will include background papers in every category and that the background papers will exclude any documents containing exempt or confidential information as defined by the Act.

These reports are held on the relevant application file and are available for inspection during normal office hours at the Commercial Development Directorate at the Customer Service Centre or via the internet at www.sunderland.gov.uk/online-applications/

Alison Fellows

Executive Director of Commercial Development

Reference No.: 16/01064/FU4 Full Application (Reg 4)

Proposal: **Change of use from A1 retail to A5 hot food take away and erection of extraction flue to side of property.**

Location: 47 Cockermouth Road Hylton Castle Sunderland SR5 3LU

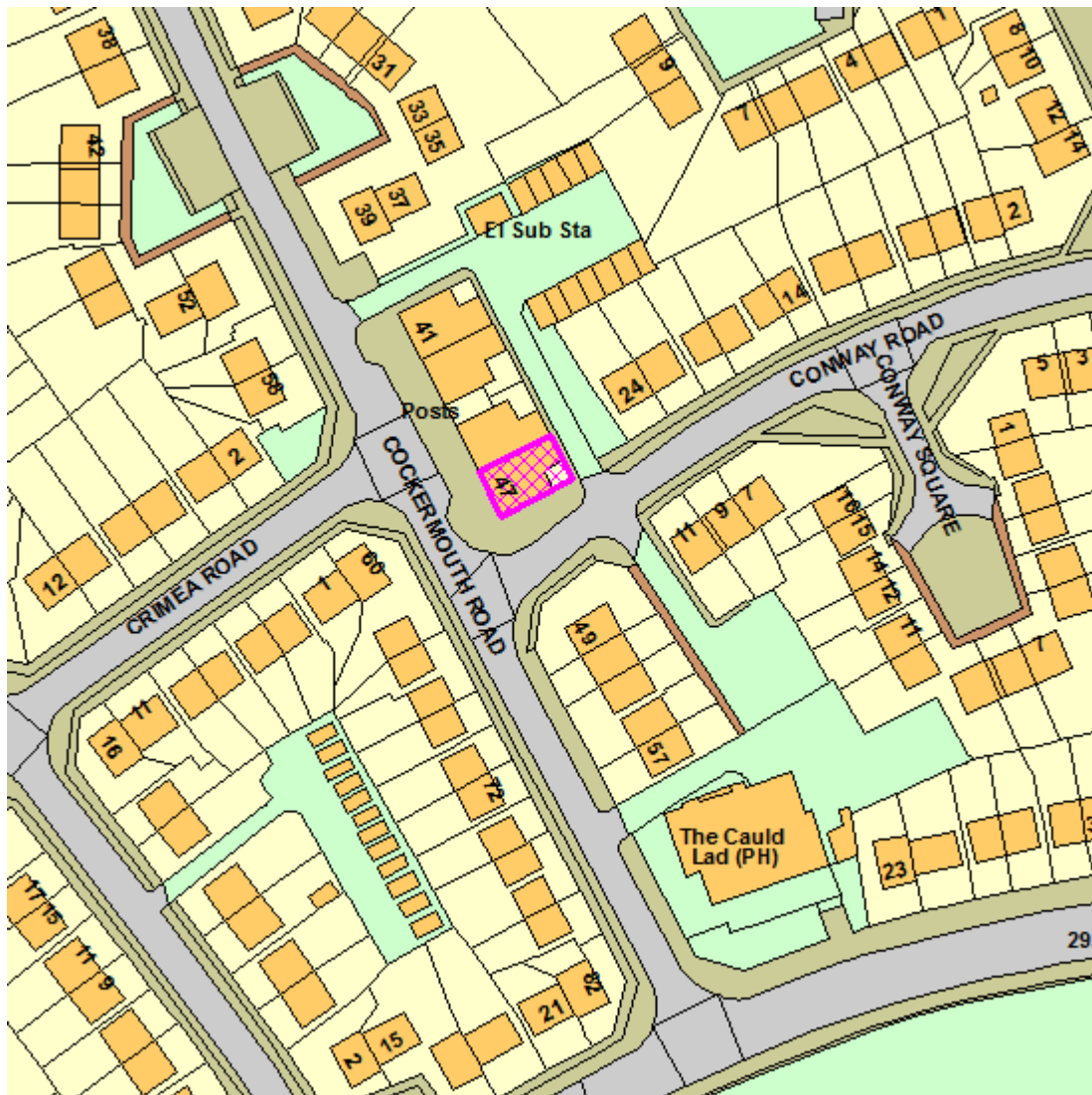
Ward: Castle

Applicant: Mr F Moraldi

Date Valid: 11 July 2016

Target Date: 5 September 2016

Location Plan



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PROPOSAL:

Planning permission is sought for a change of use of premises from retail (use class A1) to hot-food takeaway (use class A5) and erection of extraction flue to side of property at 47 Cockermouth Road, Hylton Castle, Sunderland, SR5 3LU.

The proposed development affects a two-storey property located at the southern end of a short parade of shops within the Hylton Castle housing estate. The parade fronts Cockermouth Road, a quiet estate road, from which it is set back behind a paved forecourt and parking bay, whilst to its rear is a lane serving the rear yards of the properties within the parade. The subject property features a vacant retail unit at ground floor level and residential accommodation above.

The adjoining property (no. 45) is occupied by a hot-food takeaway to the ground floor, whilst the ground floors of no. 41 and 43 have been merged to provide a large convenience store. The existing takeaway at no. 45 is a longstanding use, having been present in the unit since at least the early 1990s. The upper floors of the adjacent units also afford first floor residential accommodation.

The subject unit occupies a corner plot and its south side, in which is a door to the first floor flat, is flanked by Conway Road. The immediate surroundings of the parade are almost wholly residential in nature; dwellinghouses face the application site from across Cockermouth Road, whilst there are further dwellings to the south and east (rear) of the property, which front Cockermouth Road and Conway Road respectively.

The nearest other commercial property is the vacant Cauld Lad public house, which stands at the junction of Cockermouth Road and Caithness Road approximately 55 metres to the south of the subject unit. Planning permission has recently been granted to change the use of the ground floor public house to 2 no. retail units and 1 no. unit for use as either retail or a hot food takeaway (application reference 15/00876/FUL, approved under delegated powers on 26/10/2015), but this permission has not yet been implemented. Beyond the Cauld Lad, on the south side of Caithness Road, are the grounds of Hylton Castle Primary School.

The application proposes the change of use of the ground floor of the premises from a retail unit to a hot food takeaway (use class A5 of the Town and Country Planning (Use Classes) Order 1987 (as amended)) and the erection of an extraction flue to the property's south side.

The application proposes opening hours of 08:30-23:30 Monday to Saturday and 08:30-22:30 on Sundays and Bank Holidays and it is indicated that 2 no. full-time staff and 4 no. part-time staff would be employed. The floorplans submitted with the application show that the front part of the unit would provide a service area, with the rear part and rear offshoot providing storage and preparation areas. There are no changes to the existing arrangements in respect of the first floor flat.

The extraction flue is intended to be installed to the side elevation of the property. It will emerge part-way up the side wall, just above the door to the first floor flat, and terminate just above the front roof slope. The application does provide any specifications for the extraction system proposed to be fitted at the property. No other alterations to the exterior of the premises are proposed by the application.

The application has been accompanied by a Planning Statement to support the proposals. It is observed that the Statement uses a recent officer report to the Sub-Committee in respect of an application for a hot-food takeaway as a template. The Statement sets out that the subject unit

has been vacant for around 18 months and concludes that the proposals will have an acceptable impact on residential and visual amenity and highway and pedestrian safety.

Members should be aware at this stage that the unit was subject to a planning application proposing its use as a hot-food takeaway in 2002 (application ref. 02/00192/FUL). This was refused planning permission on grounds relating to harm to the amenity of surrounding residential properties.

Members should note that the property subject to this application is in the ownership of Siglion, a joint venture company which involves Sunderland City Council. Given the Council's interest in the building, the application cannot be determined by officers under Delegated powers and so has been referred to the Development Control (North area) Sub-Committee for determination.

TYPE OF PUBLICITY:

Site Notice Posted
Neighbour Notifications

CONSULTEES:

Castle - Ward Councillor Consultation
Environmental Health
Network Management
DC North Chair and Vice Chair Consultation

Final Date for Receipt of Representations: **22.08.2016**

REPRESENTATIONS:

Public consultation - two letters of objection have been received from the owners of the existing hot-food takeaway at the adjoining no. 45, whilst a petition against the application has also been submitted (organised by the occupiers of no. 45).

The first letter of representation from no. 45 raises the following concerns:

- competition from another takeaway within the parade is not welcome;
- concerns regarding rent and lease arrangements (i.e. reassurances given that there wouldn't be another takeaway within the parade);
- an application for a takeaway in the unit was refused in 2002;
- there are plenty of takeaways in the wider Hylton Castle and Castletown area and no demand for another;
- another takeaway may give rise to additional anti-social behaviour issues in the area;
- the drainage and sewerage system at the parade can only accommodate one hot-food takeaway.

The second letter from no. 45 raises the following concerns:

- there are no instances of takeaways in consecutive units in similar parades elsewhere in the area (i.e. Town End Farm, Downhill, Redhouse, Witherwack and Marley Pots);
- re-iterates that there are numerous takeaway outlets in the Hylton Castle area;

- the parking in front of the parade is not sufficient to accommodate extra parking;
- another takeaway will limit the range of facilities on offer within the parade;
- residents would prefer another shop in the unit rather than a takeaway;
- the proposed use would lead to drainage and litter problems.

The petition is headed by the following statement 'The signatures listed below are of those who oppose against the change of use of 47 Cockermouth Road to a hot food takeaway' and is undersigned by 271 no. residents of the Hylton Castle, Town End Farm and Castletown area.

Members must note at this point that it is not the role of the planning system to manage competition between business ventures; this is purely a private matter, whereas the merits of the planning application must be considered in the public interest. Similarly, any issue regarding rent/lease arrangements are a private matter between the business owner and the leaseholder. Nor is it the role of the planning system to gauge or establish a demand for the proposed takeaway; this is a matter for the business operator to consider and market forces would ultimately determine whether the venture is successful.

The objector has also raised concerns regarding anti-social behaviour and litter, but whether these occur is dependent on the behaviour of individuals and there is not considered to be reason to conclude that hot-food takeaways inherently give rise to such issues. The objector's concerns regarding existing drainage issues at the site would have to be raised with Northumbrian Water.

Other matters relating to amenity, parking and the range of commercial services on offer in the area are given further consideration in the next section of this report.

POLICIES:

In the Unitary Development Plan the site is subject to the following policies;

B_2_Scale, massing layout and setting of new developments
 EN_10_Proposals for unallocated sites to be compatible with the neighbourhood
 T_14_Accessibility of new developments, need to avoid congestion and safety problems arising
 T_22_Parking standards in new developments
 S_3_Support to other existing centres, local groups and small shops, including new provision
 S_12_Criteria for hot food take-aways, restaurants, other A3 uses and amusement centres

COMMENTS:

RELEVANT POLICY BACKGROUND

The National Planning Policy Framework (NPPF) provides the current Government's national planning policy guidance and development plans must be produced, and planning applications determined, with regard to it. The NPPF sets out a series of 12 'core planning principles' which underpin plan-making and decision-taking and are considered to contribute to the over-arching aim of delivering sustainable development. Particularly relevant in this case are the principles that development should always seek to secure a good standard of amenity; should proactively drive and support sustainable economic development and should encourage the effective re-use of land and property.

The relevant guidance of the NPPF detailed above feeds into policies EN10, B2, S3, S12 and T14 of the City Council's adopted Unitary Development Plan (1998), which are consequently considered to be pertinent to the determination of this application.

Policy EN10 of the UDP requires new development proposals to respect the existing pattern of land use in areas where there is no specific land use allocation. Policy B2, meanwhile, requires any development proposals to respect and maintain acceptable standards of visual and residential amenity.

Policy S3 supports the retention of local commercial parades and shops, but where retail units become of doubtful viability, alternative uses (including food and drink uses) may be acceptable providing that an appropriate level of everyday shopping remains and the proposed use is otherwise compatible with the locality.

Policy S12 states that hot-food takeaways are generally acceptable if they are located within an existing town or local centre but proposals must not have a detrimental impact on the environment, residential amenity and public or highway safety. The requirements of policy S12 are expanded upon in section 9 of Supplementary Planning Guidance (SPG) to the UDP, which states that applications for A5 uses must be set against the need to protect the amenities of residential properties from noise and disturbance associated with food preparation and vehicle and pedestrian movement. Hot-food takeaway proposals for units set within smaller retail parades will not normally be considered acceptable where there are residential dwellings within 50 metres and applications for hot food takeaways which are likely to lead to car parking on residential roads in evening periods and which would be likely to cause nuisance to nearby residents should not normally be permitted.

Also relevant is policy T14, which states that new development must not result in conditions which are prejudicial to highway and pedestrian safety.

With regard to the above, it is considered that the main issues to address in the determination of this application are as follows:

1. principle of proposed development;
2. impact of development on residential amenity;
3. impact of development on visual amenity;
4. impact of development on highway and pedestrian safety;
5. other considerations

1. Principle of development

The application property is an existing commercial unit forming part of a short shopping parade located within a primarily residential area. The proposal will continue to see the unit used for commercial purposes and so broadly speaking, the existing pattern of land use is maintained, in accordance with UDP policy EN10's requirements.

However, in line with the requirements of both policies B2 and S12 of the UDP and Section 9 of the SPG, an assessment of the impact of the proposed use on the amenity of adjoining and nearby residential dwellings and highway and pedestrian safety is necessary in order to fully ascertain the merits of the proposal. Such an assessment is provided below.

2. Impact of development on residential amenity

As noted above, policy S12 of the UDP and section 9 of the SPG require the impact of the use on the amenity of nearby residential properties to be considered, especially where there are dwellings within 50 metres of the site. In this respect, the subject property and neighbouring units feature flats at first floor level, whilst the property is directly faced by 60 Cockermouth Road from a distance of approximately 21 metres and is indirectly faced by other dwellings to the north and south of no. 60. To the rear, meanwhile, the gable end of 24 Conway Road is approximately 15 metres distant, whilst the gable end of 49 Cockermouth Road is 20 metres to the south, on the opposite side of Conway Road.

The amenity of residential properties can, it is considered, be detrimentally affected by a hot food takeaway by virtue of the noise, disturbance and smells/odours such a use may generate.

Smells/odours

The City Council generally accepts that modern ventilation and extraction systems serve to effectively limit the smells and odours emitted from hot-food takeaways. Indeed, in the Council's experience, in determining appeals against the refusal of hot-food takeaways, Planning Inspectors have found that modern extraction and ventilation systems are able to mitigate smells and odours to the extent that residential amenity is not unduly impinged upon (e.g. appeal decisions for 159 Hylton Road (app. ref. 09/04325/FUL), 53 Revelstoke Road (app. ref. 12/01445/FUL) and 41-43 Eden House Road (app. ref. 12/00945/FUL)).

The applicant has not provided any detailed specifications of the extraction/ventilation system proposed to be installed at the premises and the Council's Public Protection and Regulatory Services (Environmental Health) officers have requested that further information is submitted in order to ensure that any system installed will be effective. The applicant's agent has been asked to submit such additional detail, but to date this has not been forthcoming. It is accepted, however, that in the event the design and location of the external parts of the system are acceptable, the submission of final specifications for the system could be required through the imposition of an appropriately-worded condition in the event Members are minded to grant planning permission for the development.

Noise

Noise from a takeaway use can be generated by the machinery and equipment associated with the cooking of food, including, for example, the fan of an extraction system and the banging of pans and other kitchen items and equipment. It is recognised that extraction and ventilation systems can be programmed to run quietly and/or be fitted with a silencer, which should ensure that noise from the system is not unduly noisy, although as set out above, specifications of the extraction system intended to be installed have not yet been supplied.

The noise from food preparation, meanwhile, is not, on its own, expected to cause any undue harm to residential amenity, especially as the kitchen is located at the rear of the property.

Disturbance

As noted previously, the subject unit fronts a minor estate road and is surrounded by dwellings on three sides and features a flat to first floor level. The immediate neighbourhood is primarily residential in character and appears to be quiet, with the only likely source of notable activity in the evening being generated by the existing convenience shop and takeaway to the short parade in which the unit is located.

The disturbance associated with a hot-food takeaway is generated by the activities surrounding the use, such as the noise of customers' conversation inside and outside the unit, the noise from the engines of customers' and delivery vehicles parked outside the property and the slamming of doors of the building and customers' and delivery vehicles. Such disturbance is most detrimental to residential amenity when it occurs during hours where a reasonable degree of peace and quiet can be expected.

The applicant has proposed opening times until 23:30 Monday - Saturday and 22:30 on Sundays and Bank Holidays, so that the business would operate late into the evening, at a time when local residents could reasonably expect peace and quiet.

In this case, as noted above, there are numerous dwellings within close proximity to the application premises, including a dwelling facing the unit from 21 metres away. There are others within 20 metres, although these do not face the unit. In addition, there is a flat above the unit and flats above the other units within the parade. Given the proximity of nearby dwellings and flats and the generally quiet, residential character of the neighbourhood, it is considered that the activity associated with the proposed use will result in their living conditions being harmed to an unacceptable degree by virtue of the noise and disturbance generated by the comings and goings of customers and their vehicles. This activity and disturbance will be particularly apparent in the late evening, when residents of the area can reasonably expect a degree of peace and quiet.

It is recognised that the existing, longstanding takeaway at no. 45 and, potentially, the convenience store to no. 41-43 will already generate activity into the evening. The proposed change of use would, however, simply serve to add to and exacerbate any existing levels of noise and disturbance and would be highly noticeable within the quiet residential context of the application site.

With regard to the above comments, it is considered that the proposed change of use will result in significant harm being caused to the amenity of nearby residential properties due to the noise and disturbance generated by an additional hot-food takeaway within the parade. This disturbance would be associated with the comings and goings of customers and their vehicles and would be most apparent into the late evening, when neighbouring residents can expect reasonable levels of peace and quiet.

The proposal therefore fails to comply with the requirements of the core principles of the NPPF, policies B2 and S12 of the UDP and section 9 of the 'Development Control Guidelines' Supplementary Planning Guidance in this regard.

In considering this matter, regard has been given to the Council's decision to refuse planning permission for a hot-food takeaway at the property in 2002 (app. ref. 02/00192/FUL). This application was refused on the basis that the takeaway would give rise to the same types of residential amenity concerns identified above and it was considered in line with the same UDP and SPG policies as detailed in this report. Furthermore, the circumstances at the application site do not appear to have materially changed since 2002 (the occupancy of the other units within the parade is the same) and it is therefore considered entirely reasonable to reach the same conclusions in respect of the impact of a proposed hot-food takeaway at the unit on the amenity of the locality.

It is also recognised that planning permission has recently been granted for a hot-food takeaway use as part of a subdivision of the nearby Cauld Lad public house (app. ref. 15/00876/FUL). This is not, however, considered to be a directly comparable case, for the Cauld Lad is a large, stand-alone building which is flanked on one side by one of the busier, main estate roads and in

any case, its use as a public house would already have generated significant levels of activity late into the evening.

3. Impact of development on visual amenity

Policy B2 of the UDP requires new development proposals to respect and enhance visual amenity. In this case, the proposals involve the provision of an extraction flue to the side of the premises. In many instances, it would be preferable for such a flue to be located to the rear of a building, but the proposed location to the side elevation will at least serve to keep the flue away from the rear windows and rooms of the first floor flat. The proposed flue is also of a relatively slim design and its location will mean it is primarily viewed against the backdrop of the property's gable wall when approaching from the south.

Given the above, it is considered that the proposed flue will not appear as unduly harmful to the visual amenity of the locality and the proposal is therefore considered to comply with the requirements of the NPPF and policy B2 of the UDP in this regard.

4. Impact of development on highway and pedestrian safety

As noted previously, there is a long parking bay directly in front of the parade, which is available for the use of customers and visitors to the businesses within the parade. The Council's Highways team has noted the presence of this bay and it is accepted that it will be able to accommodate customer parking, especially as this is most likely to occur outside of peak periods of usage. The Highways team have also stated that all servicing and waste storage must take place at the rear of the premises, which the applicant has confirmed would be the case.

Given the above, it is considered that the arrangements in respect of parking and highway and pedestrian safety are acceptable, in accordance with the requirements of policies T14 and S12 of the UDP.

5. Other considerations

In reaching a decision on applications of this nature, regard must be had to the pro-sustainable development thrust of the current national planning policy and guidance agenda - in particular, the NPPF requires Local Planning Authorities to be receptive to development proposals which will lead to sustainable economic growth and effectively re-use land and buildings and should only refuse planning permission where the adverse impacts of a development proposal would demonstrably outweigh the benefits it otherwise brings.

To this end, it is recognised that there will be some low-level employment generated by the proposed use and it will serve to bring a unit which has been vacant for 18 months back into use. These minor benefits are not, however, considered to outweigh the harm identified in relation to the amenity of neighbouring residential properties.

Objectors to the application have also raised concerns regarding the provision and range of shops and services in the Hylton Castle area. To this end, aforementioned policy S3 of the UDP advises that where an alternative to a retail use within a shopping parade is being considered, care should be taken to ensure the overall shopping provision in the locality is not unacceptably undermined. To this end, allowing a further hot-food takeaway would result in 50% of units within the parade being in non-retail use. The large convenience store to no. 41-43 would, however, still be present

to cater for the day-to-day needs of the immediate community, whilst Hylton Castle is also served by its own local shopping centre at Chiswick Square (located approximately 400 metres to the south-east of the application site). It is considered, therefore, that the proposed change of use is unlikely to unacceptably undermine shopping provision within the Hylton Castle area.

In addition to the above, although not explicitly raised by objectors in respect of the current application, it is recognised that on a general level, there are concerns in communities and amongst Local Authorities and health officials across the country in respect of the rise in the numbers and popularity of hot-food takeaways, with the increase in the consumption of takeaway meals linked to conditions such as heart disease and obesity. To this end, the Council has an agenda to tackle poor health in the City by offering advice and guidance on healthy eating and lifestyles and providing facilities and opportunities to engage in sport and other physical activities.

However, in order for the Council, as Local Planning Authority, to consider resisting proposals of this type due to health-related concerns, it would need to be appropriately demonstrated through the provision of a co-ordinated evidence-based policy approach that an increase in the number of hot-food takeaways within a given locality would be harmful to the health and well-being of its residents and community. In this regard, the Council does not currently possess such an evidence-based, adopted planning policy or Supplementary Planning Document which would allow for a planning application to be refused on grounds relating to health and well-being.

CONCLUSIONS

With regard to the above comments, it is considered that although the principle of the proposed use of the unit as a hot food takeaway and its implications in respect of visual amenity and highway safety may be acceptable, the impact of the use on the amenity of adjoining and other nearby residential properties is unacceptable. In particular, the proposed use will give rise to significant levels of noise and disturbance, caused by the comings and goings of customers and their vehicles, which will be especially noticeable and detrimental when occurring late into the evening. This harm will be in addition to any generated by the existing takeaway at no. 45 and will be particularly apparent given the quiet, residential context of the application site.

Regard has been given to the other benefits the proposed use will bring (i.e. the re-opening of a long-term empty property and low-scale job creation), but it is considered that these are minor in nature and do not outweigh the significant harm identified in relation to the amenity of the locality.

It is therefore considered that the proposed development fails to comply with the core planning principles of the NPPF which seek to maintain acceptable standards of amenity, policies B2 and S12 of the UDP and section 9 of the 'Development Control Guidelines' SPG. It is accordingly recommended that Members refuse consent for the proposed development.

EQUALITY ACT 2010 - 149 PUBLIC SECTOR EQUALITY DUTY

During the detailed consideration of this application/proposal an equality impact assessment has been undertaken which demonstrates that due regard has been given to the duties placed on the LPA's as required by the aforementioned Act. As part of the assessment of the application/proposal due regard has been given to the following relevant protected characteristics:-

- o age;
- o disability;

- o gender reassignment;
- o pregnancy and maternity;
- o race;
- o religion or belief;
- o sex;
- o sexual orientation.

The LPA is committed to (a) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In addition, the LPA, in the assessment of this application/proposal has given due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This approach involves (a) removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The LPA has taken reasonable and proportionate steps to meet the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities, as part of this planning application/proposal.

Due regard has been given to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves. Particular consideration has been given to the need to:-

- (a) tackle prejudice, and
- (b) promote understanding.

Finally, the LPA recognise that compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

RECOMMENDATION: REFUSE CONSENT, for the reason set out below.

Reasons:

- 1 The proposed use of the premises as a hot-food takeaway will have a detrimental impact on the amenity of adjoining and other nearby residential properties, by virtue of the noise and disturbance generated by the comings and goings of customers, particularly late in the evening. The proposed change of use therefore fails to comply with the requirements of the core principles of the NPPF, policies B2 and S12 of the Council's adopted UDP and section 9.0 of the Council's 'Development Control Guidelines' SPG.