

## SCHEDULE A: Applications with Recommendation

21/0072

Item No: 04

Date of Committee: 26/03/2021

**Appn Ref No:**  
21/0072

**Applicant:**  
The Fryery

**Parish:**  
Carlisle

**Agent:**  
Centreplan

**Ward:**  
Stanwix & Houghton

**Location:** 53/53a Scotland Road, Carlisle, CA3 9HT

**Proposal:** Variation Of Condition 8 (Opening Times) Of Previously Approved Permission 19/0630 (Change Of Use From A1 (Retail) To A5 (Hot Food Takeaway); Installation Of New Shopfront And Insertion Of Side Window) To Extend Afternoon Opening Time From 16.30 To 16.00

**Date of Receipt:**  
01/02/2021

**Statutory Expiry Date**  
29/03/2021

**26 Week Determination**

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### REPORT

**Case Officer:** John Hiscox

#### 1. Recommendation

- 1.1 It is recommended the application is approved, to allow the condition on 19/0630 to be varied so that opening hours can be extended by 30 mins, with the shop opening at 1600 hrs, as opposed to 1630 hrs.

#### 2. Main Issues

- 2.1 Whether the principle of extending the opening hours by 30 minutes is acceptable enabling the premises to open as a hot food takeaway daily from 1600 hrs until 2100 hrs during the evening instead of the approved period under planning permission 19/0630, which permits the premises to open in the evenings from 1630 hrs to 2100 hrs.
- 2.2 This principle is to be considered in the light of the wording and reasoning for Condition 8 of planning permission ref. 19/0630.

#### 3. Application Details

**The Site**

- 3.1 The property address is 53/53a Scotland Road, which is partially residential (mainly in the upper floors) and partially a ground floor shop now occupied by The Fryery, a local business now operating three fish and chip shops in Carlisle. It has been open since mid-January 2021. Prior to that, it had been closed for approximately three years following the departure of 'Spar'.
- 3.2 The property is situated within Stanwix Conservation Area, but is not a listed building. It is a prominent corner building having its side elevation on Thornton Road and its frontage onto Scotland Road. The flat(s) upstairs are accessed by separate entrances on the Thornton Road and Scotland Road elevations, and occupy the first and attic floors. The shop is accessed via the corner entrance and has a separate rear service access gate off Thornton Road.
- 3.3 The premises was refurbished in 2020, the ground floor being converted into a hot food takeaway in the light of planning permission. The physical aspects of the conversion, including the illuminated advertisements, are authorised in a planning context.
- 3.4 In front of the main shop window is a hardsurfaced area set back from the line of the front boundary walls to properties in the same row to the north; presumably, this was removed when the building was converted to a shop or sometime subsequently.
- 3.5 Looking at the front elevation, the single-width sash and case window to the right of the shop window serves the shop area inside.
- 3.6 Adjoining the property to the north is the Sunrise Chinese takeaway, which has its own shop window and shopfront scheme including coloured paintwork and advertisements. Opposite on Scotland Road's eastern side is a row of terraced dwellings which are Grade II listed buildings. To the south is the end dwelling in a terrace, which is also Grade II listed. To the rear of the building are residential properties forming the terrace on the northern side of Thornton Road.

## **Background**

- 3.7 The Fryery, which is the now operating fish and chip takeaway at 53/53A Scotland Road, Carlisle, opened earlier in 2021 with the benefit of planning permission under ref. 19/0630;
- 3.8 The planning permission was granted by the Development Control Committee in November 2019;
- 3.9 Condition 8 of planning permission ref. 19/0630 states:  
  
*"The proposed hot food takeaway shall not be open for trading except between (1) 1100 hours and 1400 hours and (2) 1630 hours and 2100 hours on Mondays to Saturdays; and between 1630 hours and 2100 hours on Sundays and Bank Holidays.*

*Reason: To prevent disturbance to neighbouring occupiers and in accordance with Policy CM5 of the Carlisle District Local Plan 2015-2030."*

- 3.10 Contrary to the limitations required by Condition 8, the shop has, since its opening earlier in 2021, opened between the hours of 4pm (1600 hrs) and 9pm (2100 hrs). The operations are therefore in breach of the planning permission ref. 19/0630, and are unauthorised.
- 3.11 It should be noted that the opening hours stipulated within Condition 8 are in strict alignment with the opening hours proposed on the applicants' behalf and stated in the supporting statement received on 26 September 2019, prior to the application being considered by the Development Control Committee in November 2019. These intended, limited hours were known to the planning service and to the Development Control Committee when the application was considered.

### **The Proposal**

- 3.12 The application applies in retrospect for variation of Condition 8 of planning permission 19/0630, to allow the premises to open for 30 minutes longer every day, bringing the opening time back to 1600 hrs (4pm) instead of the approved 1630 hrs (4.30pm).

- 3.13 If this application is approved, the Condition will be changed to read:

*"The proposed hot food takeaway shall not be open for trading except between (1) 1100 hours and 1400 hours and (2) 1600 hours and 2100 hours on Mondays to Saturdays; and between 1600 hours and 2100 hours on Sundays and Bank Holidays.*

*Reason: To prevent disturbance to neighbouring occupiers and in accordance with Policy CM5 of the Carlisle District Local Plan 2015-2030."*

- 3.14 The remainder of planning permission 19/0630 would be unaltered by this proposed variation.
- 3.15 No specific items have been submitted to support the application (on the applicants' behalf). However, within the application form the following two statements are made to enable understanding of the decision to operate with different opening times:

*"We would like to change the opening time as we feel this will help in maintaining a steady flow of customers in the shop"; and*

*"We would like to apply for permission to open our services to the local community 30 minutes earlier at 4pm."*

## **4. Summary of Representations**

- 4.1 This application has been advertised by means of site and press notices as well as notification letters sent to twenty-eight properties who are either neighbours or who made representations in relation to the original application ref. 19/0630.
- 4.2 In total, 4 written representations have been made during the consultation period. A summary of the issues of relevance raised in objection is as follows:
- (i) timeframe now proposed goes directly against what the applicants proposed in their original application;
  - (ii) timeframe originally proposed intended to maximise avoidance of times when schoolchildren would be likely to pass by/use shop;
  - (iii) opening hours do not conform to other nearby takeaway premises e.g. Sunrise (does not open until 5pm) - no justification for this premises to open at different times;
  - (iv) extended opening hours increase time when associated problems arise including highway safety (parking/speeding), noise and odour pollution (noting that site is within a Conservation Area) and social disorder;
  - (v) premises is already operating in breach of its approved opening times of 1630 hrs to 2100 hrs, and has done so since its initial opening.
- 4.3 The letters of objection give focus to matters of problematic parking activities occurring, principally when the shop is open. This matter will be discussed in the planning report, but it must be acknowledged in advance that the principle of using the premises as a hot food takeaway is established through 19/0630, and that matters relating to potential parking problems in the context of the new use were considered in detail in the planning report, and during the Development Control Committee meeting. Potential planning concerns relating to parking were not considered to be overriding and did not prevent that application from being supported by the Development Control Committee.

## **5. Summary of Consultation Responses**

**Cumbria County Council - (Highways & Lead Local Flood Authority):** - No comment, as in the response to 19/0630 of 5th September 2019, the consultee recommended refusal of the takeaway.

## **6. Officer's Report**

### **Assessment**

- 6.1 Section 70(2) of the Town and Country Planning Act 1990/ Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires that an application for planning permission is determined in accordance with the provisions of the development plan, unless material considerations indicate otherwise.
- 6.2 The relevant planning policies against which the original application was required to be assessed was the NPPF and Policies SP1, SP6, SP7, SP9,

EC7, EC8, IP2, IP3, CM4, CM5, HE3 and HE7 of the Carlisle District Local Plan 2015-2030.

- 6.3 In the light of the nature of the current application, and taking into account the Reason provided for Condition 8 of planning permission ref. 19/0630, the only Policy now of strict relevance is CM 5, 'Environmental and Amenity Protection', which is as follows:

*"The Council will only support development which would not lead to an adverse impact on the environment or health or amenity of future or existing occupiers. Development will not be permitted where:*

- 1. it would generate or result in exposure to, either during construction or on completion, unacceptable levels of pollution (from contaminated substances, odour, noise, dust, vibration, light and insects) which cannot be satisfactorily mitigated within the development proposal or by means of compliance with planning conditions;*
- 2. it would cause demonstrable harm to the quality, quantity and associated ecological features of groundwater and surface waters or impact on human health;*
- 3. it is on contaminated or unstable land which would pose an unacceptable risk to human health or the environment, unless suitable mitigation and/or remediation is or can be carried out to ensure safe development;*
- 4. it would be subject to unacceptable risk from existing hazardous installations; and/or*
- 5. proposals for new hazardous installations (e.g. certain gases, liquids and explosive chemicals) pose an unacceptable risk to the health or safety of users of the site, neighbouring land and/or the environment.*

*Proposals may be required to submit detailed assessments in relation to any of the above criteria to the Council for approval.*

*Where development is permitted which may have an impact on such considerations, the Council will consider the use of conditions or planning obligations to ensure any appropriate mitigation measures are secured."*

- 6.4 The proposal, therefore, raises the following planning issue: Whether the principle of extending the opening hours by 30 minutes is acceptable enabling the premises to open as a hot food takeaway daily from 1600 hrs until 2100 hrs during the evening instead of the approved period under

planning permission 19/0630, which permits the premises to open in the evenings from 1630 hrs to 2100 hrs.

- 6.5 In other words, whether the extension of opening hours by 30 minutes, adding this extra time to the start of the evening opening period, would give rise to such change to the circumstances that the development can no longer meet the objectives of Policy CM 5, if Condition 8 of 19/0630 is varied in the way proposed.
- 6.6 The key text from Policy CM 5 is at the beginning of the Policy, where it states:
- "The Council will only support development which would not lead to an adverse impact on the environment or health or amenity of future or existing occupiers."
- 6.7 The applicant sought to mitigate potential concerns relating to the usage of the premises by schoolchildren on their way home from school, by limiting its opening hours so that it would minimise the likelihood of children popping in on their way home from school. It is considered that the schools most likely to be relevant to this consideration are Trinity High School, the school day ending there at around 3pm (1500 hrs) and Central Academy, whose school day generally also ends at 1500 hrs (3pm). To a certain extent, the opening hours may be relevant to students passing who attend nearby primary schools, for example Stanwix Primary School, which finishes at 3.30pm (1530 hrs) for Key Stage 2 students.
- 6.8 When the application was originally submitted, the stated opening hours were far greater. An extract from the committee report for 19/0630 includes the following paragraph:
- "The applicant originally specified opening hours as being from 1100-2200 hrs from Monday to Saturday, and from 1600 hrs to 2100 hrs on Sundays and Bank Holidays in the original submission, but has amended this to 1100 hrs to 1400 hrs and then 1630 hrs to 2100 hrs from Monday to Saturday, and 1630 hrs to 2100 hrs on Sundays."*
- 6.9 The change in approach to opening hours was influential in terms of the application being supported, with the committee acknowledging during the November 2019 committee meeting that this showed an appropriate and sensible developer ethos, having particular regard to the aforementioned matter of schoolchildren using the premises in passing, but also in terms of reducing the amount of time the shop would be open, thereby reducing potential effects of a hot food takeaway on nearby residents.
- 6.10 In considering the intended opening hours, the local planning authority agreed with the scope of opening hours proposed if the development were to go ahead (i.e. in the event of planning permission being granted), which led directly to the imposition of Condition 8 because it appeared that there was mutual agreement between the applicant and the local planning authority about an appropriate mode of operation.

- 6.11 The site operators then opened up the shop in contravention of the (mutually agreed) condition without first having approached the local planning authority to seek variation of the condition (prior to the inaugural opening in January). This led to local residents highlighting the exacerbation of impacts caused by extending the period of perceived disturbance caused by odours, noise, social disorder and parking/highway safety.
- 6.12 Members of the Committee are advised that these matters were considered when 19/0630 was a live application in November 2019, and although it is acknowledged that there are ongoing concerns being raised by local residents in these regards, they are not matters for consideration in the context of this planning application. For clarification:
- odour and noise matters are potentially to be considered by the Council's Environmental Health Service, but not by the Planning Service;
  - social disorder and parking/highway safety are now matters only able to be monitored and/or managed by the applicants, in liaison with the police and with relevant sections of local authorities responsible for highways and parking legislation.
- 6.13 It is therefore necessary only to examine whether the proposed variation of the condition would be prejudicial in any way in a planning context to such an extent that the application cannot be supported, having regard to the aforementioned issues discussed in Paragraph 6.4 and 6.5.
- 6.14 30 minutes additional opening time may not seem likely to be particularly significant in the context of the overall permitted opening periods. The premises is already allowed, by virtue of the planning permission, to open for 7.5 hours from Monday to Saturday inclusive, and for 4.5 hours on Sundays and statutory holidays.
- 6.15 The increase would lead to daily opening hours of 8 hours overall on weekdays and Saturdays, and an increase to 5 hours on Sundays and statutory holidays. That would equate to around a 6% increase on weekdays and Saturdays, and around 11% on Sundays and holidays. Overall, the increased opening hours would represent a jump from 49.5 hours to 53 hours, which equates to around a 7.1% increase in opening time in any normal week.
- 6.16 To those households raising objections to the current application, these increases accentuate their concerns about how the premises operate. It has not been helped by the increases being unauthorised, which has somewhat inflamed the local situation. However, as mentioned in Paragraph 6.2, those concerns tend now to relate mainly to matters not required to be re-examined under planning.
- 6.17 Turning now to those matters relevant to planning, although the application was dealt with in good faith and all parties seemed to be working towards the same opening arrangements at the time the planning decision was made, there has been a clear breach of planning control, which has been ongoing

while the current application has been under consideration. The applicants could have opted to revert to the opening hours stipulated in 19/0630, but have decided to pursue an increased opening period.

- 6.18 It is important to reflect that although the applicants identified the reduced hours in part to avoid times when schoolchildren were most likely to be passing, it would not be fair to say that the goods provided by The Fryery are harmful to health in the context of a balanced diet, having regard to Policy CM 5; therefore, while the intentions of the applicants were honourable in that context, it must not be concluded that any premises, in the light of the broad takeaway 'offer' which can be found in Stanwix among other local centres in Carlisle, are to be viewed negatively just because they are hot food takeaways. Some are better than others and, importantly, some are open throughout the day and late into the evenings, to a far greater extent than The Fryery in this location.
- 6.19 It must also be acknowledged that support in a broad sense must be given for appropriate new economic development in new locations in the planning context, and while the operator in this case has arguably pushed the envelope to suit its economic ambitions, a proportionate adjustment to enable the success of a new operation could potentially be tolerated, if it does not change the terms of the operations to such an extent that it is no longer recognisable (i.e. deviates substantially) in relation to the planning permission that enabled it to take place.
- 6.20 The minor increase in opening hours as discussed above does indeed appear to be proportionate, and does not seem to change the essence of the operations in such a way that it substantially deviates from the intentions of the planning permission. The aforementioned increases identified in Paragraph 6.15 are considered to be proportionate to what was originally allowed, notwithstanding the objections, and taking into account the economic development commentary mentioned in the previous paragraph.
- 6.21 It is useful to reflect that the change in hours would not significantly increase the likelihood of the premises being used more often by schoolchildren, notwithstanding the precautionary advice set out in Paragraph 6.18 above. Furthermore, if the hours now operated were stated as being preferred when the supporting statement was submitted in September 2019, they would likely have been concluded to meet the same objectives in relation to these matters. Schoolchildren walking home from Stanwix Primary School, Trinity High School and Central Academy are more likely to have walked past this takeaway by the time it opens, than to be passing after it has opened.

## **Conclusion**

- 6.22 The increase in hours is proportionate to the hours to which the premises has been limited to under planning permission 19/0630, and would not give rise to any overriding additional concerns in the context of the original Condition 8, which was justified in the context of Policy CM 5 of the current Local Plan.
- 6.23 The matters raised in objection are noted and have been acknowledged, but



do not outweigh the acceptability of the proportionate increase in opening hours, which would not prejudice amenity or health in any noteworthy way over and above the way in which they may have been affected in the context of the original planning permission.

- 6.24 It is therefore recommended that variation of Condition 8 of planning permission 19/0630 is permitted so that the premises can be open with authorisation for the extra 30 minutes (between 1600 hours and 1630 hours) daily.

## **7. Planning History**

- 7.1 In February 2021, under ref. 20/0861, Advertisement Consent was granted for the installation of internally illuminated signage - a revised scheme to include an additional section of signage at the northern end of the fascia;
- 7.2 In January 2021, under ref. 20/0860, planning permission was granted for discharge of condition 5 (cleaning and maintenance of all proposed mechanical ventilation and odour control systems) of previously approved application 19/0630;
- 7.3 In December 2020, under ref. 20/0686, the discharge of conditions 3 (materials) & 4 (mechanical ventilation & odour control systems) of previously approved permission 19/0630 was approved; and 20/0761, discharge of condition 7 (waste management) was also approved in this month;
- 7.4 In February 2020, under ref. 19/0635, Advertisement Consent was granted for the installation of new internally illuminated fascia signage;
- 7.5 In November 2019, under ref. 19/0630, planning permission was granted for the change of use from A1 (retail) to A5 (hot food takeaway); installation of new shopfront and insertion of side window;
- 7.6 In March 1987, planning permission was granted for the conversion of the upper floors of 53 Scotland Road to a flat (87/0172)
- 7.7 In October 1985, planning permission was granted for the conversion of 1st and 2nd floors of 53 Scotland Road to bedsit accommodation (85/0360)
- 7.8 In August 1969, planning permission was granted for internal alterations and rebuilding a lean-to to enlarge shop (29692)
- 7.9 In March 1968, planning permission was granted for extension of existing shop premises and removal of internal walls to form store (28838)

## **8. Recommendation: Grant Permission**

2. The development shall be undertaken in strict accordance with the approved

documents for this Planning Permission which comprise:

1. the submitted planning application form;
2. the location plan received 13 August 2019;
3. Existing Floor Plan received 13 August 2019;
4. Proposed Floor Plan received 13 August 2019;
5. Existing Side Elevation received 13 August 2019;
6. Existing Front Elevation received 13 August 2019;
7. Proposed Side Elevation received 30 September 2019;
8. Proposed Front Elevation received 30 September 2019;
9. the Notice of Decision; and
10. any such variation as may subsequently be approved in writing by the Local Planning Authority.

**Reason:** To define the permission.

4. Details of the design, height, external finish and position of all proposed mechanical ventilation and odour control systems shall be submitted to and approved in writing by the local planning authority prior to the change of use becoming operational. The development shall then be undertaken in accordance with the approved details and the mechanical extraction system installed prior to the change of use becoming operational.

**Reason:** To safeguard the environment or health or amenity of future or existing neighbouring occupiers and in accordance with Policy CM5 of the Carlisle District Local Plan 2015-2030.

5. A written scheme of cleaning and maintenance of all proposed mechanical ventilation and odour control systems shall be submitted to and approved in writing by the local planning authority prior to the change of use becoming operational. The development shall be undertaken in strict accordance with the approved details.

**Reason:** To safeguard the environment or health or amenity of future or existing neighbouring occupiers and in accordance with Policy CM5 of the Carlisle District Local Plan 2015-2030.

6. Prior to the A5 use being brought into use, a grease trap/digester system shall be installed to the drains.

**Reason:** To prevent pollution of the water environment in accordance with Policy CM5 of the Carlisle District Local Plan 2015-2030.

7. A Waste Management Plan, including details of (i) proposed refuse and oil storage and removal arrangements; and (ii) litter management shall be submitted to and approved in writing by the local planning authority prior to the change of use becoming operational. The development shall be undertaken in strict accordance with the approved details.

**Reason:** To safeguard the environment or health or amenity of future or existing neighbouring occupiers and in accordance with Policy CM5 of the

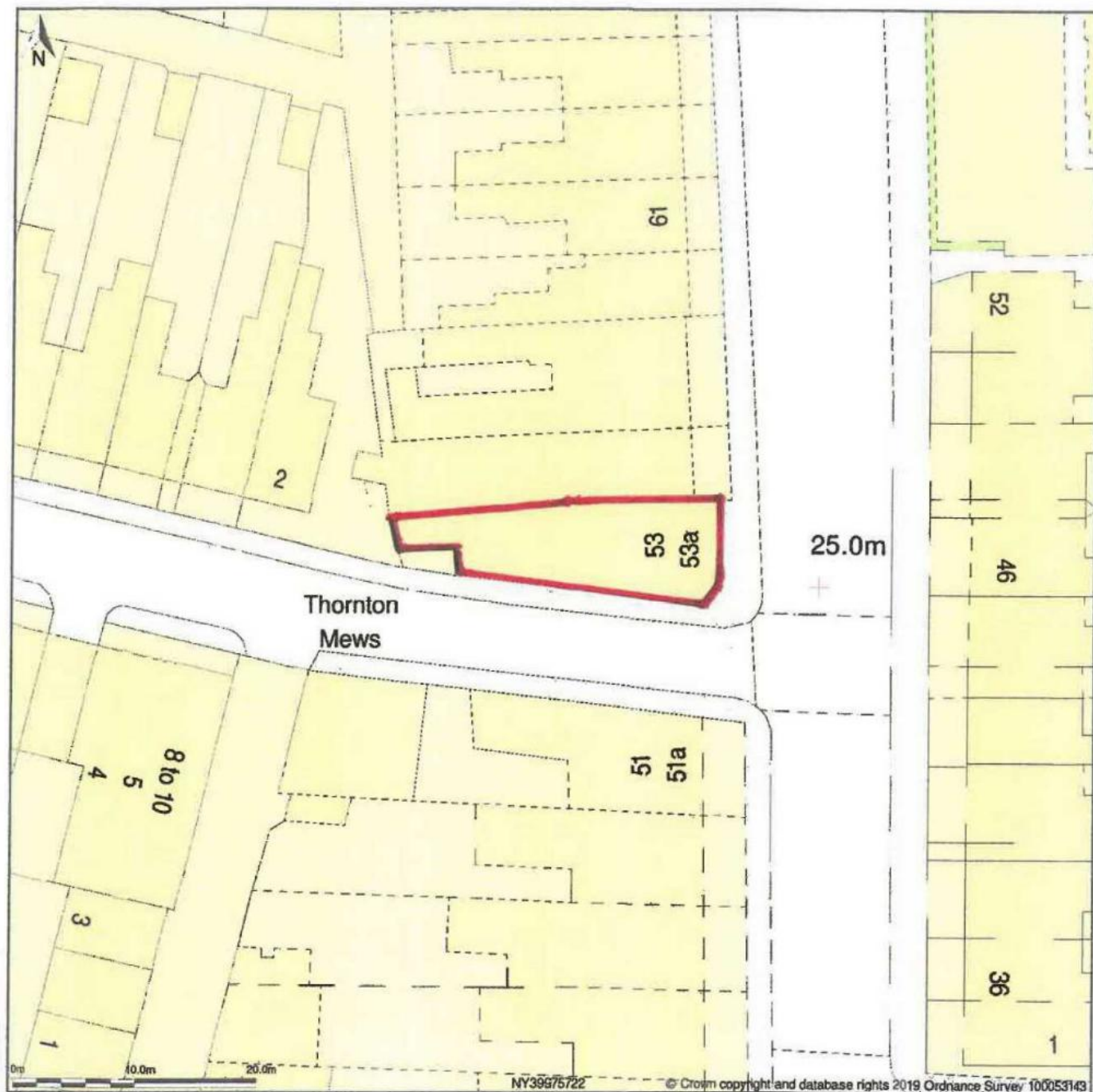
Carlisle District Local Plan 2015-2030

8. The proposed hot food takeaway shall not be open for trading except between (1) 1100 hours and 1400 hours and (2) 1600 hours and 2100 hours on Mondays to Saturdays; and between 1600 hours and 2100 hours on Sundays and Bank Holidays.

**Reason:** To prevent disturbance to neighbouring occupiers and in accordance with Policy CM5 of the Carlisle District Local Plan 2015-2030.

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**53a, Scotland Road, Carlisle, Cumbria, CA3 9HT**



Block Plan shows area bounded by: 339934.22, 557182.97 340024.22, 557272.97 (at a scale of 1:500), OSGridRef: NY39975722. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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