
Appeal Reference:	2022/A0076
Appeal by:	Cedareast Investments Ltd.
Appeal against:	The non-determination of an application for full planning permission.
Proposed Development:	Change of use from shop unit to hot food take away.
Location:	Unit 2, 142 Stewartstown Road, Belfast
Planning Authority:	Belfast City Council
Application Reference:	LA04/2022/0810/F
Procedure:	Written representations and Commissioner's site visit on 3 rd July 2024.
Decision by:	Commissioner Jacqueline McParland, dated 8 th July 2024.

Decision

1. The appeal is allowed, and full planning permission is granted, subject to the conditions set out below.

Reasons

2. The main issue in this appeal is whether the proposal is acceptable in principle.
3. Section 45(1) of the Planning Act (Northern Ireland) 2011 (the "Act") requires the Commission when dealing with an appeal to have regard to the Local Development Plan (LDP), so far as material to the application, and to any other material considerations. Section 6(4) requires that where regard is to be had to the LDP, the determination must be made in accordance with the plan unless material indicate otherwise.
4. On 2nd May 2023, the Council adopted the Plan Strategy (PS). In line with the transitional arrangements set out in the Schedule to the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 (as amended), the LDP now becomes a combination of the Departmental Development Plan (DDP) and the PS read together. In this appeal, the Belfast Urban Area Plan (BUAP) is the relevant DDP. In accordance with the subject legislation, any conflict between a policy contained in the DDP and those of the PS must be resolved in favour of the latter. Further, as the Council has now adopted the PS, previously retained policies set out in the suite of regional Planning Policy Statements (PPSs) have now ceased to have effect within this Council area. Parties to the appeal were afforded opportunity to comment on the PS and have not been prejudiced.

5. In May 2017, the Court of Appeal declared the adoption of the Belfast Metropolitan Area Plan 2014 (BMAP) unlawful. Consequently, it must be disregarded. However, while draft Belfast Metropolitan Area Plan (dBMAP) 2004 is not a DDP as it was never adopted, it could still be a potential material consideration in certain cases. In both the BUAP and in dBMAP the appeal site is located in unzoned whiteland within the Belfast settlement limit.
7. The appeal site comprises of an existing vacant unit located within the confines of a petrol filling station site. The building's front elevation is finished in natural stone material. It is located directly adjacent to the gardens of residential dwellings to the southwest and southeast. A close board fence demarcates the boundary between the appeal site and those residential dwellings. The wider area is characterised by a mixture of land uses including residential, retail, public services and ecclesiastical.
8. The appeal proposal comprises the change of use of the existing retail unit to a hot food bar. All parties were agreed that the proposal complied with the policies of the PS subject to conditions.
9. All parties were agreed that the key considerations of the PS to the appeal proposal are set out within the Supplementary Planning Guidance (SPG) on Sensitive Uses. In accordance with the SPG for Sensitive Uses, the appeal proposal is located outside of a district and local centre and over 400 metres from a nearby school.
10. Furthermore, the SPG on Sensitive Uses also requires proposals for a hot food bar to demonstrate that it would not have an adverse impact on amenity by reason of noise and disturbance, odours, litter, vermin, road safety, traffic generation and anti-social behaviour. To ensure that the proposal does not have an adverse impact on amenity the appellant has located a high-performance air filtration system away from doors and windows. The proposal also includes an extractor system which would achieve 15m/s velocity, which the Council consider would sufficiently mitigate any potential odour from adversely impacting nearby sensitive receptors. A Noise Impact Assessment has also been submitted which demonstrates that the proposal will not have an adverse impact on the amenity of nearby residents by reason of noise, providing the fence which acts as an acoustic barrier on the southern boundary is retained. The installation and operation of the extractor and odour abatement system could be conditioned to be installed prior to commencement of operation of the proposed use. All of these measures would sufficiently mitigate any adverse impacts of odour and noise arising at nearby sensitive receptors and can be conditioned if approval is forthcoming.
11. Five car parking spaces are also proposed to be used by the hot food bar within the wider petrol filling station site. There are also storage areas for waste and recycling proposed within the building and the site. The appellant stated that the hot food bar will operate the same opening hours as the petrol filling station of 07:00 to 23:00. I consider that it is necessary to condition these storage areas and opening hours, which should include deliveries, to be provided prior to the use becoming operational to prevent anti-social behaviour and any noise, odour and vermin issues arising with nearby sensitive receptors.

12. Accordingly, subject to the conditions set out below, I consider that the proposal is in accordance with the PS and the SPG on Sensitive Uses. The appeal succeeds.

Conditions

- (1) The rated sound level (dB LAr) from the operation of all combined plant and equipment associated with the hereby permitted development, shall not exceed the background sound level during the day time period (07:00 to 23:00) and the background sound level during the night time period (23:00 to 07:00) when measured and determined at 1 metre from the façade of any nearby noise sensitive receptor, in accordance with BS4142:2014+A1:2019 'Methods for rating and assessing industrial and commercial sound'.
- (2) The hot food takeaway unit hereby approved shall not be operate outside the hours of 07:00 to 23:00 on any day.
- (3) Commercial collections from and deliveries to the hereby permitted hot food bar shall not take place outside the hours of 07:00 to 23:00 on any day.
- (4) No operations shall commence at the hereby permitted hot food takeaway until the kitchen extraction and odour abatement system capable of achieving a very high odour control, as presented within the AONA Environmental Consulting Ltd report entitled 'Odour Impact Assessment Report, Proposed Change of Use of Existing Retail Unit to provide Hot Food Unit at 140 Stewartstown Road, Belfast' dated April 2022 and as illustrated on drawing from Clarman entitled 'Unit 2 Plan and Elevations', (drawing number 03-01, Revision B, dated January 2021) has been installed in accordance with the approved details. The approved system must be permanently retained thereafter.
- (5) The kitchen extraction system shall be discharged at a velocity of 15m/s as per the AONA Environmental Consulting Ltd report entitled 'Odour Impact Assessment Report, Proposed Change of Use of Existing Retail Unit to provide Hot Food Unit at 140 Stewartstown Road, Belfast' dated April 2022 and as illustrated on drawing from Clarman entitled 'Unit 2 Plan and Elevations', (drawing number 03-01, Revision B, dated January 2021).
- (6) The acoustic barrier located along the southern boundary of the site shall be permanently retained.
- (7) The use hereby permitted shall not become operational until the refuse and recycling storage area has been provided in accordance with the drawing from Clarman entitled 'Unit 2 Plan and Elevations', (drawing number 03-01, Revision B, dated January 2021) and shall be retained thereafter.
- (8) The development hereby permitted shall be begun before the expiration of five years from the date of this permission.

This decision approves the following drawings:-

1. 01-01 Revision B, Scale 1:500, Proposed Site Plan, dated January 2021;
2. 03-01 Revision B, Scale 1:100 and 1:50, Plans and Elevations (Unit 2), dated January 2021; and
3. 01-09 Revision A, Scale 1:1250, Site location Plan, dated January 2021.

COMMISSIONER JACQUELINE MCPARLAND

List of Documents

Planning Authority:-
“A1” Statement of Case
“A2” Comments on Plan Strategy

Appellant:-
“B1” Statement of Case
“B2” Rebuttal
“B3” Comments on Plan Strategy