

**Report to:** PLANNING COMMITTEE      **Date of Meeting:** 29th March 2017

**Subject:**      **DC/2016/02463**  
**16 Endbutt Lane, Crosby L23 0TR**

**Proposal:** Change of use of premises from A1 (sweet shop) to A5 (hot food takeaway) including installation of chimney/flue to the rear

**Applicant:** Mr David Miles                              **Agent:** Mr Philip Seddon  
Philip Seddon Associates

**Ward:** Victoria Ward

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## Summary

The main issues to consider are the principle of the development and the impact on the living conditions of neighbouring residential properties.

It is considered that the proposal would harm the living conditions of the occupiers of the nearby residential properties through noise and disturbance from customers visiting the premises particularly late in the evenings. It is also concluded that the opening hours do not comply with emerging Local Plan policy which requires later opening hours for proposed food and drink uses within 400 metres of a secondary school.

For these two reasons it is recommended that the proposal is refused

## Recommendation: Refuse

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Application documents and plans are available at:

<http://pa.sefton.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=OIJGAQNWFGZ00>

# Site Location Plan



## The Site

The application site is No 16 Endbutt Lane which is a single storey building within a terraced row of a commercial shopping parade.

## History

### 16 Endbutt Lane (the application site)

97/0211/S: Change of use of the premises to a hot food takeaway – Refused 17<sup>th</sup> April 1997

97/0363/S: Change of use of the premises to a hot food takeaway – Refused 13<sup>th</sup> June 1997

### 10 Endbutt Lane

S/2004/0416: Change of use from a dry cleaners to a fast food outlet. Refused 3<sup>rd</sup> June 2004 & appeal dismissed 30<sup>th</sup> March 2005.

### 14 Endbutt Lane

DC/2015/00510: Variation of Condition 2 attached to planning permission S/2013/0331 granted 13 May 2013 to extend the opening hours to 12.00 to 23.00 hours Monday to Sunday. Refused 14<sup>th</sup> July 2015 & appeal dismissed 6<sup>th</sup> February 2016.

### 20 Endbutt Lane

93/0381/S: Change of use of the premises to a hot food takeaway. Refused 19<sup>th</sup> July 1993 & appeal dismissed 21<sup>st</sup> October 1993.

## Consultations

### Environmental Health

No objection subject to the need for an odour risk assessment. Evidence is required to confirm the proposed odour control performance, further information relating to the specification of the components and the system operation, and calculations and assumptions relation to the stated 35dBA at 3m are also required.

### Policy

In order to comply with policy EQ10 a condition must be imposed restricting opening hours to after 17:00.

## Neighbour Representations

Response from employee of a local business that the proposal will take business from them.

## Policy Context

The application site is situated in an area designated as residential on the Council's Adopted Unitary Development Plan.

The policies in the emerging Local Plan (June 2016) were subject to discussion at the recent Local Plan Examination and where appropriate have been given weight in coming to a recommendation on this application.

Those policies to which there was no objection or to which no modifications have been proposed may be regarded to carry significant weight. They will be referred to where appropriate in the assessment of this proposal.

## Assessment of the Proposal

The application site is within a row of 9 units which are all single storey with storage space within the roof area. There are commercial properties to the west and on the opposite block towards Liverpool Road with residential properties opposite and to the north east of the site.

The main issues to consider are the principle of the development and the impact on the living conditions of neighbouring residential properties.

### **Principle of the development**

The National Planning Policy Framework (NPPF) advocates a presumption in favour of sustainable development and seeks to support economic growth. The NPPF also seeks to secure a good standard of amenity for all existing occupants of buildings.

#### Non-residential development within Primarily Residential Areas

Policy H10 of the adopted Unitary Development Plan (UDP) sets out the Council's approach to development in residential areas. This policy states that non-residential development will be permitted in Primary Residential Areas provided it can be demonstrated that the proposal:

- (a) will not have an unacceptable impact on residential amenity, and
- (b) is otherwise compatible with the residential character of the area.

### Development that generates noise

Policy EP6 of the adopted UDP states, among other things, that where development is likely to generate significant levels of noise it will only be permitted where the impact of the noise will not be significant or can be reduced to an acceptable level.

This requirement is carried through into Policy EQ4 of the emerging Local Plan.

### Proposals for food and drink uses in the Primarily Residential Area

Policy MD6 of the adopted UDP notes that proposals for food and drink uses in or adjacent to the Primarily Residential Area will not be permitted unless they would not cause significant harm to residential amenity.

### Emerging Local Plan – requirements for food and drink uses

Policy EQ10 of the emerging Local Plan requires food and drink uses (Use Classes A3 – A5) to meet various criteria, including that they ‘would not cause significant harm to local amenity’. In order to help address the problem of obesity amongst children, section 2 of the policy restricts takeaways (Use Class A5) within 400 metres of a secondary school or college unless hours are restricted until after 17:00 or the site is within a designated centre.

The application site lies within this 400 metres’ threshold as there are secondary schools to the south (Sacred Heart), the west (Merchant Taylors) and the north of the site (St Mary’s College).

This site is not within a designated centre, but within an established local shopping parade of mainly retail (Class A1) uses. At the junction of Endbutt Lane with Liverpool Road there is an established wine bar/restaurant and just along Endbutt Lane from the junction there is an established hot food takeaway. The latter operates a voluntary opening time of 16:30 to 22.30.

The applicant has requested opening times of 16:00 to midnight Monday to Friday, and 16:00 to 00:30am on Saturdays with no details given for Sundays or Bank Holidays.

The key issues of principle for the proposed development relate to:

- impact on residential amenity, in particular through noise
- the proposed opening hours given that secondary schools lie within 400 metres. The application proposes opening hours to be from 16:00 hours whereas the policy recommends these should not be until 17:00 hours in view of the proximity of the secondary schools.

The second issue could be addressed through conditioning any approval to require a later opening time.

The most critical issue is noise and the likely impact of this on the occupiers of nearby residential properties.

### **Impact on the living conditions of the occupiers of neighbouring residential properties**

Whilst the commercial premises do extend along Endbutt Lane for a short stretch, the highway here is much narrower and residential dwellings are close by. This gives the area a much quieter, residential character while the Liverpool Road corridor has a much busier, more commercial character.

Customers visiting the existing shops will be likely to generate some degree of noise and disturbance during the day, particularly as there is parking on both sides of the highway immediately outside the shops. However, the majority of the commercial premises along Endbutt Lane do not open late into the evening, with the exception of the wine bar at the junction with Liverpool Road and the hot food takeaway very close to this junction, as highlighted in the previous section.

The proposed use of the premises as a hot food takeaway will generate customers many of whom will arrive by car and will park on the street outside the premises. The slamming of car doors and revving of engines, and the general chatter of customers as they enter and leave the premises, will create additional noise and disturbance in the evening.

This is at a time when the ambient background noise is less and sound travels further as a result. It is also a time when local residents are more likely to be at home either relaxing or asleep, particularly those families with young children, and to expect a quieter environment.

### **Recent Appeal Decision**

There has been a recent appeal to the Planning Inspectorate against the Council's refusal to allow an extension to the opening hours of the Liverpool Pigeon pub next door at 14 Endbutt Lane from between 12:00 and 21:00 Mondays to Saturdays and between 12:00 and 17:00 on Sundays to trade between 12:00 and 23:00 seven days a week.

The appeal was dismissed in February 2016 (Ref No APP/M4320/W/15/3134300). The Inspector recognised similar concerns to those which have been raised to this proposed hot food takeaway, in terms of noise and disturbance from comings and goings.

### **Other matters**

A local business has expressed concern that the proposal will take business from them, but loss of trade to a rival business is not a material planning consideration.

### **Conclusions**

There are residential properties opposite to and to the north east of the application site. As the proposal is located close to residential properties it is considered that it would harm the living conditions of the occupiers through the noise and disturbance created by the comings and goings of customers visiting the premises particularly late in the evenings.

The proposed opening hours are earlier than those allowed by Policy EQ10 of the emerging Local Plan given that the site lies within 400 metres of three secondary schools.

The proposed development would be contrary to Sefton UDP Policies H10, EP6 and MD6 and the emerging Local Plan Policies HC3, EQ4 and EQ10 and the provisions of the National Planning Policy Framework, and it is therefore recommended that it be refused.

## **Recommendation - Refuse**

### **Reasons for Refusal**

This application has been recommended for refusal for the following reasons:

- 1) The provision of an A5 use (hot food takeaway) right next to a residential area would generate late evening noise and disturbance and would cause significant harm to the living conditions of local residents. It would therefore be contrary to Policies CS3, H10, EP6 and MD6 of the Sefton UDP, and Policies SD2, HC3 of the emerging Local Plan, and the provisions of the National Planning Policy Framework.
- 2) Policy EQ10 of the emerging Local Plan requires food and drink uses (Classes A3 – A5) to restrict their opening times to not earlier than 17:00 hours when they are within 400 meters of a secondary school. The application proposal lies within 400 metres of three secondary schools and the proposed opening hours of 16:00 are therefore contrary to this policy.