

SCHEDULE A: Applications with Recommendation

19/0936

Item No: 03

Date of Committee: 22/05/2020

Appn Ref No:
19/0936

Applicant:
Mr H Kocaturkmen

Parish:
Carlisle

Agent:
PFK Land and
Development

Ward:
Stanwix & Houghton

Location: 124 Scotland Road/2A Beechwood Avenue, Carlisle, CA3 9BU

Proposal: Change Of Use From Retail (Class A1) To Hot Food Takeaway (Class A5)

Date of Receipt:
11/12/2019

Statutory Expiry Date
05/02/2020

26 Week Determination

REPORT

Case Officer: John Hiscox

1. Recommendation

1.1 It is recommended that this application is refused.

2. Main Issues

- 2.1 Whether the proposals would be prejudicial to the private amenity of residents;
- 2.2 Whether the proposals would be prejudicial to public amenity and safety;
- 2.3 Whether the new use would be compatible with other uses in the locality; and
- 2.4 Whether the development would be prejudicial to healthy living.

3. Application Details

The Site:

3.1 The property address is 124 Scotland Road/2A Beechwood Avenue, which comprises a ground floor shop last occupied by the Bargain Booze chain and a separate first floor flat, plus associated external areas including a detached single garage. Bargain Booze ceased trading and withdrew from the shop

approximately 18 months ago, and all visible external signage relating to the business has been removed. The flat is still currently occupied, has a separate entrance from the side, and a garden area with its own gated access but no on-site parking. A fence divides the side/rear garden so that part appears to be allocated to the flat, and part appears to have been retained to provide an area associated informally with the shop.

- 3.2 The rear house wall at ground floor level (behind the shop's storage/backroom) contains double escape/fire doors that open onto the garden/yard. A single garage, in secure but tired condition, appears to relate to the shop use as it is within the area excluded from the garden area serving the flat, although its use in connection with the overall property is unclear. Fences within and surrounding the premises tend to be 1.8m high post and (vertical) plan in nature with a concrete plinth. These replaced a number of substantial privet hedgerows which were present in 2009, when the shop was occupied as 'Simply Drinks'
- 3.3 The front elevation contains a shopfront on the left which projects from the original wall of what would have been the house. Its flat front includes a roller-shutter security screen which is always down at this point in time while the shop is empty. The upper floor frontage windows are domestic in nature, whereas the right hand ground floor window (lower section of a bay/bow window) has been covered over with permanent boarding so that it does not function as a window. The last occupants used it to mount advertisements and it appears presently to be used for ad hoc fly-posting.
- 3.4 The elevation that faces onto Beechwood Avenue presently contains the side window of the added shopfront, but it is covered over with advertisements/transfers. Within the shop, behind this side window, was the staff/till area of the shop in its last operative mode.
- 3.5 The property not a listed building and is not within a heritage setting. It is a prominent corner building that is likely to have been a single dwelling until after 1967 when planning permission appears to have been granted for its alteration/subdivision. Its side elevation is onto Beechwood Avenue Road and its frontage onto Scotland Road. The shop is accessed via the front entrance only.
- 3.6 In front of the shop is an open, hardsurfaced (paver) area which once would have been the garden to the house. Its existence is now incidental to the use of the premises; it is not a parking area and is not cordoned off in anyway from the public pavement. A British Telecom kiosk, street sign and rubbish bin are located in the area between the pavement (on the Beechwood Avenue side) and the frontage. There are a number of low bollards on the corner of the junction of the two roads, but these are not within the site.
- 3.7 To the south of the property is a 30-40 year old detached bungalow (122

Scotland Road) within its own curtilage. A fence and substantial privet hedgerow separate the front garden of this dwelling from the frontage serving the application building. The south gable wall of the application building is within 8 feet of the gable wall of the bungalow, which contains two windows (at least one of these may serve a garage). The privet hedgerow continues alongside the gable wall of the application building. In between the two buildings is a path from the front to the back of the house. 122 Scotland Road enjoys a private garden to the rear; between this garden and the yard/garden currently seeming to serve the shop, is more of the privet hedge, which is tall and substantial at this point.

- 3.8 To the east beyond the garage is 2 Beechwood Avenue one of a pair of semi-detached houses. Its boundary is in close proximity to the application site. Planning permission exists to extend 2 Beechwood Avenue over an existing garage on the side of the dwelling nearest to the application site. From the garden of this house there are views to the upper section of the application building (rear windows of the flat). Upper windows of this house look towards the garden/yard area serving the flat and shop over the top of the existing garage. The garage of the application site and that of this house almost touch where eaves and side wall meet.
- 3.9 On the opposite side of Scotland Road are pairs of semi-detached dwellings; similarly these are present on the opposite side of Beechwood Avenue; beyond 2 Beechwood Avenue and 122 Scotland Road further along those streets.
- 3.10 The application building is the only (partially) substantive non-residential premises in the locality, the nearest others being the Morrison's superstore further north along Scotland Road, and the modern block containing the bookmakers, vets and Sainsbury's Local where the Stanwix local centre begins. The application building is roughly midway between these two sites.
- 3.11 The site is within the Primary Residential Area as defined within the Carlisle District Local Plan 2015-2030 (Policy HO12).
- 3.12 The site frontage is not currently used as a parking area associated with the unit; no drop kerbs exist.

Background:

- 3.13 The applicant represents The Dalston Fryer, a local business with fish and chip shops in Dalston (The Dalston Fryer) and in west Carlisle in the area of Newtown and Raffles (Dante's on Shady Grove Road).
- 3.14 It may be noted that, notwithstanding the specific proposals in the name of an applicant which operates takeaways at present, if the application is successful it could be taken on by any A5 operator, as long as said others

complied with relevant regulations/legislation.

- 3.15 The current proposals have been adjusted since the application was submitted, with the frontage hardsurfaced area in front of the shop no longer proposed for vehicle parking.

The Proposal:

- 3.16 The current use of the shop premises is A1 of the Use Classes Order (retail). The application proposes to change the use of the shop premises to a hot food takeaway establishment, which falls under Use Class A5. Alterations to the building are generally limited, according to the submitted drawings, to re-use of the existing ground floor shop space. The proposed ground floor plan identifies a frying, serving, waiting and display space in the actual shop area, with a preparation, storage and w/c in the rear area beyond a single door central to the floor. The existing internal shop floorspace is to be adapted to accommodate the new use. Submitted drawings show the proposed layout of the takeaway.
- 3.17 The application was originally submitted firmly on the basis that parking for the unit would be partially on-site (off-street), utilising the frontage. No layout plans for the parking area were provided with the original submissions, resulting in a written request by the case officer for a vehicle parking and turning plan to be provided.
- 3.18 The applicants changed the proposal in this regard, subsequent to this request, opting not to include the frontage area for user parking, instead opting for all parking to be on-street as per the current situation. This represented a significant shift in approach, which led to the application being re-advertised with new neighbour/objector letters and a second site notice being posted to allow contributors to consider the revised scheme. All previous consultees were re-consulted.
- 3.19 The applicant has specified opening hours as being from 1100-2300 hrs daily.
- 3.20 The applicant has indicated that an odour control system would be installed in the manner installed on other premises i.e. The Dalston Fryer. However, only generic information has been provided to date in response to a request for further detail in this regard. There are no site specific proposals, meaning that it is not known where on the building, either internally or externally, any apparatus would be installed.
- 3.21 On 10 February 2020, a supporting letter (relevant to paragraph 3.18 above) was submitted on behalf of the applicants by PFK consultants. The intention of the document was to address matters raised in representations and consultation responses submitted up to that date. A summary of the issues

discussed in the document is as follows:

- * the Policy context of the proposal in relation to the Carlisle District Local Plan 2015-2030 is discussed, in particular with regard to Policies EC8 (Food and Drink)
- * the appropriateness of the proposals in the context of potential anti-social behaviour
- * how the development is considered not to give rise to overriding road safety concerns, taking into consideration nature of existing and proposed use, potential other uses, opportunities available in the locality and the positions of Cumbria County Council as highway safety specialist consultee, and Carlisle City Council's Access Officer in relation to the safety of pavement users
- * how the development would bring back into use a vacant commercial unit, with an appropriate alternative use to the current A1 use.

4. Summary of Representations

- 4.1 The planning application has been advertised by way of site notices and notification to neighbours.
- 4.2 In addition to the original consultation/advertisement, letters were sent on 10 February 2020 to all neighbours and contributors, along with relevant consultees, in relation to supplementary information received which changed the proposals by omitting the parking proposal for the frontage. The supplementary information was also intended to respond to matters arising in representations submitted by the public.
- 4.3 A total of 57 letters of representation have been received up to the date of writing this report during the week commencing 2 March 2020. These represent a total of 42 households, as several contributors submitted more than one letter of representation.
- 4.4 A petition has been received in opposition to the proposals, with 69 signatories all from households within Stanwix/Belah/Etterby. The signatories oppose the proposals on the following grounds:
 - (i) additional traffic impacts on local residential amenity
 - (ii) additional traffic causing road/pedestrian safety impacts
 - (iii) potential littering issues associated with use
 - (iv) potential anti-social behaviour associated with use
 - (v) potential odour and noise issues associated with use, especially having regard to long opening hours
 - (vi) use incompatible with residential area

(vii) plenty of other takeaways within walking distance

4.5 A summary of the relevant matters raised in objection to the proposal is as follows:

- (i) Lack of clarity in relation to where odour control/extraction apparatus would be installed; generic information only received but no site-specific proposals so no understanding of its potential effects/impacts including those upon residential amenity
- (ii) No information provided relating to mitigation measures in the event of odour control/ventilation systems failing (temporarily)
- (iii) No guarantee that odour control systems would successfully eliminate odours - even well-run fish and chip shops create odour
- (iv) Lack of information relating to drainage, to ensure public sewer is not blocked or constricted
- (v) No noise impact assessment submitted to support the application, despite potential noise impacts from business and customers, which would have the potential to impact negatively on residential amenity of residents
- (vi) Concern relating to litter management (including discarded food waste)
- (vii) Potential for anti-social behaviour, noise and disruption to nearby residents (gathering point for people) generated by development
- (viii) Development would promote increased levels of danger to road users including pedestrians (level and nature of traffic promoted including staff, deliveries and customers)
- (ix) Concern that the Cumbria County Council responses do not adequately address matters relating to road/pedestrian safety (including safety of less ambulant users as identified within the consultation response of the Carlisle City Council Access Officer) and that views expressed within responses do not appear to have been qualified/evidenced; responses appear to be at odds with previous recommendation for former Spar shop (19/0630) and 103-105 Kingstown Road (17/0873)
- (x) On-street staff and customer parking plus deliveries (including outward via home deliveries) would potentially cause road/pedestrian safety impacts and impact negatively on residential amenity with congestion in the locality and blocking of private accesses
- (xi) Delivery vehicles parking partially on pavement have damaged pavement making it dangerous - this would continue/worsen
- (xii) Nature of use is such that customers would be likely to park for longer than in relation to A1 retail use, worse at certain times of day (peak times for persons wishing to purchase meals)
- (xiii) Supporting information underestimates likely number and nature of visitors at peak times, thereby not recognising full implications in terms of impacts
- (xiv) Local road network under pressure presently and inadequate to respond to additional pressures caused through new use
- (xv) Beechwood Avenue is also used as a local bus route - additional concern relating to relationship of future business/use with use of the

road network

- (xvi) Local pavement/road network safety concerns extend to parent/children users as people walking to school
- (xvii) Concern that additional traffic/congestion could prevent emergency vehicles getting through via Beechwood Avenue if needed
- (xviii) Use of frontage for parking would potentially cause road/pedestrian safety dangers (no details provided to show how this would work)*
- (xix) Use of frontage for parking inadequate to serve shop and flat above*
- (xx) Inability to supervise/manage usage of frontage area and/or on-street usage for parking/turning*
- (xxi) Frontage is not currently available as a parking area for the premises (contrary to position stated on applicants' behalf) and has not been used for this historically*
- (xxii) Lack of information relating to deliveries and waste collection vehicles

*NB - PROPOSALS CHANGED SO THAT FRONTAGE AREA IS NOT INCLUDED FOR ANY PARKING IN FEBRUARY 2020

- (xxiii) Application site is within a predominantly residential area and not within a parade of shops; application introduces a virgin use into an immediate locality where currently there are no commensurate takeaways
- (xxiv) A5 takeaway use is significantly different to A1 retail use in terms of the Use Classes Order, hence the need to obtain planning permission for the change of use; Applicants' planning statement attempts to underplay magnitude of the proposed change
- (xxv) Revised Planning Statement does not adequately address concerns raised in previous representations
- (xxvi) Stanwix area already well provided with various takeaway and food retail outlets serving local need - additional takeaway adds to sense of proliferation in Stanwix area (saturation mentioned)
- (xxvii) Amount of takeaways in Stanwix is harming the environmental quality ('kerb appeal') of the local area
- (xxviii) Premises not considered to be linked to local centre at Stanwix (contrary to position stated on applicants' behalf); and not linked to local centre at Kingstown - falls in an area outside both local centres; therefore Policy EC5 of the Local Plan does not apply
- (xxvix) Other future uses such as residential or other businesses would be more compatible with locality
- (xxx) Proposed long opening hours from morning to late evening are inappropriate to this predominantly residential area (impacts on residential amenity)
- (xxxi) Proposed opening hours are longer than those stated for Bargain Booze, thereby extending periods of disruption in terms of additional traffic and parking impacts previously experienced when Bargain Booze was open.
- (xxxii) Bargain Booze opening hours were in reality often opening at 12 noon and closing at 2100 hrs most nights.
- (xxxiii) Proposed opening hours inconsistent with previous planning

permissions (19/0630 and 17/0873) and with terms imposed on applicants' other premises in Dalston

(xxxiv) Proposed use not compatible with Local Plan policy SP9 'Healthy and Thriving Communities' due to increased provision of fast food (and increased opportunities to purchase it, especially for young people) and commensurate adverse effects on peoples' health

(xxxv) Proposed use not compatible with Policy EC8 'Food and Drink' or HO12 'Other Uses in Primary Residential Areas' for example due to concentration elsewhere providing focus for anti-social behaviour

(xxxvi) No guarantee that business would provide jobs for local people

5. Summary of Consultation Responses

Cumbria County Council - (Highways & Lead Local Flood Authority): - No objection.

Cumbria Constabulary - North Area Community Safety Unit: - No objection

Local Environment - Environmental Protection: - No objection - technical advice provided.

Planning - Access Officer: - Concerns relating to impact of development on safety of pavement users.

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 policies against which the application is required to be assessed are the NPPF and Policies SP1, SP6, SP9, EC7, EC8, IP2, IP3, CM4, CM5 and HO12 of the Carlisle District Local Plan 2015-2030.

6.3 The proposal raises the following planning issues:

1. Whether the proposals would be prejudicial to the private amenity of residents;
2. Whether the proposals would be prejudicial to public amenity and safety;
3. Whether the new use would be compatible with other uses in the locality; and
4. Whether the development would be prejudicial to healthy living.

Whether the proposals would be prejudicial to the private amenity of residents:

6.4 Local Plan Policies SP6 'Securing Good Design', EC8 'Food and Drink', CM5 'Environmental and Amenity Protection' and HO12 'Other Uses in Primary Residential Areas' are of particular relevance to the proposal, in that they

seek to ensure that the developments would be acceptable in terms of their relationship with existing uses. All refer specifically to making sure new uses are not prejudicial to existing uses.

- 6.5 Care must be taken in the context of these policies when considering change of use from Use Class A1 to Use Class A5. Significant differences arise with the introduction of an A5 use that would be much less likely to be experienced in a retail or related use. For example, it is more likely that odour control would be required due to the potential smells emanating from the cooking of foods including the aroma of the food itself and the hot oils used in frying.
- 6.6 It is also likely that rather than a constant or periodic drip-feed of customers, there would be more intense periods around traditional mealtimes, especially in the early evening. If the business is successful, it is possible (as with other businesses in the city such as Fontana's in London Road, and The Fryery in Newtown Road) that customers will be prepared to queue for their meals. It is anticipated that users will either pre-order and collect, turn up on spec and order, or order by email/phone to have their meal delivered (e.g. 'Just Eat').

Clientele:

- 6.7 The last use was as an off-licence which also sold cigarettes, snacks and soft drinks.
- 6.8 The clientele ranged from children buying sweets, snacks and soft drinks to adults purchasing alcohol drinks. There was a drip-feed of customers visiting the shop throughout the opening period. Many customers dropped in to purchase goods in passing, either stopping off their vehicles or walking to the shop from their homes in the local area.
- 6.9 Customers visiting in their vehicles tended to park as close as possible to the store, more often than not on Beechwood Avenue or around the corner on Lansdowne Crescent. Occasionally, customers would park on Scotland Road including drivers of larger vehicles who were disinclined to try to find a space to park off the main road.
- 6.10 It is likely that the future clientele would consist of a cross-section of all people if it serves the local community and wider environs, including people passing on the way in and out of the city on the arterial A7 route, and those who have perhaps ordered their meals on-line and are having them delivered to them in other parts of the area. Users would include those choosing to visit the premises without using a private vehicle (e.g. walking, cycling, using public transport).

Hours of Opening:

- 6.11 When it was last operated by Bargain Booze, the shop tended to open on afternoons and evenings from around noon to 9pm without a closure during that period, although actual licences entitled the premises to open at 0800 hours and close at 2200 hours every day.

- 6.12 The planning application proposes that opening hours for the A5 takeaway use would be from 1100 hours to 2300 hours on weekdays and Saturdays, and from 12 noon to 2200 hours on Sundays and Bank Holidays.
- 6.13 It is likely that visitation by customers would intensify in relation to mealtimes, in particular in late afternoons/early evenings associated with the traditional evening meal. However, depending on how future operators decide to use the premises, it is possible that there would be activity throughout the day and evening. This could arise from deliveries, customers and staff.
- 6.14 Taking into consideration the nature of the proposed use, by comparison to the previous use it is likely that more regular deliveries would be required, because the products are more perishable and therefore fresh supplies are required on a more frequent basis.
- 6.15 It is also likely that customer and staff presence, including in relation to deliveries, would potentially be quite intensive at times and less so at other times. The audience for this takeaway would vary in relation to the specific 'offer' which is not known to date and which is difficult to pinpoint because ultimately any planning permission granted could be implemented by others. However, more often than not it is the broad 'teatime' window that promotes the most intensive use of A5 premises, which would be between 1700 and 2000 hours.

Anti-Social Behaviour:

- 6.16 Objectors have raised concerns about anti-social behaviour arising from users of the takeaway hanging around, using the shop environs and nearby while they consume their food and drink, and generating noise.
- 6.17 Policy CM4 'Planning Out Crime' requires, in Criteria 1, that '*development should be laid out and buildings positioned with the intention of creating active and vibrant neighbourhoods and maximising natural surveillance opportunities*'. In this respect, the premises would provide operators with a fairly open aspect which enables regular observation of external areas looking outwards from the serving area, utilising the front and side windows. This would have the potential to act as a disincentive to persons displaying anti-social behaviour, and allow the shop operators the opportunity to manage situations relating to the shop premises.
- 6.18 With the removal of existing window transfers and panels, the quality of observation/surveillance would be improved over that which currently exists in respect of the off-licence.
- 6.19 It would not, however, enable the operators to monitor behaviour in areas nearby including the neighbouring dwelling at 122 Scotland Road, which has low frontage wall that lends itself to providing an ad hoc seat. That wall is not visible from the shop because a substantial privet hedgerow belonging to 122 Scotland Road is situated in between. No opportunity exists to improve intervisibility in this regard.

- 6.20 It may be noted that the proposed usage has not promoted an objection from the Cumbria Constabulary as consultee, which has noted information relating to managing crime in the supporting information submitted in September. Although there is no specific evidence to demonstrate that the new use would not have a negative effect on private amenity due to criminal activity and/or anti-social behaviour, it is accepted that a level of disturbance may be caused at times, because although the operators may seek to manage customer behaviour if it becomes problematic, it is unlikely that staff would be dedicated to this activity.
- 6.21 One difference between off-licences (generally) and takeaways is that patrons tend to take their drinks and snacks away with them to consume elsewhere from the former; whereas, patrons on occasion linger or find themselves a place to settle or sit close to takeaway premises, to enable them to eat their food while it is still very warm.
- 6.22 There is a level of potential for both off-licence and takeaway premises to attract customers who do not disperse swiftly; the differences in clientele are subtle, in part because in relation to the latter, the sale of alcohol is not generally involved. People who gather close to takeaways may tend to be younger e.g. teenagers, whereas those lingering at off-licences may tend to be older because of the minimum age requirement to purchase alcohol.
- 6.23 Off-licences, in the context of the A1 use class, are likely to promote a level of lingering; but less so than takeaways within the A5 use class with regard to the service/offer and the likely clientele. The proposed use would be less compatible with the prevailing residential use than even the off-licence which is within the A1 retail use class.
- Odour control:*
- 6.24 The applicants have indicated that an odour control system would be implemented, which would involve external components such as a motor and possibly a flue or flues. At this stage, however, details of such a system have not been provided and therefore it is not known how this would potentially impact upon nearby residents. Depending on choices made in relation to the fitting out of the shop, it is possible that extraction apparatus including motors and flues could be intended to be placed on any of the four elevations of the detached building. This would have the potential to significantly change circumstances for the residents of at least two homes nearby - 122 Scotland Road and 2 Beechwood Avenue.
- 6.25 In relation to 122 Scotland Road, the separation between this property and the application is minimal at 8ft and therefore placement of external apparatus with any noise or odour emanating from it would potentially adversely affect the level of comfort and enjoyment the occupiers enjoy. It is important, therefore, that details of this part of the proposal are known to enable support to be given.
- 6.26 The potential circumstances in terms of odour for the residents of 2 Beechwood Avenue is perhaps less because there is at least some separation provided by the rear garden serving the shop and flat. That is not

to say that the residents of that dwelling would not be significantly affected, but again it is impossible to tell because details of the apparatus are not clear.

- 6.27 It may be noted that the extant planning permission relating to 2 Beechwood Avenue would permit construction of additional habitable accommodation that would be nearer to the premises than the present accommodation.
- 6.28 Further afield and in the public outdoor realms, it is likely that even with efficient odour control, it would not fully cancel out odours coming from the operations. Even the most well-controlled takeaways are likely to put out some odours which may arise from the food or the cooking oils via open windows, doors and extraction installations.
- 6.29 The applicants were requested during the consideration period to provide details of odour control items but have merely provided material suggesting the types of devices that could be utilised rather than proposing a specific scheme.
- 6.30 It is noted that the City Council's Environmental Health Officer has not objected to the proposals on the grounds of potential odour nuisance.
- 6.31 It may be noted that the circumstances relating to this premises are somewhat different to those relating to 53/53A Scotland Road, the former Spar shop which now has planning permission for a similar change of use. The planning application included more precise details; the locality already had in situ a takeaway next door to the application building; the rear of the premises already housed substantial air conditioning units (visible and audible from the public realm); the proposed external items were proposed to be installed in locations whereby they would not be likely to give rise to significant adverse effects; and the distance between the rear of the application building and the nearest dwelling on Thornton Road was far greater than the minimal distance between the application building and the two nearest residences.
- 6.32 In some circumstances where similar changes of use are proposed, it is appropriate to assume that odour control measures are feasible even if the details are not known. This can lead to the imposition of appropriate planning conditions. In this set of circumstances, however, there is heightened sensitivity due to (i) the absence of any similar establishments nearby, (ii) the level of representation received which identifies the deficiencies in the proposals in this regard, (iii) the potential introduction of a new use into this otherwise residential area (as recognised by the Local Plan) and (iv) the proximity of nearby dwellings, the most sensitive of which are 2 Beechwood Avenue and 122 Scotland Road. It is in acknowledgement of these sensitivities that the applicants were asked to demonstrate how odour control would work to enable it to be clearly understood during the consideration period, it being inappropriate to deal with the matter via conditions because it is fundamental to whether or not the proposals can be supported.

Noise:

- 6.33 It is recognised that the comings and goings of users of takeaways can

promote generation of noise, for example conversation, ignition/engines running, doors shutting. For this reason, it is necessary to consider compatibility between the use and existing uses.

- 6.34 In an appeal decision ref. APP/E0915/A/12/2185843 for a proposed similar change further north along the A7 (57 Kingstown Road), the Inspector discussed the future relationship of the use with the Primary Residential Area. This relationship applies also to the current application site. 57 Kingstown Road has similarities to the application site in terms of its proximity to adjacent residences. The Inspector referred to the range of potential noise concerns listed in the previous paragraph, and found that the uses would be incompatible because the proposal *'would have a materially detrimental impact on the living conditions of nearby residents in relation to noise and disturbance'*.
- 6.35 It is accepted that the contrast caused by transition from that premises, last operated as a picture framers, to a takeaway would have been likely to be more stark than the change from an off-licence to a takeaway, particularly because the current proposal relates to opening hours which, by virtue of licences afforded to Bargain Booze were to a great extent comparable.
- 6.36 The A1 use class is for retail shops. The Bargain Booze business was compatible with the A1 use class. Its appropriateness in the residential area was therefore not able to be assessed because a planning application was not required for its transition from a corner shop to an off-licence.
- 6.37 The main differences between what was operating within the A1 use and what is proposed within the A5 use, in terms of potential noise are (1) the potential intensification of users during the 'teatime' period mentioned in paragraph 6.15 above, and the 'trickle' of customers using the off-licence; and (2) the potential for delivery vehicles to be coming and going to pick up deliveries to nearby households. The latter would be likely to project beyond the 1700-2000 hrs mealtime slot and would promote ongoing use of vehicles later than is desirable in the predominantly residential locality, and although customers of the off-licence would have been entitled to come and go to use the off-licence in terms of its issued licence, a successful takeaway would seek to extend its period of delivery activity into the last three hours from 2000 to 2300 hours (weekdays and Saturdays) and into the last two hours (Sundays and Bank Holidays) to maximise its income.
- 6.38 The potential additional, and later noise generated from the use would be incompatible with the prevailing 'quiet' residential use in all other properties nearby; the noise would be experienced most by those living in homes adjacent to areas where customers would park on the roadside. For the residents of these dwellings (in particular in the area of Beechwood Avenue closest to Scotland Road) the future situation would compromise private amenity more so than the previous and overall A1 use with an extended period of vehicles starting up, engines revving, vehicles doors shutting and conversation of customers/staff.

Littering issues:

- 6.39 It is generally known that takeaways generate litter. Packaging may be discarded irresponsibly, or may be dealt with responsibly on site or away from the premises. It is not clear from the submissions how the operators would specifically deal with potential littering issues here. Currently, one (council maintained/operated) litter bin is present on the edge of the forecourt/frontage.
- 6.40 Littering in general is a broader issue for the District. How people choose to dispose of or recycle their packaging affects the environment significantly, with evidence in many places of a build-up of discarded packaging from all sorts of purchases. Takeaways have the potential to generate quite a noticeable level and range of litter which includes bags, boxes, wrappers, cans, bottles, sachets, cups, cutlery and food waste. Generally, this is considered to be a nuisance if no strategy is in place to address littering effects.
- 6.41 It would be difficult to conclude that the new use would promote littering of an overwhelmingly adverse nature, despite there being no evidence to the contrary. To a great extent, the objections identify this as a potential issue through supposition, due to experiences with other such establishments. It is not, though, considered to be an overriding planning concern in this instance, in part having regard to the likely scale of the business within this modest premises. It is expected that at least some level of waste management would have to be implemented to enable the business to successfully run and to avoid action being taken in an Environmental Health/nuisance context.

Parking/access:

- 6.42 At times, when the premises was in operation as an off-licence, the combination of vehicles parked in association with staff, customers and with residents also parking nearby, meant that congestion would regularly become an issue. This could be exacerbated during deliveries which were understood mainly to be weekly, sometimes more frequent. This arose because the delivery vehicle tended to park as near as possible to the shop on Beechwood Avenue.
- 6.43 It is acknowledged that this, at times was prejudicial to private amenity because access into and out of nearby private properties was hindered or even blocked. Those attempting to exit their driveways onto Beechwood Avenue sometimes found it difficult to navigate safely between parked vehicles and had on occasion resorted to parking their vehicles outside their curtilages, to ensure that blockages were avoided.
- 6.44 It is also acknowledged that, should the premises be re-used for purposes within the A1 use class, including as an off-licence, this could re-surface as an issue.
- 6.45 By comparison to the last use, however, the new use would be likely to invoke visitation by a range of vehicles:

- Deliveries daily or several times per week of fish, potatoes and other foodstuffs, drinks, ingredients and sundries by van or lorry
- Vehicles related to the pick-up of meals and other items for deliveries required in relation to telephone and internet orders e.g. car, moped
- Cars, vans and potentially other larger vehicles picking up their own pre-ordered meals or attending on an ad hoc basis to order, wait for and take away their meals
- Staff vehicles

6.46 The case officer has noted on 5-6 site visits to the locality in recent weeks that, at various times of the day including the evening and at weekends, currently the areas of pavement close to the premises (where vehicles tended to park when Bargain Booze was operational), are relatively free from parked cars, vans etc. This is likely to relate to the closure of Bargain Booze in that nobody is visiting the shop; it is noted that the flat is occupied but generally this does not seem to have given rise to nearby parking in these areas.

6.47 If the premises is occupied as a takeaway within the A5 use class, it is inevitable that users (including staff) would park in a range of locations, principally part-on and part-off nearby pavements in between driveways, trees and street furniture. That is the tendency in and around the locality. It is likely that some users would stop on Scotland Road rather than turning off onto Beechwood Avenue; it is also possible that drivers would attempt to park on the frontage despite there being no proposal to do this and no dropped kerbs being available. This is witnessed elsewhere, for example at Stanwix Bank where customers (and likely delivery drivers) occasionally pull up fully onto the pavement.

6.48 This would promote interaction between users of the premises, pedestrians and residents in a manner that would inevitably change circumstances substantially compared to the current situation of the shop being vacant; but comparison with the previous situation when it was in use as an off-licence is the overriding matter to be assessed.

6.49 In respect of the latter point in paragraph 6.48, if no site specific parking can be provided, users will tend to park as close as possible to the outlet if they are driving. This includes delivery drivers who will wish to get the hot food from door to door as quickly as possible.

6.50 All neighbours, contributors and consultees were made aware of the decision of the applicant to no longer pursue usage of the site frontage for parking associated with the new A5 use. Prior to this change to the application, the applicants were requested to provide a plan showing proposed parking and turning arrangements on this frontage area because it is essential to be able to understand how this could be successfully integrated. Instead of providing this information to illustrate how this would be implemented, the frontage was taken out of the scheme and all parking would revert to being 'on-street'.

6.51 In the absence of proposals identifying a potential parking/turning layout for vehicles on the site frontage (as was purported when the application was originally submitted), it is not possible to assess whether this would be

beneficial in terms of providing a level of off-street parking provision. Presently, the position of the local planning authority is that it would be very difficult due to the proximity of the area to the junction with Scotland Road, and the associated road user/pedestrian hazard that could arise with vehicles pulling on and off the area, driving over the pavement.

- 6.52 The highly likely scenario, therefore, is that all staff and customer traffic would park on the street as near to the shop as possible, causing obstruction to residents' accesses and giving rise to a potentially high level of vehicles presence over and above that associated with the previous off-licence use. This would be most evident at peak times, especially in the period concentrated around the teatime/evening meal.

Summary in relation to private amenity impacts:

- 6.53 In summary, in relation to private amenity impacts, there are certain aspects of operating an A5 use takeaway which must be mitigable. These are herein identified as:
1. Ensuring parking associated with the use does not unacceptably impact upon the private amenity of nearby residents
 2. Ensuring that potential odours from the use do not adversely affect private amenity in terms of how residents are able to satisfactorily reside in their properties
 3. Ensuring that potential noise associated with operation would be acceptable in terms of how residents are able to satisfactorily reside in their properties
 4. Demonstrate compatibility of the proposed use with the surrounding uses (which in this case, are exclusively residences).
- 6.54 The applicants have failed to provide any level of certainty relating to mitigation of potential odours from the development, despite being invited to do so. This, therefore, becomes an issue that has not been mitigated, and is so important in this context that it would not appropriately be dealt with by condition.
- 6.55 There is concern from the local planning authority that the new use would promote a level and nature of traffic that would diminish the private amenity of nearby residents, in particular because the new use would depend entirely on users parking on the street in an area which is sensitive to conflict caused by ad hoc parking. The proposed problems caused would be more intense than those related to the previous use as an off-licence and likely all other A1 uses at certain times, in particular within the teatime/evening meal period.
- 6.56 Noise generated by users, having particular regard to the hours of opening proposed, the intensified level of noise emanating from users during the evening meal period, and the comings and goings of delivery vehicles, would be likely to disturb nearby residents in a predominantly residential area unacceptably, and more so than the previous use as an off-licence and likely all other A1 uses.

- 6.57 The proposed use, having regard to these issues listed above (odour, noise, parking impacts) would therefore be incompatible with the prevailing residential character and nature of the area, which is within the Primary Residential Area as defined by the Local Plan.
- 6.58 As a result, the proposals fail to comply with the aforementioned policies SP6, HO12, EC8 and CM5.

Whether the proposals would be prejudicial to public amenity and safety:

- 6.59 In relation to this area of consideration, the most relevant policies of the Carlisle District local Plan 2015-2030 would be EC7 'Shop Fronts', EC8 'Food and Drink', IP2 'Transport and Development', IP3 'Parking Provision' and CM4 'Designing Out Crime'. These all are relevant in terms of ensuring all development is designed and delivered to safeguard users.

Impacts on road safety:

- 6.60 Although consideration of road safety may be considered alongside traffic impact on private amenity, it is necessary to provide a focus specifically on how traffic generated by the development would impact on public safety. In this respect, on the one hand there is a clear position adopted by Cumbria County Council as highway safety specialist consultee; on the other hand, local residents have identified various concerns stated in strong terms about the susceptibility of the locale, including the junction of Beechwood Avenue with Scotland Road, to road user danger.
- 6.61 Either side of the junction a number of bollards are present. There are 8 on the north side of the junction aligned with the curve and five on the south side. Textured crossing slabs exist in between bollards to alert all (including sight-deficient) users to the crossing point, which on both sides meets the road surface without a significant step. The road end is surfaced with block pavers from the edge with Scotland Road back for a distance of approximately 10m into Beechwood Avenue.
- 6.62 Vehicles using the premises tend to park part-on, part-off the pavement on both sides of Beechwood Avenue if they choose to park in this general location. In so doing it is possible to leave enough space for pedestrians to pass along the pavements, although it may hinder their passing: for example, small trucks have mirrors which are proud of the cabs that can sometimes cause a hazard; some parking does not leave quite enough space for all pavement users to easily pass.
- 6.63 Whenever vehicles park either side of Beechwood Avenue beyond the pavers and bollards, subsequent users have to navigate around the parked vehicles. Even part-on, part-off pavement parking narrows the road so that two vehicles cannot pass each other without waiting for each other to pull around the parked vehicle. This is a pinchpoint that causes users to have to manoeuvre unnaturally on approach to the junction with the main road, and when turning into Beechwood Avenue from Scotland Road.

- 6.64 Vehicles parking on Scotland Road to visit the premises, which will be an inevitable (although potentially low level) outcome of the new use being implemented, would again cause partial obstructions to road users around which they would need to navigate, in this case close to the Beechwood Avenue junction and designated pedestrian crossing in front of 122 Scotland Road. Any obstruction of Scotland Road is undesirable and a potential road safety concern, and it would not be possible for the local authority to monitor the situation if danger were to be caused.
- 6.65 With the shop not in use, pressure has been relieved on the locality, and ad hoc parking on the roadside is not a significant issue. However, as soon as the premises is brought back into use, issues previously arising will resurface. They are likely to be different because the A5 use tends to promote frequent deliveries and there will be times during the days and weeks when the number of visitors to the premises increases significantly, i.e. around main mealtimes.
- 6.66 Cumbria County Council's position is that the transition between use classes would not promote such a different set of circumstances that an objection could be sustained. When requested to compare its recommendation to the recommendation for refusal proposed for 53 Scotland Road (former Spar - planning application 19/0630), the current position was justified to some extent having regard to the difference in terms of congestion levels and parking problems between the two localities. The application premises is considered by the consultee to be in a location under less pressure from congestion.
- 6.67 It is important to note that the consultee has not formally adopted a different position, now that the frontage area is no longer proposed by the applicants for parking and turning, as stated when the application was originally submitted. The consultee provided its original response in the absence of any site layout information; having had the opportunity to look at the position again, in relation to the revised scheme omitting frontage parking, the consultee confirmed it did not have any additional comments to make.
- 6.68 The overall proposal, however, would be less favoured if the option to include the frontage area for parking and turning had been pursued.

Impacts on pedestrian safety:

- 6.69 This relates closely to considerations regarding road user safety, as the pavement network is intrinsically linked to the road network. The site includes an open frontage over which all persons are free to pass, including less ambulant users and those with wheeled support - there is no change in level between the pavement and the frontage. It provides a heavily used desire line for people walking around the corner.
- 6.70 It is acknowledged that the junction can be difficult to navigate (in vehicles) if obstructions are present as referred to above, especially where the obstruction has been caused by parked vehicles. This has the potential to

impact on the safety of pedestrians using the pavements or attempting to cross the road if visibility is impeded in two ways - if drivers cannot see the pedestrians; and if the pedestrians cannot adequately view the traffic.

- 6.71 Pedestrians using the nearby crossing would on occasion be affected, if vehicles are parked in such a way that pedestrian visibility or ability to safely access the crossing are impeded. This would be similar in respect of the aforementioned textured crossing platforms within Beechwood Avenue.
- 6.72 Although no parking is proposed formally on the frontage, it is inevitable that occasionally users would pull their vehicles up outside close to the shop building, as there are no physical barriers between the frontage and the pavements. In such instances, both by crossing the public pavement and by impeding a well established desire line, the use would put pedestrians at a disadvantage and potentially at risk.
- 6.73 It is important, again, to acknowledge Cumbria County Council's position on this, in that it does not consider the transition to give rise to any significant change in circumstances promoting a reason to object.
- 6.74 The Carlisle City Council's Access Officer has identified potential conflict between pavement parking and obstruction for a range of users: wheelchair users, ambulant disabled, Class 2 scooter users and parents with prams. This position is adopted notwithstanding intended usage of the frontage area for parking, as it relates to how people can navigate safely along the pavement network in the vicinity of the site.

Crime prevention issues:

- 6.75 The potential for anti-social behaviour has been mentioned earlier in this report, and while it is considered that the proposed use could attract such behaviour, it would not be due to the layout and design of the development. The proposals invoke an opportunity to remove all transfer and panels from existing windows, to enable intervisibility between the shop and the outside area. This would be a benefit arising in terms of enabling operators to monitor the outside area.
- 6.76 However, ultimately it would be a matter for the relevant authorities such as the police to deal with criminal acts, and with the proposals not intrinsically promoting new opportunities for crime, and with the consultation response of the Cumbria Constabulary confirming no overriding concerns, this planning matter is not considered to be a significant influencing factor.

Summary in relation to public amenity and safety:

- 6.77 In summary in relation to public amenity and safety, there is a level of concern relating to traffic impacts on road user and pedestrian safety, because there are likely to be times when the interaction of vehicles (generated by the development) with the locality causes obstruction, congestion and thereby conflict. Although the position of Cumbria County Council as specialist consultee is acknowledged, in that it accepts that any change from A1 to A5

would not give rise to an objection, the nature of usage of the premises would without doubt include different pressures than previously experienced if a high number of users congregate at mealtimes, as can be witnessed in other successful takeaways in the city. This could change the effects of the premises on driver and pedestrian safety.

- 6.78 However, although the level of change in usage may be significant, leading to periods of greater intensity than if the shop continue to be used for an A1 retail use, on balance the local authority accepts that potential impacts are not overriding and would not promote sufficient reason to refuse the application.
- 6.79 Specifically in respect of public amenity and safety, therefore, the application accords with policies EC7, EC8, IP2, IP3 and CM4 of the Local Plan.

Whether the new use would be compatible with other uses in the locality:

- 6.80 Essentially, the prevailing nature of development is residential in this locality, stretching from the edge of the Stanwix 'hub' which finishes at Sainsbury's Local (Cheviot Road) to the Morrison's superstore opposite Briar Bank. This is clearly reflected by the Local Plan, which shows that the Stanwix Local Centre (Policy EC5) is based around the shop and service area south beyond Sainsbury's, and leading in the direction of the city. In the other direction, there is no local centre until Kingstown which is centred around California Road. Policy EC5 therefore does not apply to this site/building, contrary to the views contained within all supporting information.
- 6.81 The site is quite central within the Primary Residential Area (Local Plan Policy HO12), and relates to no other non-residential uses between Sainsbury's Local and Morrison's. It stands alone as a former corner shop serving the surrounding area, which is dominated by otherwise exclusively by residential development.
- 6.82 Other uses falling within the A1 Use Class are: hairdressers, travel agencies, post offices, sandwich bars, domestic hire shops, dry cleaners and funeral directors. A1 premises can be changed to other uses either temporarily or permanently as 'permitted development', such as estate agencies and financial services (Use Class A2), restaurants and cafes (Use Class A3), dwellinghouses (Use Class C3), offices and light industry appropriate in a residential area (Use Class B1).
- 6.83 Change of use to Use Class A5 from A1 requires planning permission and cannot be undertaken unless full planning permission has been obtained. This is because there is clear potential for such a change to promote incompatibility between uses, or at least for the compatibility to be properly assessed.
- 6.84 Earlier in this report, issues are discussed in relation to impacts on private amenity. The application was found not to be consistent with the relevant policies SP6, EC8, HO12 and CM5 because it would promote overriding concerns relating to noise, odour and the impacts of user parking on the

ability of residents to reside without disturbance.

- 6.85 The prevailing, and only other evident use of the wider locality is residential outwith the local centre of Stanwix up to Morrison's. There is logic to the existence of what is in effect a corner shop, although it is acknowledged that any of the aforementioned uses could be implemented as permitted development. However, the A5 use in this location is considered to be less logical than either the A1 use or any of the other uses to which it could be changed. It would be an incongruous and ill-fitting use in relation to nearby residences and the wider residential area, giving rise to impacts including noise, odour and diminished residential amenity caused by the potential level of on-street parking.
- 6.86 The proposed use is, therefore, in conflict with Policies SP6, EC8, HO12 and CM5 of the Local Plan in this specific context.

Whether the development would be prejudicial to healthy living:

- 6.87 This is a matter identified within the objections of a number of individuals who have written in, because they consider that it would introduce an additional fast food premises to the area, enticing people to potentially eat less healthily than they ought to. For that reason, it might not be compatible with Policy SP9 of the Local Plan 'Healthy and Thriving Communities'.
- 6.88 It is valid to acknowledge that some of the food provided by takeaways may not be on the very healthy side of a balanced diet. 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. Furthermore, takeaway outlets tend to come and go if they are not self-sustaining.
- 6.89 In relation to this issue, it is considered that the proposed use would not give rise to an unacceptable adverse impact on human health, therefore the proposal would be consistent with Policy SP9.

Conclusion:

- 6.90 The proposed change of use is considered to comply with Policies IP2, IP3 and EC8 insofar as it relates to impacts on public safety and amenity which, although significant, are not overriding. The change in nature of the use and associated traffic effects would be acceptable in this context because they would not promote prejudicial danger to road and pavement users by an unacceptable degree. This is in accord with the specialist consultation response of Cumbria County Council.
- 6.91 The resultant development would also be consistent with Policies EC7 and CM4 in that it would be compatible with crime prevention aims and has not promoted an objection from the Cumbria Constabulary as specialist consultee.

- 6.92 The development is consistent with Policy SP9 of the Local Plan in that it can not be adjudged to be prejudicial to healthy and thriving communities. It is not appropriate to deem that all takeaways are by their nature purveyors of unhealthy food and drink.
- 6.93 However, the proposed change of use is considered to conflict with Policies SP6, HO12, EC8 and CM5 because of the proposed A5 use being an unacceptable new use in this predominantly residential area, with the potential of causing an unacceptable level of adverse impact in respect of odour, noise and the ability of residents to satisfactorily occupy their dwellings due to the effects of ad hoc on-street parking.

7. Planning History

- 7.1 In 2003, planning permission was refused under ref. 02/1275 (and a subsequent appeal dismissed) for the erection of 2no illuminated free standing advertising display units;
- 7.2 In 1993, Advertisement Consent was granted under ref. 93/0220 for the installation of an internally illuminated fascia sign;
- 7.3 In 1988, Advertisement Consent was granted under ref. 88/0358 for the erection of an illuminated fascia sign;
- 7.4 In 1986, planning permission was granted under ref. 86/0544 for installation of a replacement shopfront.
- 7.5 In 1967, planning history suggests that the building was subdivided to create a shop and flat within this former dwelling, under ref. 28191.

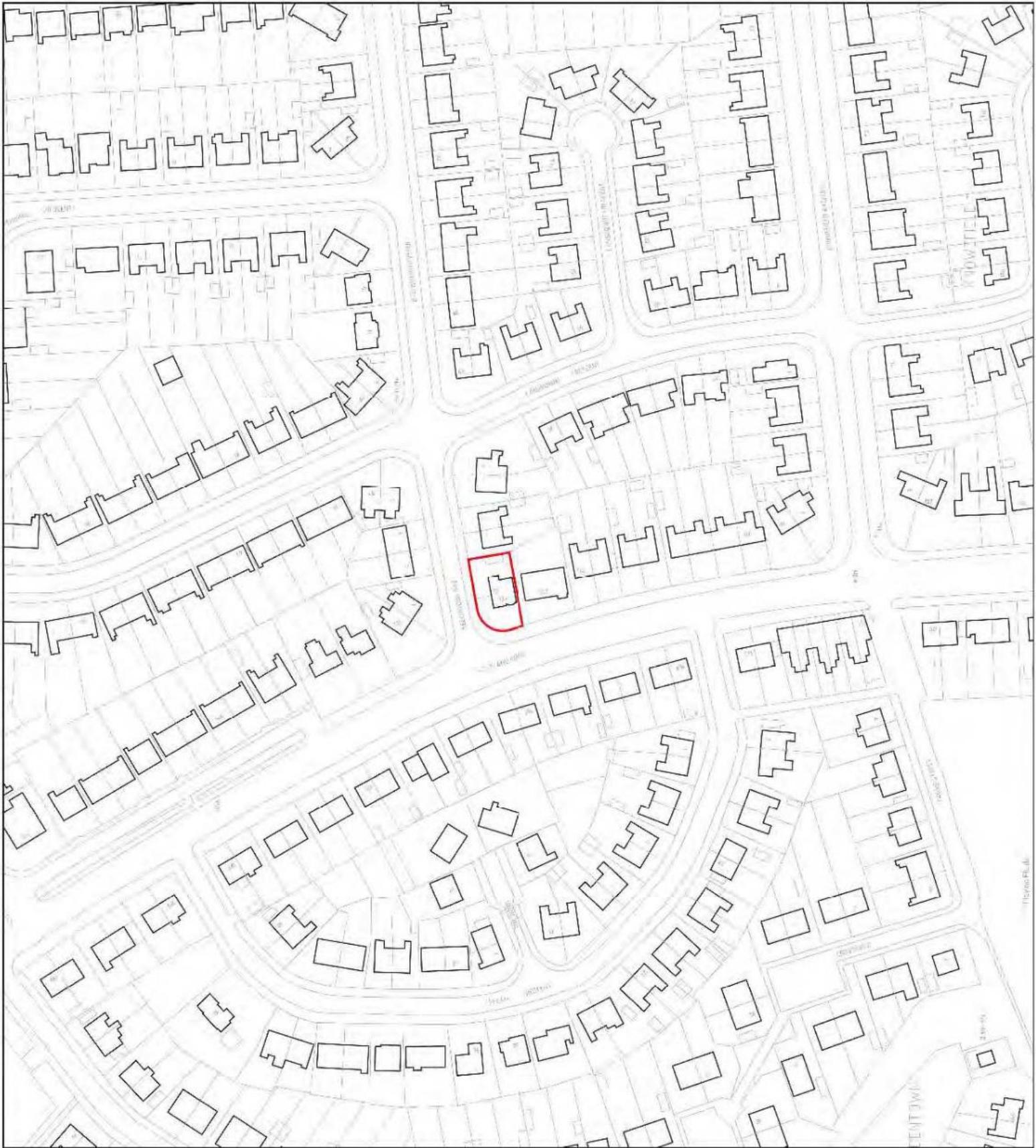
8. Recommendation: Refuse Permission

1. **Reason:** The proposed change of use, by virtue of:
- (i) its location within an a Primary Residential Area as defined by Policy HO12 of the Carlisle District Local Plan 2015-2030;
 - (ii) its proximity to adjacent residences, in particular those at 122 Scotland Road and 2 Beechwood Avenue;
 - (iii) the cumulation of adverse impacts on private amenity arising from potential noise and odour emanating from and associated with the change of use; and
 - (iv) adverse impacts arising from the ad hoc parking of vehicles on

the roadside, on the ability of nearby residents to reside satisfactorily within their dwellings;

is incompatible with the prevailing, surrounding residential use and therefore conflicts with Policies SP6, HO12, EC8 and CM5 of the Carlisle District Local Plan 2015-2030.

Location Plan (1:1,250)



Revision Status
Rev Date Amendments Initials

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Drawing

Title: Location Plan

Scheme: Change of Use of 124 Scotland Road

Scale: 1:1,250

Date: July 2019

DWG No.: C/02

Drawn: D Gray

A3

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Site Plan (1:200)



Revision Status	Initials
Rev	Date
Amendments	

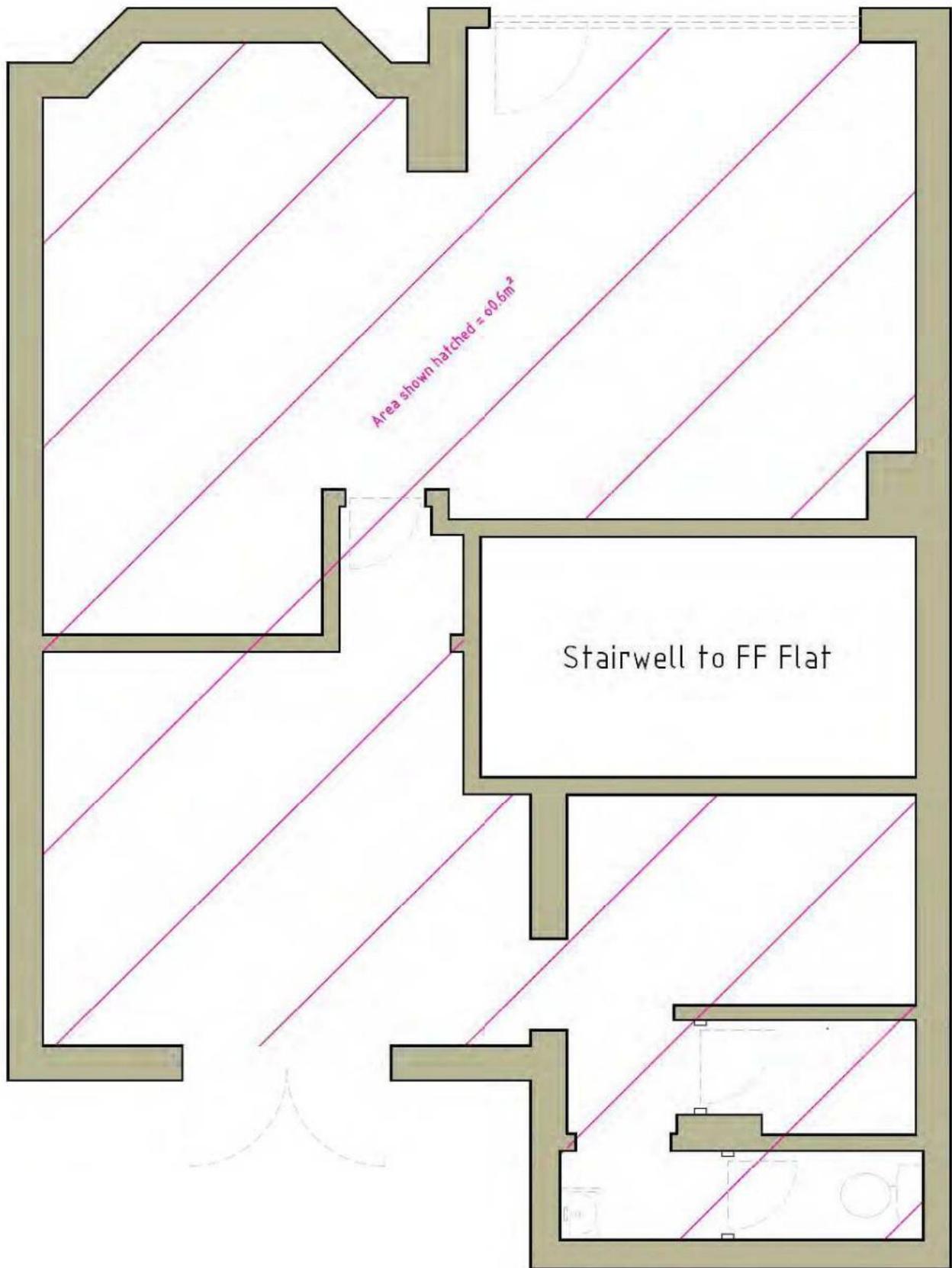
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Drawing Title:	Site Plan
Scheme:	Change of Use of 124 Scotland Road
Scale:	1:200
Date:	July 2019
DWG No.:	D\01
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Drawing

Title: Ground Floor Plan

Scheme: Change of Use of 124 Scotland Road

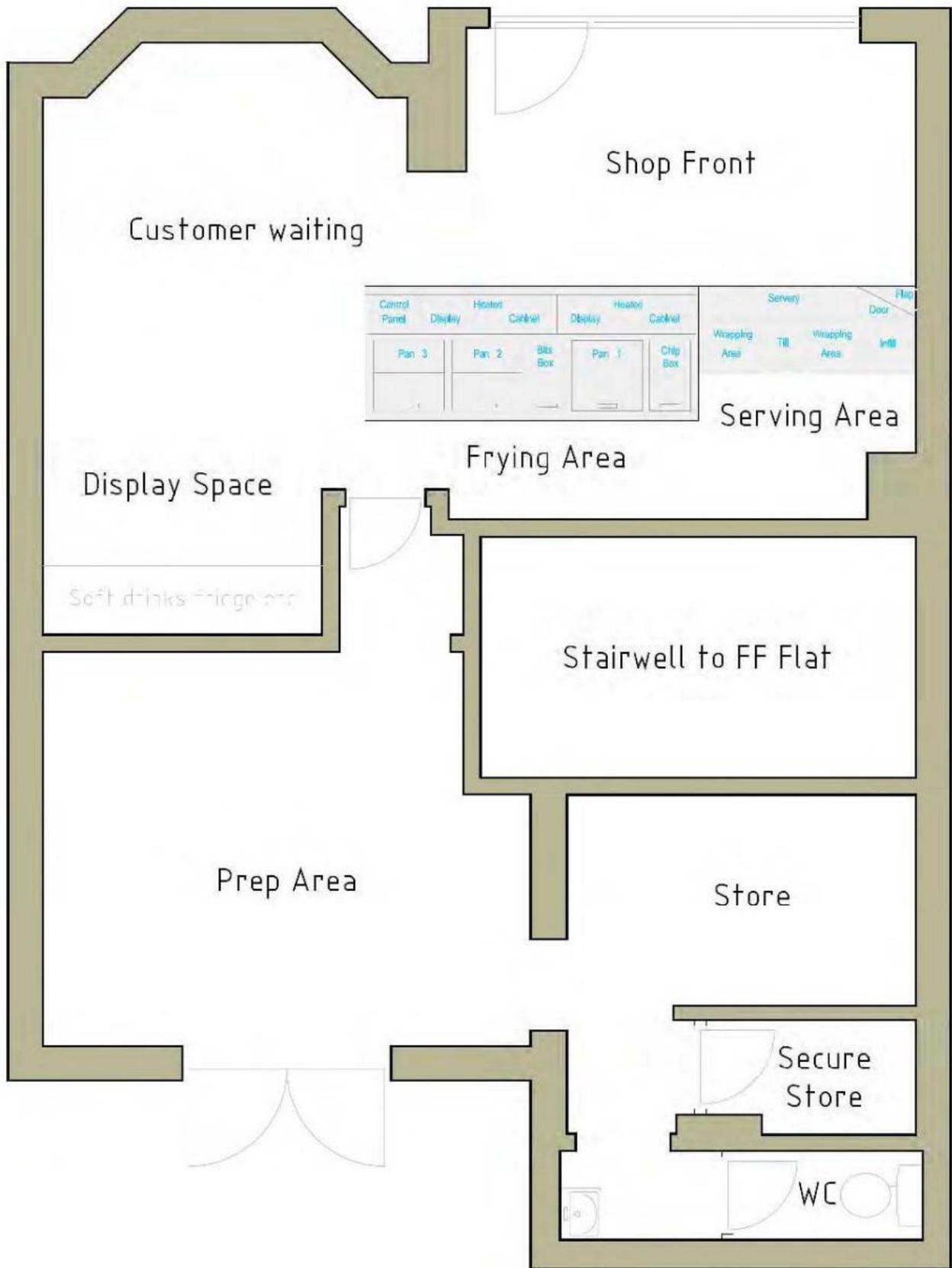
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Date: July 2019

Dwg No.: D.03

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Drawing

Title: Proposed Ground Floor Plan

Scheme: Change of Use of 124 Scotland Road

Scale: 1:50

Date: July 2019

Dwg No.: D.05

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