

<b>APPLICATION NO</b>	<b>PA/2014/0689</b>
<b>APPLICANT</b>	Mr D Shafer
<b>DEVELOPMENT</b>	Planning permission for change of use of a café to a hot food takeaway and installation of an extraction flue
<b>LOCATION</b>	4 High Street, Kirton-in-Lindsey
<b>PARISH</b>	<b>KIRTON-IN-LINDSEY</b>
<b>WARD</b>	Ridge
<b>CASE OFFICER</b>	Andrew Law
<b>SUMMARY RECOMMENDATION</b>	<b>Refuse permission</b>
<b>REASONS FOR REFERENCE TO COMMITTEE</b>	Significant public interest

## **POLICIES**

**National Planning Policy Framework:** Paragraph 14 outlines a presumption in favour of sustainable development.

Paragraph 19 states that the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Significant weight should be placed on the need to support economic growth through the planning system.

**North Lincolnshire Local Plan:** Policy DS1 (General Requirements)

Policy S5 (Development in Crowle, Epworth, Kirton-in-Lindsey, Frodingham Road and Ashby High Street District Shopping Centres)

Policy S9 (Restaurants and Hot Food Takeaway Establishments)

Policy HE2 (Development in Conservation Areas)

**North Lincolnshire Core Strategy:** Policy CS1 (Spatial Strategy for North Lincolnshire)

Policy CS2 (Delivering More Sustainable Development)

Policy CS5 (Delivering Quality Design in North Lincolnshire)

Policy CS6 (Historic Environment)

## **CONSULTATIONS**

**Highways:** No objection.

**Environmental Health:** Raise concerns relating to the provision of an acceptable extraction system. Recommend refusal of planning permission.

**Historic Environment Record:** Initial objection to the scheme removed following submission of additional information depicting an acceptable (in terms of visual appearance) flue solution.

## **TOWN COUNCIL**

No response received.

## **PUBLICITY**

Neighbouring properties have been notified, and site and press notices posted. Letters of objection have been received raising the following concerns:

- The takeaway will result in additional congestion and parking along a narrow one-way street to the detriment of highway safety.
- The proposed takeaway will result in congregation and antisocial behaviour in the area.
- The takeaway will attract people under the influence of alcohol.
- The proposed takeaway will result in greasy smells along the High Street.
- The proposed takeaway will result in additional litter in the area.
- The takeaway would be out of keeping with the conservation area.
- Kebabs and pizzas are unhealthy and will be sold to school children at lunch times.
- The property does not have a toilet or fire escape and as such is not suitable for a takeaway.
- The bins will have to be located at the side of the property and will be unsightly.

Letters of support have been received on the following grounds:

- The proposed takeaway would provide a good alternative to existing takeaways.
- The proposal will benefit the town by introducing new trade and creating jobs.
- Different people have tried to run a café from the site and failed, and so a change of use is needed.
- The takeaway will be busiest at night when the road is not busy.
- Any shop operating from the site would have the same problem with parking.

It should be noted that a number of the letters of support received have been submitted by people living some distance outside of Kirton.

## **ASSESSMENT**

The application site is a former sandwich bar/café located on High Street, within the centre of Kirton-in-Lindsey. The site is located within both the development boundary and the conservation area of Kirton. The area is primarily commercial in nature, being located close to the market place. The site is bounded by commercial/retail uses to three sides and by residential properties to the rear. The property is a single-storey end terrace with a mono-pitch roof that slopes down from front to rear. This application seeks planning permission to change the use of the property to a takeaway and the applicant intends to sell pizzas and kebabs from the premises.

**The main issues in the determination of this application are:**

- **whether the takeaway would be harmful to highway safety in the area;**
- **whether the takeaway would result in loss of amenity to local residents via noise and smell;**
- **whether the takeaway would be harmful to the character and appearance of the conservation area; and**
- **whether the takeaway would have an impact on the health and wellbeing of school children in Kirton.**

### **Highways**

The application site is located on a narrow stretch of High Street, which is a one-way road in this location. The council's Highways department has been consulted on the application and has raised no objections to the proposed development. It should be noted that the site is currently a commercial property, being previously used as a café/sandwich shop and could be used as such again without the need for planning permission. Any commercial use operating from the building will attract vehicular traffic and on-street parking. However the proposed use as a takeaway tends to be busiest in the evening, outside of peak hours in terms of vehicle movements. Therefore the takeaway is unlikely to have any significant impact on congestion or road safety above and beyond what could be expected from the currently consented use of the building. Indeed, due to the nature of the business and the hours in which it is likely to be busiest, the proposed use could be expected to have a lesser impact. For these reasons, and in accordance with the advice of the Highways department, it is considered that the proposed change of use will not have an unacceptable impact on highway safety in the area.

### **Amenity**

The site is located on High Street, in a predominantly commercial area within the shopping centre of Kirton, close to the market place. This area has a mix of commercial uses and a much smaller percentage of residential properties than other parts of Kirton. Indeed the property has previously been used as a café and is sited between retail properties. As such it is considered that this location is appropriate for a takeaway use in principle and that the use will not result in unacceptable loss of amenity due to general noise and disturbance from customers visiting the site.

However, the council's Environmental Health department has raised concerns relating to the provision of an acceptable extraction system. In order to ensure adequate dispersal of cooking odours and to comply with Environmental Health legislation a suitable extraction system must be provided and the discharge point of the extraction system must be 1 metre above the ridge height of adjacent properties. However, due to the single-storey nature of the application site and the fact that neighbouring properties are two storeys in height, a large flue would be needed and this flue would have to be fixed onto the wall of the adjoining property. The owner of the application site also owns the adjoining property and has indicated that he would be prepared to allow a flue to be fitted on this property. However, fixing a flue directly to the adjoining property has the potential to result in significant nuisance to the occupiers of the first-floor flat within it as a result of noise and disturbance from fans within the extraction system.

The applicant has submitted a noise assessment to demonstrate that a suitable extraction system can be installed without having an unacceptable impact on residential amenity. The reported extraction system noise levels are significantly higher than World Health Organisation guideline values for community noise, indicating that there is the potential for significant loss of residential amenity. The noise report describes possible mitigation measures to reduce the noise levels from the extraction system. However the report states that 'The extent of sound reduction needed to reach normal acceptance standards is near the edge of what is technically possible given the physical constraints of the location'. The report also indicates uncertainty as to whether it is possible to achieve all the necessary mitigation at the site. Environmental Health have assessed this report and have recommended that the application should be refused because it is likely to result in loss of residential amenity. It is considered that a reason for refusal citing lack of justification is more appropriate in this instance.

### **Impact on the conservation area**

The proposed change of use entails no new building works other than the installation of a flue as part of an extraction system. Due to the fact that the application site is single-storey and that any flue installed would be required to sit higher than the two-storey rooflines of adjacent properties, it was considered that an unacceptable impact upon the conservation area would occur. The council's conservation officer has been consulted on the application and initially raised concerns relating to the size and visual prominence of the flue that would have to be installed on the adjoining property. Subsequently, the applicant has provided details of the proposed extraction system and where it would be sited. It is intended that the proposed flue would exit the roof of the building in the same location as the small existing flue; it would then run around the corner of the adjoining property below the ridge height of the applicant property, and then up the rear facing elevation of the adjoining property to a point 1 metre above the ridge height of this building. Therefore the flue will not be visible from the public highway as it will be screened by the applicant's property and the adjacent building. The conservation officer has confirmed that on this basis the flue will not have an unacceptable impact on the character or appearance of the conservation area.

Objections have been raised citing that the storage of bins within the site would have an adverse impact on the character and appearance of the area. There is an area to the side of the building which can be used for the storage of bins which is screened by an existing timber gate. It should also be noted that this is an existing commercial premises that has previously been used as a café and sandwich shop and as such the need for bins to house food waste is not something new that is being introduced as a result of the proposal. Therefore the operation of the takeaway and the storage of bins used to house food waste

would not have a significant impact on the character of the conservation area in this location.

### **Impact on the health and wellbeing of school children**

The application site is located a significant distance from the nearest school. Furthermore the site is located within the shopping centre where uses such as that proposed are to be expected and do already exist. It is possible that school children would use the takeaway should they be allowed outside of the school premises at lunch times; however they could also use any of the other premises in the shopping centre that sell unhealthy food. The proposed development does not introduce a source of unhealthy food close to the school, nor does it introduce such a use in an area that does not already contain similar uses. On this basis it is considered that the proposed development would not have an unacceptable impact on the health and wellbeing of school children in Kirton.

### **Miscellaneous**

Many of the objections received have cited the presence of existing takeaways in Kirton and the fact that there is no need for an additional takeaway. This is not a material planning consideration and is not a valid reason for the refusal of planning permission. The proposed change of use would not be harmful to the shopping function of the area and would replace an existing food-based commercial property. The proposed use would create three jobs and, whilst this is no increase in the number of jobs created by the previous use, it is still a benefit to the local economy that these jobs are secured.

Objections have been received citing the fact that the use would encourage the congregation of youths and people under the influence of alcohol and as such would result in the introduction of antisocial behaviour to the area. There is no evidence that antisocial behaviour would result from the change of use; however should antisocial behaviour occur outside of the takeaway then this would be for the operators and the police to manage appropriately. It would not be reasonable to refuse planning permission based upon an unsubstantiated assumption that the proposed use would generate inappropriate behaviour to occur in its locality.

The existence of toilets and/or fire escapes is not a material planning consideration. Should planning permission be granted the applicant would have to comply with any other relevant legislation such as health and safety regulations and fire regulations etc.

### **Conclusion**

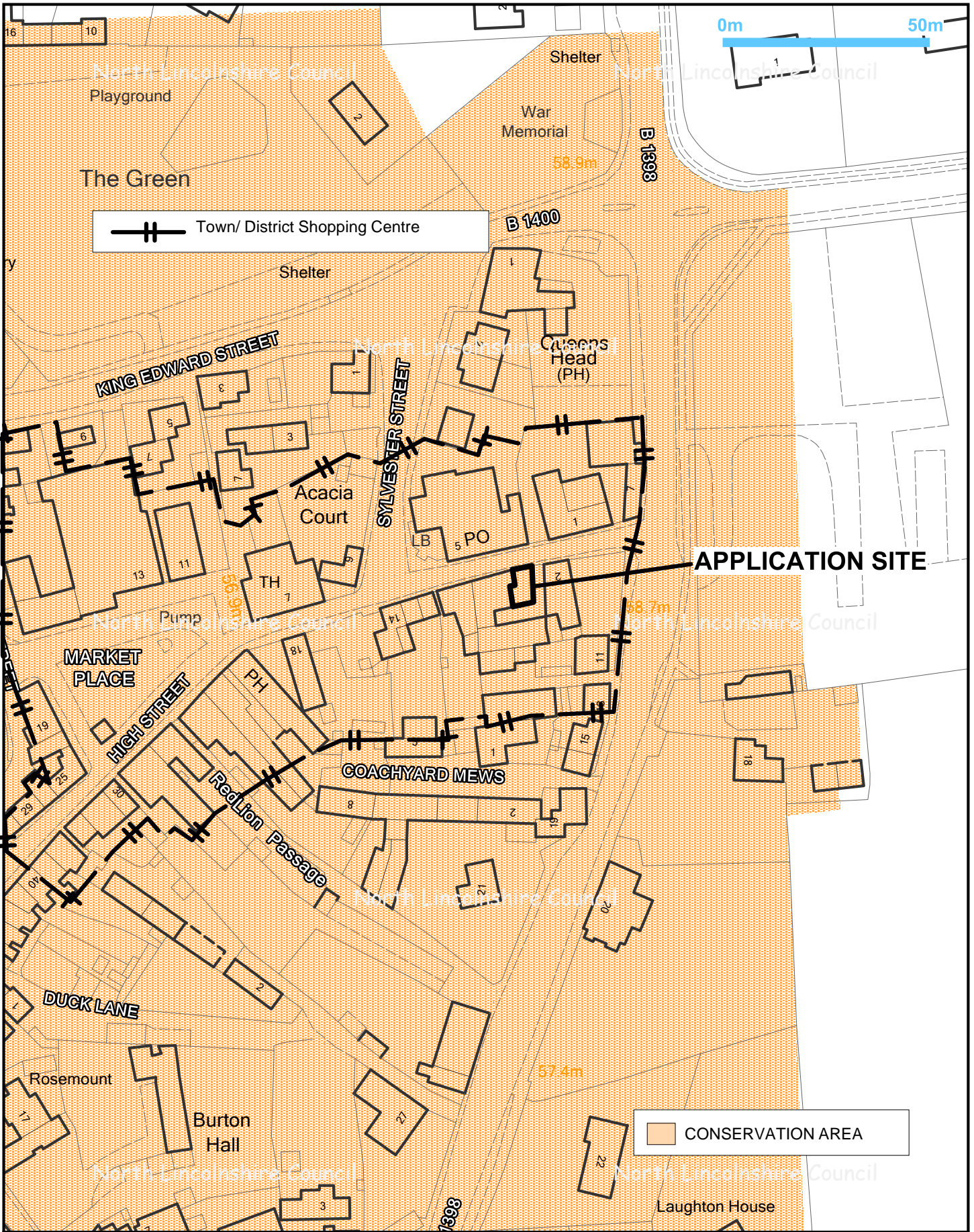
It is considered that the application site is a suitable location for a takeaway in principle, and that the change of use would not have an unacceptable impact on highway safety, or the health of young people. However it has not been demonstrated that an acceptable extraction system can be installed to protect the amenity of the adjoining property. The siting of the flue that would be required as part of such an extraction system would have a seriously detrimental impact on the Kirton-in-Lindsey conservation area. It is acknowledged that the use would secure three jobs and support the local economy; however these benefits are not considered to outweigh the concerns relating to amenity. For these reasons the application should not be supported.

**RECOMMENDATION      Refuse permission for the following reasons:**

Insufficient evidence has been provided to demonstrate that a suitable extraction system can be provided without resulting in loss of amenity to the adjoining property as a result of noise and vibration. Therefore the proposed development is contrary to policies DS1 and S9 of the North Lincolnshire Local Plan.

**Informative**

In determining this application, the council, as local planning authority, has taken account of the guidance in paragraphs 186 and 187 of the National Planning Policy Framework in order to seek to secure sustainable development that improves the economic, social and environmental conditions of the area.

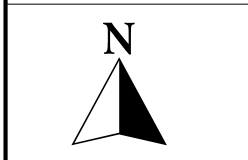


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