

SCHEDULE A: Applications with Recommendation

21/0782

Item No: 08

Date of Committee: 22/10/2021

Appn Ref No:
21/0782

Applicant:
Joey Seenarine

Parish:
Carlisle

Agent:

Ward:
Newtown & Morton North

Location: 153 Newtown Road, Carlisle, CA2 7LL

Proposal: Change Of Use From Hairdressers To Hot Food Takeaway

Date of Receipt:
05/08/2021

Statutory Expiry Date
30/09/2021

26 Week Determination
25/10/2021

REPORT

Case Officer: Richard Maunsell

1. Recommendation

1.1 It is recommended that this application is refused.

2. Main Issues

- 2.1 Whether The Principle Of Development Is Acceptable
- 2.2 Impact Upon The Amenity Of Occupiers Of Residential Properties
- 2.3 Highway And Parking Issues
- 2.4 Whether The Scale, Design And Impact On The Character Of The Area Is Acceptable
- 2.5 Other Matters

3. Application Details

The Site

3.1 This application relates to 153 Newtown Road which is a two storey end of terrace property, located on the south side of Newtown Road approximately 0.5 miles (0.8 kilometres) west of the roundabout with the A595. The building occupies a corner site with residential properties adjacent. There are double yellow lines around the corner of the building with on-street parking adjacent.

- 3.2 On the opposite side of the road and to the north west, is a bakers currently occupied by Routledges. Approximately 140 metres further to the west, is a small neighbourhood centre on Raffles Avenue comprising of a flower shop, hot food takeaway and Newtown Community Primary School.
- 3.3 The surroundings to the property are wholly residential with the site and its surroundings identified as being located within a primary residential area in the proposal maps which accompany the Carlisle District Local Plan 2015-2030.

Background

- 3.4 As stated in Section 7 of this report, planning permission was refused in 1990 for the change of use of the ground floor to a hot food takeaway. The reasons for refusal are as follows:

- “1. The proposed development would conflict with the provisions of the approved Carlisle Urban Area Local Plan which allocates the area in which the proposal is located as Primary Residential.*
- 2. The proposal would result in the intensification of a commercial use in a predominantly residential area and would, in combination with similar uses in existence or with planning approval, be likely to effect an inappropriate change in the character of the area as a result of increased levels of noise, disturbance, traffic generation and activity.”*

The Proposal

- 3.5 The current application seeks permission for the change of use of the premises from a hairdressers to a hot food takeaway. The frontage of the building would be unaltered but it is proposed to install an extraction flue on the gable of the building that would face Cranbourne Road. The proposed hours of opening would be 10:00 hours until 22:00 hours each day.

4. Summary of Representations

- 4.1 This application has been advertised by means of a site notice and direct notification to the occupiers of four properties. In response, seven representations have been received objecting to the application and the main issues raised are summarised as follows:
1. the area already struggles with people parking for the hospital, and local shops and services and this proposal will result in additional vehicles collecting or delivering food;
 2. the existing use has long been a problem with customer parking (sometimes all day) close to the junction which raises safety issues;
 3. additional vehicles will result in car doors slamming, engines running and noise pollution which is unacceptable;
 4. the local road network is already used as a racetrack which would

- increase;
5. there is no adequate parking for the takeaway;
 6. there are already a number of chip shops, cake shop and convenience stores in the vicinity with problems of discarded litter in the area;
 7. the hours of business for takeaways are unsociable;
 8. the use will result in odours into neighbouring properties;
 9. increased levels of noise will be generated at night;
 10. the takeaway will lower the value of neighbouring properties;
 11. the rear yard of the premises is shared and is unsuitable for use with the residential property above;
 12. there is nowhere safe and hygienic to store food waste potentially leading to an influx of vermin.

5. Summary of Consultation Responses

Cumbria County Council - (Highways & Lead Local Flood Authority): - the following response has been received:

Cumbria County Council as the Local Highway Authority (LHA) and Lead Local Flood Authority (LLFA) can confirm that we have no objection to the proposed development as it is considered that it will not have a material effect on existing highway conditions nor will it increase the flood risk on the site or elsewhere.

Although it is noted that the change of use may cause more vehicles to visit the premises, as these are likely to be spread out over a longer period of time, it is anticipated that any impact will be slight.

The LLFA Surface Water Map shows that there is an area of minor surface water flooding close to the site, with a 1 in 1000 chance of Surface Water flooding occurring each year;

Local Environment - Environmental Protection: - businesses such as the one proposed can give rise to complaints about odour, from occupiers of nearby residential properties. The potential for such complaints may be reduced, though not entirely obviated, by the installation and use of a suitable extract ventilation system. Such a system should be designed, for the cuisine in question, and installed by a competent ventilation engineer. In order for such systems to work successfully they will usually need a high level termination point. The system will also need to be designed such that its operation does not cause a noise nuisance. To this end, the resulting system will also need regular maintenance by a competent person. In addition, suitable apparatus will need to be installed to ensure that excessive amounts of oil and grease do not enter the drainage system.

Complaints may also be received which concern the hours of operation of such premises and the consequent comings and goings of customers and delivery drivers. The hours proposed for this application do not seem excessive and so it is recommended that any consent should reflect this.

If the application is successful then the applicant should contact this

department in order to be advised with regard to legislative compliance for food safety and occupational health and safety.

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 application is required to be assessed are the National Planning Policy Framework (NPPF), the National Planning Practice Guidance (NPPG) together with Policies SP2, SP6, SP9, EC6, EC8, HO12, CM5 and IP3 of the Carlisle District Local Plan (CDLP) 2015-2030. The proposal raises the following planning issues.

1. Whether The Principle Of Development Is Acceptable

6.3 Within the NPPF there is a presumption in favour of sustainable development. Paragraph 7 requires that:

“The purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.”

6.4 Paragraph 8 continues and identifies that to achieve sustainable development there are three overarching objectives. Paragraph 10 states *“so that sustainable development is pursued in a positive way, at the heart of the Framework is a **presumption in favour of sustainable development** (paragraph 11).”*

6.5 The application site is within a Primary Residential Area and although cited as a reason for refusal for the previous planning application in 1990, policies have changed since that time. Commercial uses of premises *may* be acceptable in residential areas, as highlighted by Policy HO12 of the local plan, subject to consideration against that other relevant local plan policies.

6.6 Policy EC6 of the local plan reflects the hierarchical approach of retail and main town centre uses for the district in Policy EC2 which is itself consistent with the Framework which seeks to protect vitality and viability of existing centres and also provides for new centres within strategic sites across the district. Under the NPPF, a hot food takeaway is defined as a ‘Main Town Centre’ use. Paragraph 87 of the Framework states that:

“Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable

sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.”

- 6.7 Paragraph: 011 Reference ID: 2b-011-20190722 Revision date: 22 07 2019 clarifies that it is “...for the applicant to demonstrate compliance with the sequential test (and failure to undertake a sequential assessment could in itself constitute a reason for refusing permission).”
- 6.8 Paragraph 90 of the NPPF requires impact assessments to be completed on retail and leisure proposals over 2,5000 square metres if there is no locally set threshold. The impact assessment should include consideration of “*the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal*” and “*the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).*”
- 6.9 Policy EC6 of the local plan outlines the locally set thresholds for retail floorspace within the urban area being proposals which exceed 1000sqm (gross) for convenience retail and 500sqm (gross) for comparison retail.
- 6.10 The application form which accompanies the application states the floorspace of the building is 43 square metres which is significantly less than the impact thresholds set. Additionally, the proposal seeks to reuse an existing commercial building and as such, it is not considered necessary in this instance to provide a Sequential Test.
- 6.11 Based on the foregoing, the principle of the reuse of the building for a commercial use is not precluded by planning policies. The issues raised by this application are discussed in the following paragraphs.

2. Impact Upon The Amenity Of Occupiers Of Residential Properties

- 6.12 Policy EC8 of the local plan specifically relates to proposals for food and drink premises. The policy states that development proposals for uses within Use Class A3 (restaurants and cafes), A4 (drinking establishments) and A5 (hot food takeaways) will be approved provided that: 1) they are in defined centres or, if not, accord with the sequential and impact tests; 2) the amenity of adjacent uses would not be adversely affected; 3) the proposal would not cause unacceptable levels of traffic generation or highway obstruction, particularly where customers are collecting food from takeaways, or jeopardise highway or pedestrian safety; and 4) the proposal would not lead to an unacceptable concentration of a particular use or business type within and given locality. Policy EC8 states that opening hours will be imposed having regard to the surrounding uses, the character of the area, possibility of nuisance to residential areas and public safety. Although following changes to the use classes order, from 1 September 2020, hot food takeaways are now considered to be a sui generis use, this does not affect the meaning or application of the policy and its criteria.
- 6.13 Furthermore Policy HO12 of the local plan which relates to proposals for

other uses in primary residential areas seeks to protect the amenity of residential areas from inappropriate development. The policy further states that proposals for non-residential uses will only be permitted providing that 1) such uses maintain or enhance the overall quality and character of the immediate area; 2) there is no detrimental effect on residential amenity either through noise, nuisance, damage to visual amenity or increase in traffic; and, 3) the proposed use will provide a beneficial service to the local community. Policy HO12 also states that the character and residential amenity of the area should not be compromised by the cumulative impact of such proposals, either through increase in traffic or the intensity or intrusive nature of such proposals.

- 6.14 Local plan Policies SP6 and CM5 are also relevant to the proposal, in that they seek to ensure that the developments would be acceptable in terms of their relationship with existing uses. Both policies refer specifically to making sure development is not prejudicial to existing uses.
- 6.15 The application site is located on Newtown Road. There are several commercial uses further to the east along Newtown Road, close to the junction with the Cumberland Infirmary including (but not exclusively) a vehicle repair garage, sandwich shop, convenient store, hot food takeaway and barbers. Part way along Newtown Road between these premises and the application site are a funeral directors, hairdressers and Post Office. Diagonally opposite the site is a bakers. Further past the site on Raffles Avenue is a florist, school and hot food takeaway. As such, to the east and west of the site are areas anchored with commercial uses close to the Infirmary and Raffles Avenue. In between, there is a peppering of businesses adjacent to residential properties. As stated in Section 1 of this assessment relating to the principle of the change of use, this is not in question. The issue is the relationship with the neighbouring properties and the potential impact on the amenity of the occupants.
- 6.16 The current use of the premises as a hairdressers is likely to have only one or two clients, arriving on an appointment basis and spending a reasonable amount of time in the building. At the time of writing this report, the hours of opening varied with the latest opening times being 10:00 hours until 19:00 hours. By contrast, the proposed use would operate seven days a week between the hours of 10:00 and 22:00. In addition, the frequency of patrons to the premises is likely to be significantly different which greater numbers and a more frequent turnover through the takeaway. As well as pedestrians and customers in their own vehicles, the nature of takeaways has changed with more premises offering delivery services through companies such as Deliveroo and Just Eat or via their own drivers. It would be unlawful to impose a condition prohibiting any restriction on takeaway deliveries as it would be unenforceable. It is therefore reasonable to assume when assessing the current proposal that there could be coming and goings from the takeaway based on the proposed operating hours by customers, staff and delivery drivers by various transport modes, i.e. on foot, by motor vehicle or by cycle.
- 6.17 The proposed use of the premises as a hot food takeaway would result in the business operating late into the evening as well as on Sundays and bank

holidays when occupants of neighbouring residential properties would expect a reasonable amount of peace and quiet. Although located adjacent to a main route into the city from the west, the levels of vehicle movements in the evening and night, would be considerably less than the daytime and the noise levels from the traffic would therefore be much reduced. The proposed use would significantly increase the amount of noise, activity and disturbance emanating from the premises and within the surrounding area from patrons and staff including delivery drivers entering and leaving the premises on foot or within vehicles at anti-social hours when low ambient noise levels within residential areas are to be expected. This level of disturbance (from general chatter between patrons, vehicle engines stopping and starting, car doors slamming etc.) would be significantly compounded due to the application site's position within a primary residential area with no other late-night commercial uses present thereby resulting in the additional coming and goings from the takeaway being particularly noticeable to surrounding residents given the relative quiet residential nature of the existing street scene. The building is subdivided between the ground floor use and a first floor flat which is in separate ownership and would be disassociated from the business. In the absence of any attenuation measures, the use would result in significant levels of noise travelling through the ceiling that would be detrimental to the occupier of this flat. In such circumstances it is considered that the proposal would significantly intensify noise, activity and disturbance within the area to the detriment of the residential amenity of the surrounding area.

- 6.18 Objectors have raised concerns about the potential for odour to emanate from the premises. The submitted plans show a ventilation flue on the gable of the building; however, no technical details have been provided as to the method or equipment that would be used in the extraction. There is also no evidence to suggest that the illustrated size of the flue is adequate; however, such details could be secured through the imposition of a planning condition.

3. Highway And Parking Issues

- 6.19 Planning policies, including Policy EC8 of the local plan, require that development proposals make adequate provision for parking and do not result in highway safety issues. Specifically, criterion 3 of Policy EC8 states the proposals for food and drink will be acceptable provided that:

“the proposal would not cause unacceptable levels of traffic generation or highway obstruction, particularly where customers are collecting food from takeaways, or jeopardise highway or pedestrian safety;”

- 6.20 Objectors have raised concerns regarding the potential for parking problems and the impact upon highway safety. The premises occupies a corner position where along the immediate roadside frontage are double yellow lines which prohibit the parking of any vehicle. Adjacent to these, are on-street parking spaces; however, these are generally occupied no matter the time of day or night.

6.21 Cumbria County Council as the relevant Highway Authority has been consulted on the proposal and has confirmed no objection to the proposed development as they considered that the proposal will not have a material effect on existing highway conditions. The Highway Authority have noted that although the hours will be increased which may cause more vehicles to visit the premises as these are likely to be spread out over a longer period of time it is anticipated that the impact will be slight.

6.22 The comments of the Highway Authority are noted and their advice is generally accepted in the determination of planning applications; however, in this instance, the proposal would result in a significant change to vehicle movements on this corner site, as outlined in this report through patrons, delivery drivers of the business and those employed by third party food delivery companies. It is also doesn't align fully with advice previously given or other sites in the city for similar proposals, namely 57 Scotland Road where a change of use to a hot food takeaway was refused and dismissed at appeal due the restricted parking and proximity to a busy junction. More recently, during the course of an application for a change of use at 53/53a Scotland Road, the Highway Authority stated:

“The access from the A7 Scotland Road / junction of Thornton Road the U107 double yellow lines along this junction. No parking has been provided, and could result in parking on the double yellow lines at this junction.”

6.23 Whilst not ignoring the response from Cumbria County Council, in making a balanced assessment of the proposal, it is considered that the limited available on-street parking facilities will result in patrons parking on the double yellow lines to the detriment of users of the highway. As such, the proposal would be unacceptable in this regard.

4. Whether The Scale, Design And Impact On The Character Of The Area Is Acceptable

6.24 Paragraphs 126 to 136 of the NPPF which emphasises that the creation of high quality buildings and places is fundamental to what the planning system and development process should achieve. The Framework has a clear expectation for high quality design which is sympathetic to local character and distinctiveness as the starting point for the design process. Paragraph 130 outlines that:

“Planning policies and decisions should ensure that developments:

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);*
- d) establish or maintain a strong sense of place, using the arrangement of*

- streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;*
- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and*
 - f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.”*

6.25 It is further appropriate to be mindful of the requirements in paragraph 134 of the NPPF which states:

“Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development. Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).”

6.26 Policy SP6 of the local plan requires that development proposals demonstrate a good standard of sustainable design that responds to local context taking account of established street patterns, making use of appropriate materials and detailing, and reinforcing local architectural features to promote and respect local character and distinctiveness. The preparation and cooking of food for consumption off the premises, is likely to require the installation of a substantial mechanical extraction system which would include a flue for ventilation as stated earlier in this report.

6.27 When approaching the building from the east, Newtown Road rises up and the gable of the building is exposed within the street scene. The installation of a large stainless metal flue on this gable would be a discordant feature and one which would be detrimental to the character of the street scene.

4. Other Matters

6.28 Some of the representations received raise concerns about the number of food outlets, including takeaways, in the locality and consequently, that the development may have an adverse impact upon healthy living. It is acknowledged that some of the food provided by takeaways may not always be a healthy choice but it is essential to recognise that offering choice to consumers is logical, reasonable and influenced by the consumer market. It also has to be considered that the scale of the business is modest by comparison to other national chains providing other forms of fast food. Whilst there are food outlets, it isn't considered that there would be an unacceptable concentration of such business types in the locality as prohibited by Policy

EC8. In relation to this, it is considered that the proposed alteration to opening hours wouldn't give rise to an unacceptable adverse impact on human health, therefore the proposal would be consistent with Policy SP9 of the local plan.

- 6.29 Concerns have also been raised that the proposal may result in an increase in anti-social behaviour. Although the use is likely to lead to increase levels of noise and disturbance, it is unreasonable to assume that all customers from hot food takeaways would take part in anti-social behaviour. If anti-social behaviour was to take place this would be a matter for Cumbria Constabulary as the relevant appropriate authority for dealing with crime and disorder.
- 6.30 The reference made in the objections to the potential impact on property values in the area isn't a material planning consideration.

Conclusion

- 6.31 In overall terms, the application site is located within a primary residential area. The principle of a commercial business in juxtaposition with residential properties isn't discounted by planning policies. Moreover, it is the potential impact of the use on the living conditions of the occupiers of these properties that needs to be assessed.
- 6.32 The NPPF together with local plan policies aims to build a strong, competitive economy and generating employment opportunities which would be the outcome from this development should the application be approved; however, the conclusion from the foregoing assessment, is that the proposal would be detrimental to the living conditions of the occupiers of residential properties in the locality and would generate issues in terms of parking and highway safety.
- 6.33 The installation of a large stainless extraction flue on this prominent gable wouldn't add to the overall quality of the area and is likely to result in a discordant feature within the street scene.
- 6.34 Any perceived benefit from the proposal would be demonstrably outweighed by the harm that would result and for these reasons, the proposal is considered to be contrary to the objectives of national and local planning policies.

7. Planning History

- 7.1 Planning permission was refused in 1990 for the change of use of the ground floor to a hot food takeaway.

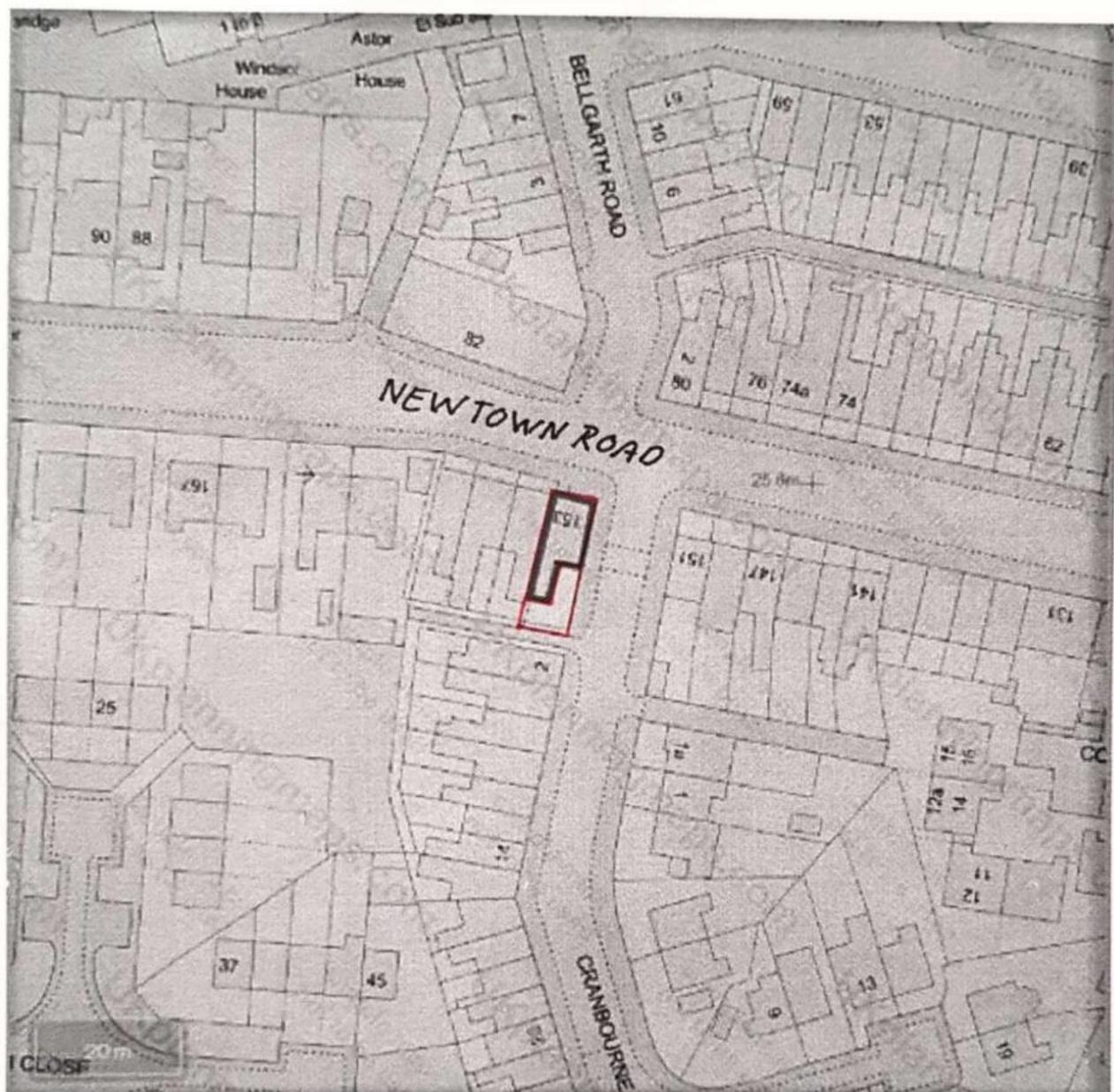
8. Recommendation: Refuse Permission

1. **Reason:** Although located close to a main highway thoroughfare, the application site is located in a Primary Residential Area. The

proposed change of use of the premises to a hot food takeaway, would result in the takeaway operating throughout the day and late in the evening as well as on Sundays and bank holidays when occupants of neighbouring residential properties would expect a reasonable amount of peace and quiet and in particular to the occupier of the first floor flat above the premises. As such, the proposed use would significantly increase the amount of noise, activity and disturbance emanating from the premises and within the surrounding area from patrons and staff including delivery drivers entering and leaving the premises on foot or within vehicles at anti-social hours when low ambient noise levels within residential areas are to be expected. This level of disturbance (from general chatter between patrons, vehicle engines stopping and starting, car doors slamming etc) would be significantly compounded due to the application sites position within a primary residential area with no other late-night commercial uses present thereby resulting in the additional coming and goings from the takeaway being particularly noticeable to surrounding residents given the quiet residential nature of the existing street scene. In such circumstances it is considered that the proposed use as a hot food takeaway would significantly intensify noise, activity and disturbance within the area to the detriment of the residential amenity of the surrounding area. The proposal is therefore contrary to criterion 2 of Policy EC8 (Food and Drink); criterion 7 of Policy SP6 (Securing Good Design); criterion 2 of Policy HO12 (Other Uses in Primary Residential Areas); and the objectives of Policy CM5 (Environmental and Amenity Protection) of the Carlisle District Local Plan 2015-2030.

2. **Reason:** The application site is located on the corner of Newtown Road and Cranbourne Road where parking is prohibited by double yellow lines. Adjacent parking facilities in the form of on-street parking is generally at capacity which would be the case during the evening when residents would normally return from work. A hot food takeaway would result in an intensification of the use in highway terms generated by the amount of visits from patrons and delivery drivers on a short-term basis. This is likely to result in parking outwith designated on-street parking areas that would cause interference in the free flow of traffic, additional danger and inconvenience to road users and would therefore be contrary to criterion 7 of Policy SP6 (Securing Good Design); criterion 3 of Policy EC8 (Food and Drink); criterion 2 of Policy HO12 (Other Uses in primary Residential Areas); and the objectives of IP3 (Parking Provision) of the Carlisle District Local Plan 2015-2030.
3. **Reason:** The use of the premises as a hot food takeaway will necessitate the installation of an extraction flue. When approaching the building from the east, Newtown Road rises up and the gable of the building is exposed within the street scene.

The installation of a large stainless metal flue on this gable wouldn't positively contribute to the overall character of the area resulting in a discordant feature and one which would be detrimental to the character of the street scene contrary to criterion a) of Paragraph 130 of the National Planning Policy Framework; and criterion 1 of Policy SP6 (Securing Good Design) of the Carlisle District Local Plan 2015-2030.



SCALE 1:1250 Location Plan


Parking spaces



Block plan 1:500 SCALE

DO NOT SCALE FROM THIS DRAWING

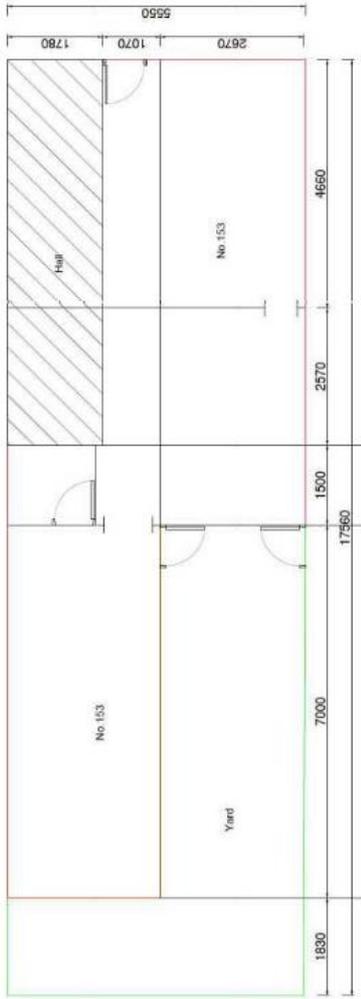
GENERAL

1. This drawing is prepared by the architect and is subject to the provisions of the Building Act 2004 and the Building Regulations 2004. It is intended to be used in conjunction with all other relevant drawings and specifications. Check the details provided in the drawing to ensure they are correct and consistent with the specifications. Check the details provided in the drawing to ensure they are correct and consistent with the specifications.
2. This drawing is to be used in conjunction with all other relevant drawings and specifications. Check the details provided in the drawing to ensure they are correct and consistent with the specifications.
3. Changes to the drawing must be approved by the architect and the client. Any alterations to the drawing must be approved by the architect and the client. Any alterations to the drawing must be approved by the architect and the client.
4. This drawing is prepared by the architect and is subject to the provisions of the Building Act 2004 and the Building Regulations 2004. It is intended to be used in conjunction with all other relevant drawings and specifications. Check the details provided in the drawing to ensure they are correct and consistent with the specifications.
5. Features as detailed.

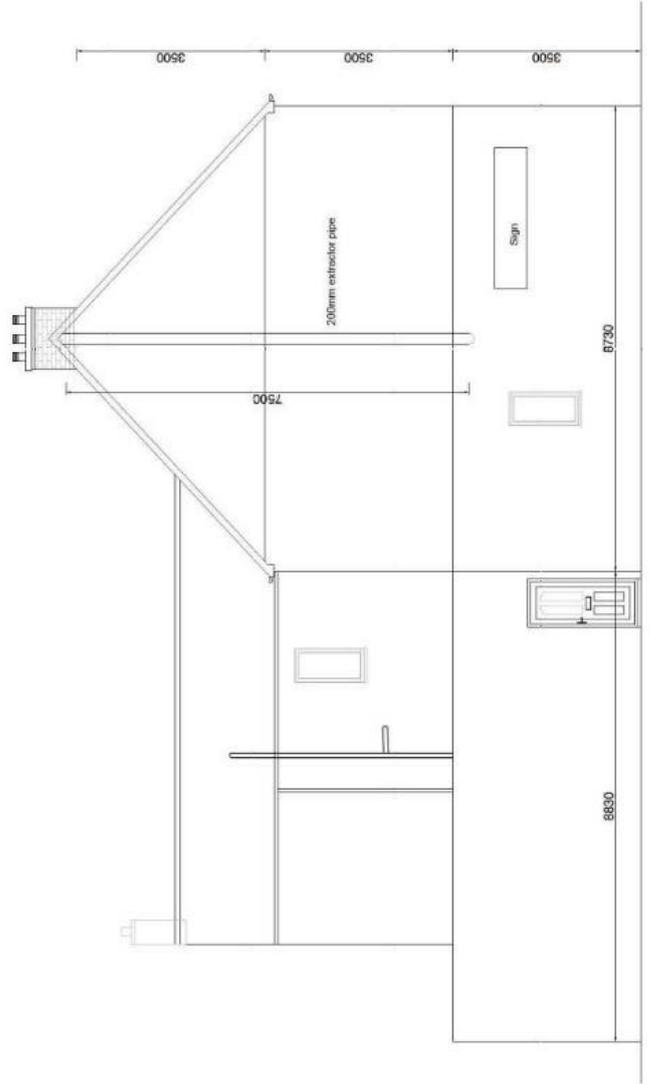
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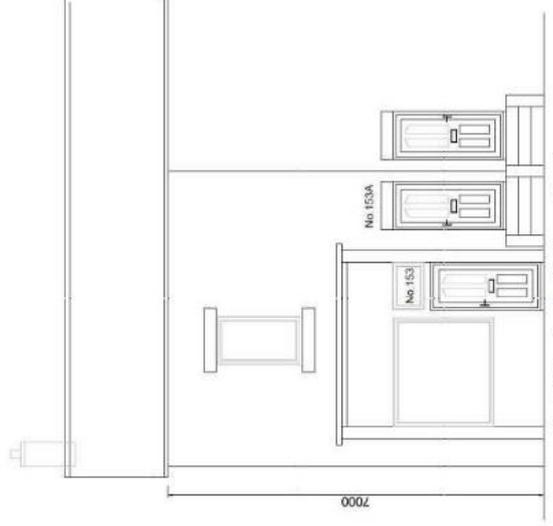
- Yard
- Building
- Hall



Block Plan
Scale 1:50 @ A1



Side Elevation to Crane Bourne Road
Scale 1:50 @ A1



Front Elevation to Newtown Road
Scale 1:50 @ A1

CLIENT	N/A
PROJECT	153 Newtown Road
DRAWING TITLE	Structural Details
DATE	August 21
DESIGNER	SS
DRAWING NO.	SK100
REV.	-

FOR COMMENT