

THE CITY OF DURHAM TRUST

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2 June 2021

Leigh Dalby
Durham County Council
Planning Development Central/East
Room 4/86-102
County Hall
Durham
DH1 5UL

Dear Mr Dalby,

Planning application DM/21/01752/FPA | Change of use of ground floor premises from Dental Surgery (Use Class E) to Hot Food Takeaway (Sui Generis) with associated internal alterations | 37 North Road Durham DH1 4SE

Trustees have considered this application and resolved to object on the grounds of the serious risks to road safety. The relevant policies are set out below.

We cannot accept the comments of the Highways Development Management team. This is for two reasons:

1. They say “Servicing would need to take place to the rear of the development.” Access is via this archway. It is 2.3m wide between the kerbs and the height is about 2.7m. A Ford Transit is 2474mm wide and would not fit. Smaller vans might fit but would have difficulty turning.
2. They say “Given the central location, I would not object to the proposal on highway grounds.” This is not a central location. CDP Policy 9 and the associated policies map defines where the town centre boundary lies and it extends as far as the railway viaduct but not beyond it. As stated below, there are several residents living very close to these premises, including next door and across the back lane.



As well as being unfamiliar with the site location, it would appear that the accident record of North Road outside the proposed takeaway has not been considered.

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Map courtesy crashmap.co.uk, Base mapping: Google.

The map above was sourced by crashmap.co.uk from open data provided by the Department for Transport¹ and shows that there have been four personal injury accidents since 2015 on North Road between the roundabout and the junction with Sutton Street. Working from north-west to south east (i.e. down towards the roundabout) they are:

Ref: 2018110279735 15 March 2018 at 20:27, outside the Bridge Hotel. After dark, raining, wet road. A 52-year old man, crossing the road from the driver's offside, was knocked down and slightly injured.

Ref: 2020110960025 25 June 2020 at 1300, outside My Kinda Pizza. Daylight, fine day, no strong winds, dry road. Two vehicle collision, one person slightly injured.

Ref: 2019110899723 17 November 2019 at 19:30, outside Durham Arches Dental Clinic (i.e. the application site). Dark, fine, no strong winds, more than 3cm of water, road surface defective. 2 vehicle collision, 49-year old female driver slightly injured.

Ref: 201511ND14935 27 July 2015 at 16:51, junction with the roundabout. Daytime, raining, wet road. Two vehicle collision, 23-year old female driver and 20-year-old male passenger both slightly injured.

¹ <https://data.gov.uk/dataset/cb7ae6f0-4be6-4935-9277-47e5ce24a11f/road-safety-data>

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These are only the incidents where somebody was injured. There will have been many others which were damage-only.

My Kinda Pizza has now closed, but when it was in operation Trustees passing the site often saw cars parked outside that shop as the driver collected a pizza. Since this was almost always after 6pm the civil enforcement officers had stopped work for the day and there was no enforcement. It is in the nature of take-away shops that customers and delivery drivers stop outside, regardless of yellow lines, for five or ten minutes. Patients at the dental surgery or customers at the adjacent hairdressers would be parking for half an hour or more, in the daytime, and would be far more likely to get a ticket if they parked outside so they would park legally.

The application site is closer to the roundabout, so vehicles exiting to head up North Road will, because of the pier of the viaduct, not see any parked vehicle until they are almost upon it.

There are already problems with Domino's Pizza, at the junction of North Road and Sutton Street, and if this application is allowed it will only exacerbate the situation.

The following policies in the County Durham Plan indicate that this application should be refused:

Policy 6: Development on unallocated sites

The development of sites which are not allocated in the Plan or in a Neighbourhood Plan which are either (i) within the built-up area; or (ii) outside the built-up area (except where a settlement boundary has been defined in a neighbourhood plan) but well-related to a settlement, will be permitted provided the proposal accords with all relevant development plan policies and:

[...]

e. will not be prejudicial to highway safety or have a severe residual cumulative impact on network capacity;

Paragraph 4.109 in the supporting text says that the scope of this Policy includes "conversions to accommodate new uses" which is what this application proposes. Consequently this Policy is relevant. A new take-away in this location will be prejudicial to highway safety.

Policy 21: Delivering Sustainable Transport

This Policy begins by stating that *The transport implications of development must be addressed as part of any planning application*. Part (c) goes on to require that sustainable transport shall be delivered by *ensuring that any vehicular traffic generated by new development, following the implementation of sustainable transport measures, can be safely accommodated on the local and strategic highway network...*

This proposal would generate vehicular transport – customers and delivery drivers – and as argued above this cannot be safely accommodated on the local network.

Policy 29: Sustainable Design

This is a wide-ranging Policy and we have assessed these proposals against five of the first six criteria:

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All development proposals will be required to achieve well designed buildings and places having regard to supplementary planning documents and other local guidance documents where relevant, and:

- a. *contribute positively to an area's character, identity, heritage significance, townscape and landscape features, helping to create and reinforce locally distinctive and sustainable communities;*

Replacing a dental surgery with a hot food takeaway will not contribute to the area's character, identity, heritage and townscape. The premises are very close to the Grade II* viaduct. If the premises are to stay open till 3am, as is proposed, this will be to the detriment of the local community.

- b. *create buildings and spaces that are adaptable to changing social, technological, economic and environmental conditions and include appropriate and proportionate measures to reduce vulnerability, increase resilience and ensure public safety and security;*

Given the hazards outlined above this proposal will not ensure public safety which of course includes highway safety; quite the opposite.

- c. [...]

- d. *minimise the use of non-renewable and unsustainable resources, including energy, water and materials, during both construction and use by encouraging waste reduction and appropriate reuse and recycling of materials, including appropriate storage space and segregation facilities for recyclable and non-recyclable waste and prioritising the use of local materials;*

Takeaway food containers are very often discarded after use and no indication is given as to how this problem will be addressed.

- e. *provide high standards of amenity and privacy, and minimise the impact of development upon the occupants of existing adjacent and nearby properties; and*

It is proposed that these premises will be open until 3am, which will have a major impact on the occupants of existing adjacent and nearby properties. There are residential properties next door above Partners hairdressers, nearby in Lambton Street including number 16 which backs on to the site, the Bridge Hotel and in Parkside. The applicant is asking that the arrangements for noise abatement and cooking ventilation are dealt with by way of conditions. These are matters which affect neighbouring residents and they should have the opportunity to comment before a decision is reached, rather than having to rely on the judgement of a planning officer who will only have the applicant's assertions to consider.

- f. *contribute towards healthy neighbourhoods and consider the health impacts of development and the needs of existing and future users, including those with dementia and other sensory or mobility impairments.*

Hot food takeaways do not contribute towards a healthy neighbourhood. The Council's

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own research², referenced in paragraph 5.315 of the County Durham Plan, confirms this. Further discussion of this issue is considered below.

Policy 30: Hot Food Takeaways (A5 Uses)

Since the County Durham Plan was adopted, the A5 use class has been abolished and hot food takeaways are classed as *sui generis*. However, Government guidance³ is that *Many local planning authorities (LPAs) have adopted development plan documents and supplementary planning documents (SPDs) referring to hot food takeaways under the previous A5 classification. While no longer A5 use, the validity of these development plan documents and SPDs and their evidence base for decision-making on planning applications should remain unaffected.*

The reason for this change is that *the replacement of the A5 hot food takeaway use class with sui generis allows local authorities to have greater control, through using the planning application process, to prevent the proliferation of hot food takeaways. [op cit].* In order for this greater control to be possible planning applications should not, as is the case here, be in effect outline applications but should give sufficient detail for interested parties to be able to comment and for the planning authority to have sufficient information on which to reach a decision.

Much of Policy 30 relates to proposals in town centres or near schools, but neither apply here. (The defined Town Centre stops at the railway line.) The final paragraph is relevant:

Where a proposed A5 use is considered locationally acceptable, consideration will need to be given to the impact that the development would have in terms of amenity, particularly in relation to noise and odours. Where it is considered that the proposal would give rise to unacceptable impact, the application should be refused.

The only way that consideration can be given to amenity, particularly noise and odours, is for relevant details to be submitted with the application. This has not been done. Of the adjacent premises, both the Station House and Dominos Pizza stop serving at 10:30pm. Dominos continues delivering until 2am and this has led to complaints from local residents. These premises are proposing to stay open and serving walk-in customers until 3am and while, obviously, they are a different company they do need to show how they will avoid the problems that have arisen with Dominos, who have a more limited offering.

As regards odours, the applicant has not stated except in the vaguest terms how these will be controlled. Different food offerings have different impacts. Noise from customers will be a problem and also potentially from equipment used on the premises. As stated earlier, there will be traffic problems.

Conclusion

For all of the reasons given above this application should be refused.

Yours sincerely,

John Lowe

Chair, City of Durham Trust.

2 <http://durhamcc-consult.limehouse.co.uk/file/4958672>

3 <https://www.gov.uk/government/publications/healthy-weight-environments-using-the-planning-system/addendum-hot-food-takeaways-use-in-the-new-use-class-order>