



Leeds
CITY COUNCIL

Originator: Martha Hughes

Tel: 0113 222 4444

Report of the Chief Planning Officer

PLANS PANEL EAST

Date: 19 May 2011

Subject: APPLICATION 11/01102/FU Change of use and alterations from former Internet cafe to pizza takeaway with restaurant facilities (A3/A5 usage) at 209 Dewsbury Road, LS11

APPLICANT

Mr A Shabani

DATE VALID

17 March 2011

TARGET DATE

12 May 2011

Electoral Wards Affected:

City & Hunslet



Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

GRANT PERMISSION subject to the following conditions

1. Standard time limit (3 years)
2. Development in accordance with approved plans
3. Details of sound insulation to first floor flat to be submitted
4. Hours of opening 08:00 – 22.00 Monday to Saturday, 10.30 to 22.00 Sundays and Bank Holidays.
5. Hours of delivery 07.00 to 22.00 Monday to Saturday with no deliveries on Sundays or Bank Holidays.
6. The rear entrance/ exit and yard area shall not be used between the hours of 21.00 – 07.00 and all rear doors and windows at the ground floor of the premises shall be kept closed shut after 21.00 – 07.00. In the interests of residential amenity.
7. Extract ventilation to be taken through existing chimney
8. A scheme of odour control measures relating specifically to the food to be prepared and sold at/ from the premises shall be submitted to the Local Planning Authority and approved in writing prior to the operation of the use hereby approved. The odour control measures shall then be installed in accordance with the approved details prior to the commencement of the approved use and shall be maintained as such for the

lifetime of the use. The scheme shall be prepared in accordance with the approved details and shall be maintained as such for the lifetime of the use. The scheme shall be prepared in accordance with Defra Guidance; Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems. Should the food to be prepared and sold from the premises alter, the scheme for odour control shall be updated accordingly and then implemented prior to the additional food preparation taking place and retained in place in accordance with the revised details for the lifetime of the use.

9. Submission of details of any mechanical ventilation or air conditioning units
10. Submission of details of sound insulation of plant and machinery (including extraction systems, fans, ducts, air conditioning units.)
11. Provision of grease trap

Reason for approval;

The application is considered to comply with policies S2, SF8, SF15 and GP5 of the UDP Review, and having regard to all other material and subject to conditions to protect residential amenity is considered acceptable.

1.0 INTRODUCTION:

- 1.1 This application is brought to Plans Panel at the request of Councillor Iqbal due to concerns regarding residential amenity.

2.0 PROPOSAL:

- 2.1 The application proposes a change of use at the ground floor of the premises from an internet café (A1 use) to a restaurant and hot food take away (A3/A5 use). The proposed floor plans show a café area to the front of the premises with a counter and kitchen behind. There is a basement at the premises which is proposed to be used as a store area.
- 2.2 Details submitted with the application propose that the ventilation would be taken through the existing chimney to ventilate the cooking area.
- 2.3 The proposed hours of opening are 08.00 to 23.00 Monday to Saturday and 10.30 to 23.00 Sundays.

3.0 SITE AND SURROUNDINGS:

- 3.1 The site is an existing vacant shop (formerly an internet café) with first floor flat above located within Dewsbury Road town centre. The property is identified as part of the secondary frontage of the town centre on the UDP proposals map.
- 3.2 The property is located close to the junction of Dewsbury Road with Tunstall Road and is to the south of the existing BP Petrol Filling Station on Dewsbury Road. The ground floor shop has a floorspace of 85 square metres.
- 3.3 The property backs onto Back Burton Terrace. Burton Terrace is a residential street of terraced properties with small gardens facing Back Burton Terrace. The first floor flat above the premise is laid out with a living room and dining room above the proposed take away and restaurant, with bedrooms at second floor.

4.0 RELEVANT PLANNING HISTORY:

4.1 None relevant

5.0 HISTORY OF NEGOTIATIONS:

5.1 Officer Pre Application advice that principle of proposed change of use is not considered to conflict with policies S8 or SF15 but impact to residential amenity must be taken into consideration.

6.0 PUBLIC/LOCAL RESPONSE:

6.1 The application was advertised by way of site notices posted on 31 March 2011 and the publicity period expired on 21 April 2011.

6.2 4 Letters of objection have been received from residents on Burton Terrace raising the following objections;

(i) The shopfront will encourage cars to park on Dewsbury Road very close to a the BP service station where there are already many accidents at the entrance and exit of the forecourt and this will worsen the situation.

(ii) If cars do not park on Dewsbury Road then they will park on Back Burton Terrace which is a cul-de-sac less than 6m wide and would hinder access for residents and emergency vehicles.

(iii) It is not unreasonable to assume that existing parking restrictions will continue to be flouted as they are at present.

(iv) Inconsiderate parking already takes place on Back of Burton Terrace due to inadequate parking for existing businesses on Dewsbury Road, which makes access difficult for elderly residents and people with children's buggies as this is the only step free access to properties on Back Burton Terrace. .

(v) A similar proposal was refused at 215 Dewsbury Road on highway grounds

(vi) Concerns are expressed regarding increased foot traffic past Back Burton Terrace as residents have in the past had problems with people using the cul-de-sac and adjacent gardens as a public convenience and an increase in foot traffic would worsen the problem.

(vii) Potential noise problems from patrons of the proposed use would disturb the quiet enjoyment of the residential properties.

(viii) Concerns regarding odours from cooking and from waste just 6m away would prevent the objector from enjoying their garden or having windows open in the summer.

(ix) Noise from the kitchen area of the proposed unit would be detrimental

(x) Potential for vermin to be attracted by the food stuffs in bins on a residential street. Rats have been seen in the area and there are fears that unchecked food waste stored improperly could lead to vermin. Streetscene services problems are only addressed when prompted by residents.

(xi) There are more than sufficient takeaway restaurants in the area

(xii) Already problems with discarded takeaway cartons and packaging in the street and gardens and another take away would be intolerable.

(xiii) Existing problems of fly-tipping and inappropriate storage of waste from existing businesses as well as theft and unauthorised use of non commercial bins. Residents have to take great care in getting rid of litter and maintain a pleasant environment and the business proposed would stretch residents ability to do this.

(xiv) Anything that would encroach further into the already not quite private space and make it unsafe for the children could only be a bad thing. Residents should be allowed the safe enjoyment of what small gardens they have.

(xv) loss of property value

7.0 CONSULTATIONS RESPONSES:

Highways

7.1 The site is accessible via alternative modes of transport. Deliveries will be similar to the existing use and therefore no concerns are raised. A takeaway restaurant may have the potential to attract more frequent short stay visitors by car. However the area adjacent to the proposed unit is heavily protected by Traffic Regulation Orders. No highway objections are raised.

7.2 Letters of objection have referred to a refused application for a hot food take away at 215 Dewsbury Road in 1999 on the grounds that the use could lead to increases in on street parking. However, since this refusal Highways advise that highway objections relating to uses which may attract or encourage parking on lengths of highway already controlled by Traffic Regulation Orders have not been substantiated for some time in light of numerous appeal decisions where Inspectors found that Local Authorities should enforce the parking restrictions if parking problems became apparent. Legal advice has been sought on this matter in the past and the advice is that an application should not be refused on highway grounds where there is a separate power (contained within the Traffic Management Act 2004) to deal with parking in restricted areas through the issue of Parking Contravention Notices (PCN's).

7.3 Objections have also referred to accidents at the entrance and exit to the adjacent Petrol Filling Station forecourt which the proposed use would worsen. Highways have looked at the accident record and note that a large number of accidents relate to cars leaving the forecourt and then slowing to turn into Linden Road opposite. Based on the accident history record and the legal advice that parking restrictions should be enforced to control any on street parking problems Highway advice is that it is difficult to substantiate that the proposed use would increase the likelihood of accidents occurring.

Environmental Health

7.4 There are residential properties to the rear of the site and above the proposed development. Potential exists for noise and odour from activities associated with the takeaway to disturb the occupants of nearby residential premises, including those living on Back Burton Terrace and above the premises, from comings and goings of customers to the premises especially in the late evenings. Conditions would minimise some of the potential disturbance however complaints may still result as noise from patrons on street would be uncontrollable.

7.5 Conditions required to ensure that the noise levels from plant and machinery are 10 dBA below background noise levels. The discharge of extracted air through the chimney should ideally be 1m above ridge height of the roof, or not less than 1m above the roof eaves. The design and access statement states that the premises will be used for the preparation of hot toasted sandwiches, panini's and pizzas and if this is the case then the odour from the premises should be moderate. As the existing chimney which the extract ventilation is to be taken through is some 0.5m above the ridge height of the premises and the nearby dormer window, it is not anticipated that this will lead to odour problems. Additional measures such as the

use of carbon filters could help mitigate any additional odours if the application premises were to start cooking anything deep fried like burgers, chicken or preparing food such as curries. Guidance about odour can be found in the Defra guidance; Guidance on the control of odour and noise from commercial kitchen exhaust systems.

Licensing

- 7.6 The applicant is not proposing hot food sales or deliveries after 23.00 therefore a Premises License is not required.

8.0 PLANNING POLICIES:

- 8.1 The development plan includes the Regional Spatial Strategy to 2026 (RSS) and the adopted Leeds Unitary Development Plan (Review 2006) (UDP). The RSS was issued in May 2008 and includes a broad development strategy for the region, setting out regional priorities in terms of location and scale of development. In view of the relatively small scale of this proposal, it is not considered that there are any particular policies which are relevant to the assessment of this application.

GP5: General criteria for development.

T2: Highway considerations

S2: Vitality and viability of Town Centre's

SF8: Secondary Shopping Frontages

SF15: Hot Food Take Away's

9.0 MAIN ISSUES

1. Principle of proposed change of use
2. Highway considerations
3. Impact to residential and visual amenity
4. Conclusion

10.0 APPRAISAL

1. Principle of proposed change of use

- 10.1 The proposed change of use relates to an existing shop unit within a secondary frontage of Dewsbury Road town centre. Policy SF8 advises that within secondary shopping frontages, proposals for change of use of retail at ground floor level to non retail within use class A3 (which formerly included both restaurant and hot food take away uses) will be determined on their own merits.
- 10.2 The supporting text then advises that the aim of the Secondary Frontage Policy is to safeguard the overall retailing character of shopping centres, whilst recognising that non retail and specialist uses do provide a service, and should be made available to the public as a secondary element of a shopping centre.
- 10.3 The secondary frontage which the application premises forms part of is 207 to 215 Dewsbury Road. The current uses within this frontage comprise a travel agents (A2 use) which appears to be closed, a cash converters shop (A1), food shop (A1) and a recruitment office (A2) together with the application premises a vacant internet café (A1).
- 10.4 The proposal would therefore introduce an A3/ A5 use to this frontage, and two A1 uses would still be present together with two A2 uses. The premises is vacant at

present and therefore the proposal will bring the premises back into use. The vacant A2 use at 207 (travel agents) could be converted back to an A1 use without the need for planning permission.

- 10.5 It is therefore considered that the change of use of the premises to A3/A5 at ground floor use will not harm the retailing function of the centre and the principle of the proposed change of use does not conflict with policy SF8 of the UDP. Therefore the acceptability of the change of use should be considered against policy SF15 in terms of planning considerations for hot food Take Aways.

2. Highway considerations

- 10.6 Policy SF15 advises amongst other criteria that hot food Take Aways will not normally be acceptable unless they can meet all highway and road safety requirements.
- 10.7 Highway Officers have advised that there are no objections on highway safety to the proposed change of use. However objections have been received relating to highway safety concerns, regarding increases in on street parking on Dewsbury Road and Back of Burton Terrace leading to problems for residents as well as potential to increase the number of accidents due to the proximity to access to BP petrol filling station (PFS) where there accidents have already occurred.
- 10.8 Highway Officers comments on these issues are set out above in section 7 of the report. It is recognised that a takeaway restaurant may have the potential to attract more frequent short stay visitors by car however Highways advise that the area adjacent to the application premises is heavily protected by Traffic Regulation Orders and legal advice is that this restriction should be enforced to maintain highway safety if problems are apparent. The refusal of a hot food take away at 215 Dewsbury Road in 1999 has been considered, however appeal decisions in recent years maintain that on street parking concerns where traffic regulation orders are in place should be enforced.
- 10.9 In relation to the accident record on Dewsbury Road at the entrance/ exit to the BP PFS, Highway Officers do not consider that the proposed use is likely to lead to an increase in accidents and that the accident history record relates to problems with vehicles leaving the PFS and slowing to turn into Linden Road off Dewsbury Road.
- 10.10 Concerns have been raised that cars would park on Back Burton Terrace therefore restricting access for residents. It is considered that Back Burton Terrace as a cul-de-sac is not convenient for patrons of the take away to park in as access out of the terrace is so restricted and would require vehicles to reverse out onto Tunstall Road a busy main road. There is a public car park on the opposite side of Tunstall Road adjacent to the community centre which would be more convenient. On balance it is therefore not considered that Back Burton Terrace would see a particular increase in comings and goings of vehicles which would justify refusal of the application due to the restricted access arrangements which would be likely to deter customers from parking here.
- 10.11 The premises are an existing commercial use and although vacant at present could be reoccupied and deliveries are expected to be similar to the existing permitted use. Highways Officers have not raised any objections to the proposed change of use and it is not considered that there are grounds for refusing the proposed change of use on highway safety matters.

3. Impact to residential and visual amenity

- 10.12 Policy SF15 advises that proposals for hot food Take Aways will not normally be acceptable unless they are not likely to raise concerns for residents by way of visual intrusion and fumes, cooking smells, litter and food spillage, operation at unsocial hours, congregating of customers, parking and vehicle movements and noise.
- 10.13 The representations received from residents on Burton Terrace have raised concerns regarding increased foot traffic past Back Burton Terrace, potential noise problems from patrons of the take away, odours from cooking and from waste, potential for the use to attract vermin and litter.
- 10.14 In terms of noise nuisance, it is recognised by the Environmental Health Officer that there is potential for disturbance, however subject to conditions to ensure that the noise levels from plant and machinery are 10 dBA below background noise levels and it is expected that the noise level of the proposed system would be able to comply with, there are no objections from Environmental Health. Further conditions are recommended to control noise from the premises, and it is recommended that a condition restricts the use of the rear access/ entrance and yard after 9pm and that all windows and doors are closed after 9pm.
- 10.15 The hours of opening are recommended to be until 22.00 which is earlier than the standard hours suggested under policy SF15.
- 10.16 In terms of potential odours associated with cooking at the premises. the applicant proposes that the premises will be used for the sale of cold and hot sandwiches and paninis and pizzas. On this basis the applicant does not consider that deep frying of food will occur which would be more likely to result in odours. The applicant proposes to install a single stage filtration system which will have a noise level of 44dba at 3m from the fan and the extraction rate will be of a light loading up to 0.25m/s.
- 10.17 Given that there is potential for the food preparation to alter once planning permission is granted, it is considered that a condition can be imposed to ensure that an appropriate scheme for odour control relating to the food to be prepared at the premises is provided to ensure that odour nuisances do not occur (Condition 8 as set out at the start of this report).
- 10.18 Environmental Health advise that the discharge of extracted air through the chimney should ideally be 1m above ridge height of the roof, or not less than 1m above the roof eaves this will therefore dissipate any odours away from open windows of nearby properties. The existing chimney projects 0.5m above the ridge height, and whilst this is not the full 1m which is preferable, it is almost 1m above the height of the closest dormer window at No. 32 Burton Terrace and the recommended condition regarding odour control should ensure that adequate filters are provided if the type of food to be prepared expands beyond Panini's and pizza's. It is considered that the proposed arrangements through the existing chimney maintain visual amenity to the rear of the property and avoid unsightly external flues or awkward projections above the ridge of the roof height.
- 10.19 In relation to potential increases in litter associated with the proposed use, there is an existing litter bin on Dewsbury Road in front of No. 207 therefore although residents concerns are noted regarding increased litter, there is on street provision for disposal of litter. In relation to concerns regarding the storage of waste from the business and concerns regarding attracting vermin, the premises has a small yard area to the rear accessed from Back Burton Terrace which is bounded by a 1m brick boundary wall with railings above and an access gate. It is considered that this

area will provide a suitably enclosed area for bin storage as it would for the existing commercial use. The applicant has advised that the bins would be collected/emptied by way of a private contractor using an 1100 litre bin collected weekly initially and increasing should this capacity be exceeded.

- 10.20 Objections have also been received relating to footfall and increases comings and goings past Back Burton Terrace. It has to be appreciated that this site lies within a designated town centre and as such a certain level of activity has to be expected. The entrance to the premises is located on Dewsbury Road away from Back Burton Terrace and the direction which customers take after visiting the take away/restaurant could be a number of routes. The use will operate into the evening, however a certain level of evening activity would occur in the town centre anyway and it is not considered that increases in activity associated with the proposed use would be so significant to be harmful to residential amenity of residents of Burton Terrace. Nevertheless, an earlier restriction to opening hours than requested by the applicant is recommended until 10pm only.
- 10.21 In terms of amenity to the first floor flat above the premises, the applicant advises that they will occupy the flat and environmental health are content with this arrangement, however it is not considered that it could be controlled via condition that only the owner can live in the flat as this would be unreasonable. Therefore it is recommended that a sound insulation scheme be submitted to ensure that noise from the restaurant/ take away use below does not result in noise and disturbance to the first floor flat.
- 10.22 There are residential properties on the opposite side of Dewsbury Road (No's 228 - 244) however these properties are some 23m away from the application site and face onto a busy main road. It is not considered that any associated activity from the proposed use would result in a loss of residential amenity to these properties.
- 10.23 Other comments raised in objection letters relate to loss of property value, however this is not a planning matter. Objections also refer to there being sufficient take aways within Dewbsury Road town centre already, however in general this is a matter of competition and as set out at the start of the appraisal it is not considered that the proposed A3/A5 use will threaten the retail function of the town centre.
- 10.24 Subject to the conditions recommended at the start of this report, it is considered that the proposed use would not conflict with the requirements of policy SF15 and that on balance the proposed use within the secondary frontage of a town centre is considered to be acceptable in terms of the relationship to nearby residential properties.

11.0 4. CONCLUSION

- 11.01 The site is located within a designated S2 centre. The entrance to the site faces onto the main road of Dewsbury Road and the associated activity would generally relate to this frontage. The principle of the proposed change of use is not considered to harm the retail function of this secondary frontage but will bring back into use a vacant unit.
- 11.02 The relationship to residential properties at the rear of the site have been considered in detail in terms of potential noise disturbance, visual amenity concerns and any associated litter or odours relating to the proposed use. On balance it is considered that the concerns can be mitigated against by way of conditions as set

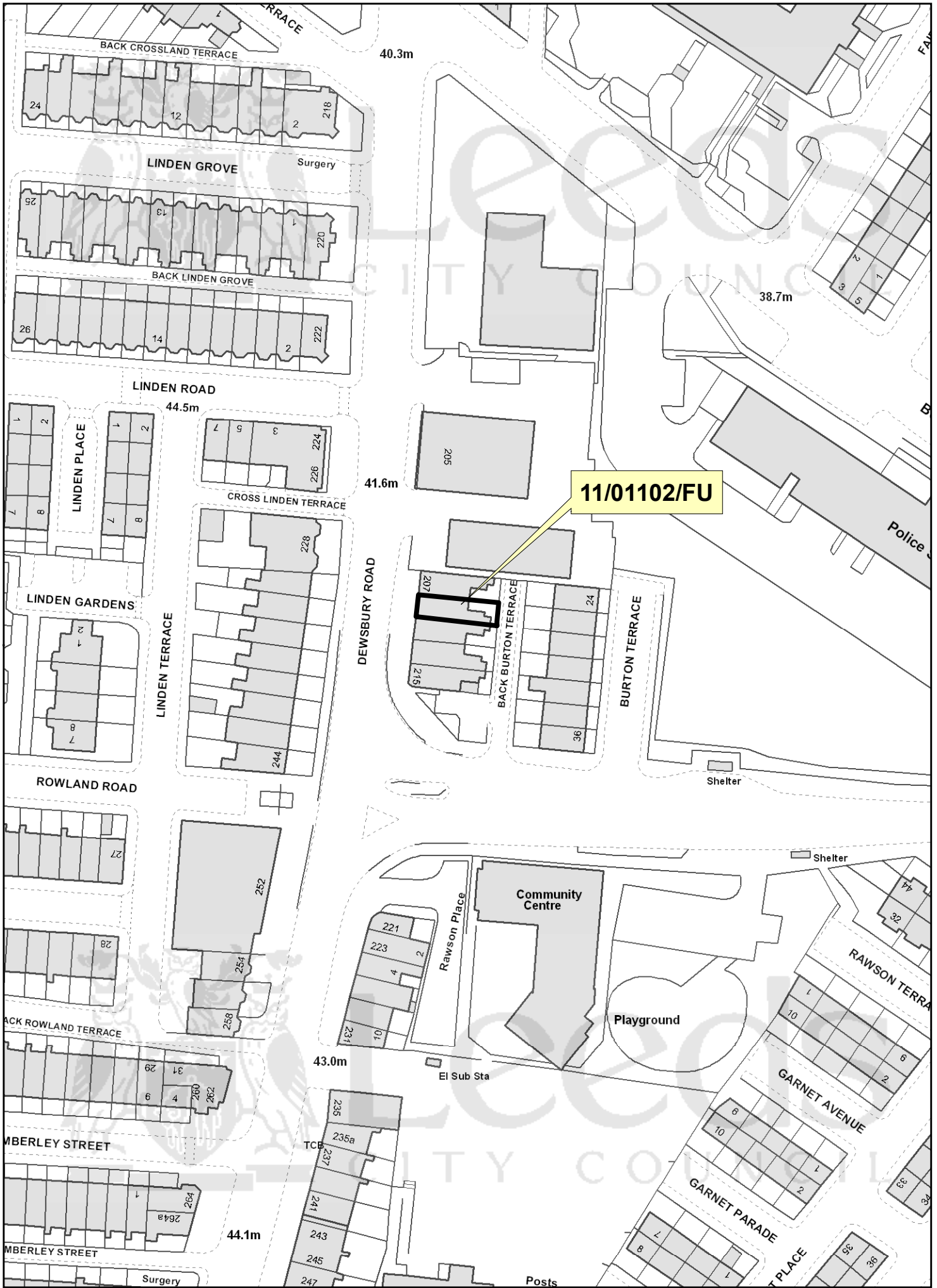
out at the start of the report, and that any increases in activity will not be so significant to unduly harm residential amenity given the location of the site within an S2 centre.

- 11.03 There are no highway concerns regarding the proposal given the existing TRO's which can be enforced to restrict any unsafe parking and the availability of a public car park close by on Tunstall Road.
- 11.04 The application is recommended for approval subject to the condition set out at the start of this report.

Background Papers:

Application file: 11/01102/FU.

Certificate of Ownership; Certificate A signed on behalf of applicant.



EAST PLANS PANEL

