APPLICATION NUMBER: 21/00277/FUL

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
21/00277/FUL	Rachel Carney	26 May 2021

Address: 1 Halifax Road Littleborough OL15 0HL

Proposal: Change of use from sandwich shop (Class E) to restaurant and hot food takeaway (Sui Generis) including erection of a flue to the rear elevation (Retrospective)

PUBLICITY	**Weekly list expired?**	Y	**Site notice expired?**	Y
	Neighbour letters expired?	Y	**Press Notice expired?**	NA

DELEGATION	**Significant departure from local plan?**	N	**Contrary to national policy?**	N
	Applicant a Council Member or officer?	N	**Contrary to previous decision?**	N
	Major with 10 or more objections and recommending approval?	N	**Called in or Planning Panel objection?**	N

COMMENTS	**Planning Panel comments received?**	N
	Neighbour comments received?	Y

EIA	**Screening opinion completed and saved to Onbase?**	NA

CONDITIONS	**Pre-commencement conditions proposed?**	N
	Pre-commencement conditions agreed (or notification period expired)?	NA

RECOMMENDATION	**REFUSE**

CHECKED AND SIGNED OFF BY: AT **DATE: 01.06.2021**

SITE

1 Halifax Road is an end terrace two storey building, the ground floor of which was until recently occupied by a sandwich shop (formerly Use Class A1 but now Class E.) The terrace within which the property is located is otherwise residential and there is a residential flat above the application site. The Red Lion pub is located on the opposite side of Halifax Road.

PROPOSAL

The application seeks to change the use of the site from a sandwich shop (Class E) to a restaurant and hot food takeaway (Sui Generis). The application also includes the erection of a flue to the rear elevation – already installed.

RELEVANT PLANNING POLICY

National Guidance

National Planning Policy Framework (NPPF) – February 2019

National Planning Practice Guidance (NPPG)

Adopted Rochdale Core Strategy (CS):

E1 Establishing thriving town, district and local centres
E2 Increasing jobs and prosperity
P1 Improving image
P3 Improving design of new development
G9 Reducing the impact of pollution, contamination and land instability
T2 Improving accessibility
DM1 General Development Requirements

Unitary Development Plan (UDP):

G/D/1

Supplementary Planning Documents (SPD):
Guidelines & Standards for Hot Food Takeaway Uses (April 2015, updated February 2017)

RELEVANT SITE HISTORY

04/D43164 – New shop front and entrance door to side – Refused and appeal dismissed
04/D43981 – Installation of replacement shop window and new door - Refused

CONSULTATION RESPONSES

Highways And Engineering
No objection. The site is on the edge of Littleborough Town Centre. In highways terms the operation of a sandwich shop and takeaway are similar. Proposal includes restaurant but due to its size highways could not object.

Env Health - Noise/Odours

Cannot support the application. The adjoining property is residential and has a bedroom over the application site. As such the occupants of the residential property will likely be subject to nuisance and disturbance arising from noise and odour.

The change would represent a significant intensification of cooking and a shift in usage to more sensitive times.

Network Rail
Requested that the applicant's compete an Asset Protection Initial Enquiry Questionnaire.

REPRESENTATIONS

The application has been publicised with a site notice and neighbour notification letters. Ten letters of objection have been received, including one objection from a ward Councillor that included a committee call in request for if the officer recommendation was for approval. The objections are summarised below:

Objection and planning reasons for call in request from Cllr Tom Besford:

1. It is on a blind corner after a bridge, meaning that there is almost no room for delivery drivers/other people to pull up and use the takeaway safely.
2. It is a heavily residential area with residential flats above it and to the side. The additional smells from a hot food takeaway in addition to late opening hours will make this horrible for residents.
3. In this care, the occupiers decided to press ahead with a refurbishment against RBC Planning recommendations, in order to prepare the building for a hot food takeaway, the added an external extraction fan to the building, against planning rules. Given the location of the space and the tightness of the shared yard between the business and residential, I believe there is far greater fire risk in an area with minimal escape routes.

Similarly I would think the business owners would need to apply for retrospective planning permission for this external extraction system which has caused the residents great distress and concern.

There is a difference between a cafe serving predominantly cold food and customers who sit indoors during the day vs a hot food takeaway open late into the evening, with the noise, smells and fumes from the space, takeaway drivers pulled up outside in a dangerous place and the additional of a large external extractor fan.

Other objections received:
- The area is residential and parking is at a premium for residents. Residents will find it difficult to park near our own homes if spaces are taken up by staff and customers. There is only space for one car directly outside the site. Existing parking arrangements see parking on the pavement which results in pedestrians having to walk into the road. This will increase.
- The site is close to a busy junction which regularly sees road accidents.
- Odours from the site will mean that residents will not be able to open windows without smells permeating into our homes.
- Night time opening by the takeaway will create disturbances from noisy customers.
- The proposal will result in littering and discarded food that will attract vermin.
- There are seven existing hot food takeaways on Church Street, five of which sell the same food as that proposed by the applicant. These all open late night and are more than sufficient in number to support customer demand.
- Existing takeaways are position in the main town centre and away from residential properties, resulting in minimum disruption to local residents.

- The site is located away from the main foot flow of customers. It has been used for several business' over the years and has not been successful, primarily due to its location.
- The addition of a hot food takeaway will not enhance the area.
- Concerns over the position and safety of the extractor fan.
- Concerns over fire hazards for neighbouring property. There is no fireproofing to adjacent property.
- There is no property sound proofing to adjacent property.
- There is no proper drainage to capture fats etc.
- The flue can be seen from the road and detracts from the appearance of the area.
- A sign has been erected without planning permission

ANALYSIS

Principle of development

The application relates to an existing retail unit that until recently operated as a sandwich shop (former use class A1). As an existing retail unit the commercial use of the premises is already established.

Located outside of the defined local centre, policy E1/L of the Core Strategy is not relevant to the application. However policy E2 is relevant and this establishes that the Council will support the creation and retention of successful businesses and increase the number and quality of jobs to create a more prosperous lower carbon economy.

Policy E1 establishes that retail and leisure facilities should be focussed in town and local centres in order to promote the vitality and viability of these centres. Paragraph 86 of the National Planning Policy Framework also establishes that local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan.

No sequential test has been submitted with the application. The application has therefore failed to demonstrate that there is not a sequentially preferable site available within the nearby Littleborough Town Centre and the proposal is contrary to policy E1 of the adopted Core Strategy and policy in the NPPF.

The SPD also provides guidance on the appropriate concentrations of hot food takeaways and clustering, this however relates proposals within local centres and the principle of development should therefore be assessed in accordance with the policies above.

Noise and disturbance

Policy G9 of the Core Strategy requires that applications do not lead to an unacceptable increase in noise or other pollution. Policy DM1 requires that development is compatible with surrounding land uses in terms of its impact upon amenities of neighbouring residents and also requires that developments mitigate against any impacts due to noise. The SPD - Guidelines & Standards for Hot Food Takeaway Uses also acknowledges that it is important to ensure that hot food takeaways do not harm local environmental quality or residential amenity. With this in mind the design of fume extractions/ventilation equipment should ensure that odours, fumes or noise cause no significant nuisance or disturbance to nearby properties.

In respect of the above it is noted that impact on adjacent residents is a common theme in the objection letters, including the objection from the local ward Councillor.

Consultations have been undertaken with the Council's Public Protection Officer (noise and odours). The Officer has advised that the Public Protection cannot support the application due to the harmful impact the development would have on the adjoining residents. The relationship with the neighbouring property is rather unique due to one of the residential bedrooms being sited over a good portion of the application site. As such, the Public Protection Officer has advised that residents of this property would likely be subject to unacceptable nuisance and disturbance arising from noise and odour from the proposed use.

In respect of the proposed use, the Case Officer and Public Protection Officer recognise that the existing site has previously operated as a sandwich shop. It is also acknowledged that under the newly created Use Class E, planning permission would not be required to change the use of the site to a restaurant, although it must be noted that the changes to the Use Class Order do not permit external alterations.

It is noted that part of the proposal is to use the site as a restaurant but no restaurant provision is shown on the proposed floor plans. It is also noted that the size of the premises would make any restaurant on the site very small (the proposed floor plan shows the publicly accessible area of the site to be approximately 6m2. Existing floor plan shows a slightly larger takeaway floor area of approximately 10m2 meaning that any cooking or other operations associated with a restaurant use at the site would be very minor.

Taking into account the size of the application site, the detail on the submitted plans, and the description of development, it is considered that the primary use on the site would be takeaway, rather than restaurant. As identified by the Council's Public Protection Officer, this use would result in additional noise and disturbance that would have a harmful impact on adjoining residents. The application details that the proposed use would operate until 9pm and although there is currently no control over the hours of operation for a Class E use at the site, the provision of a takeaway operating during the evening would result in a clear intensification of use into less sociable hours, compared with the former sandwich shop. In addition, a hot food takeaway, with the associated extract ventilation system (as installed), would result in significant increase in cooking at the site, which would directly result in an unacceptable increase in noise and odour, causing nuisance and disturbance for adjacent residents.

To summarise, the proposed use, which includes hot food takeaway, would have a harmful and unacceptable impact on neighbouring residents through increased noise and disturbance. The application is therefore unacceptable in this regard and contrary to policy G9 and DM1 of the adopted Rochdale Core Strategy, the hot food takeaway SPD and the NPPF.

Highway safety

A number of the objections have referenced the impact of the proposal on highway safety, with concerns over the impact of the development on parking. There are also concerns regarding deliveries and the proximity of the site to the junction.

Consultations have been undertaken with the Council's Highway Officer who has confirmed that from a Highways perspective, they do not object to the proposal. Highway Services note that the site is on the edge (not in) Littleborough Town Centre and from a highways perspective, the operation of a sandwich shop (the former use) and a hot food takeaway are very similar. Highways also note that although the application also includes restaurant use, due to its small size they also have no objections to this element.

In respect of the above, the LPA recognise that the hours currently proposed differ from those that the sandwich shop operated on and that as such, on street parking is likely at more of a premium during the evening when residents are at home. Nonetheless, as identified earlier, there are no current controls over the hours of operation at the site and as such a use that falls under Class E, may be able to move into the site and operate at the hours current proposed for the hot food takeaway and restaurant. It is also noted that given the scale of the development, other traffic movements associated with the use as referenced by the objector, would likely only be small and not differ from those for the previous use. With this in mind, whilst the concerns regarding highway safety and parking are recognised, it is not considered that the Local Planning Authority could reasonably object to the proposal on such grounds and demonstrate that the proposal would result in harm to highway safety. The application is as such acceptable on these grounds and in accordance with policies T2 and DM1 of the Core Strategy.

Visual amenity

In respect of visual amenity the only external alteration proposed under this application is the installation of the external flue pipe to serve an extract ventilation system. This retrospective part of the application is installed to the rear of the site, where, as the officer site photographs show, public visibility is low. As such, whilst it is recognised that the flue pipe as installed is not attractive in its design, given the low visibility of the rear of the site it is not considered that this element of the proposal would result in unacceptable harm to the visual amenity of the area and this element of the application accords with policy P1, P3 and DM1 of the adopted Core Strategy and the NPPF.

Network Rail

The application site lies within the statutory Network Rail consultation zone due to its close proximity to the railway. Network Rail have provided no comment in regards the detail of the application but they have sent an Asset Protection Initial Enquiry Questionnaire for the attention of the applicant. This has been forwarded to the applicant but there are no further comments from Network Rail in regards the acceptability of the application.

Other considerations

Other objections received refer to the potential fire hazard related to the development and other possible risks associated with the extract ventilation system. The planning system does not generally assess fire risk but Building Control have confirmed that they would require an application for the development and this would include assessment of the flue and any required fire boarding between the site and neighbouring development.

There are also concerns that the drains of the property are not adequate for fat from the takeaway use. The LPA note that section 111 of the Water Industry Act 1991 makes it illegal to permit any substance which may interfere with the free flow of the sewerage system, to pass down any drain or sewer connecting to a public sewer. This will include fats, oils and grease. This matter is controlled out of the planning system and does not comprise part of the assessment of the current application.

Summary

The application would represent development of a town centre use where a sequential test has not been submitted to demonstrate that there are no sequentially preferable available sites in the town centre. As such, the principle of development is unacceptable on this site.

The application would also represent an increase in noise and odours from the site which would result in unacceptable disturbance for neighbouring residents.

The recommendation is for refusal.

RECOMMENDATION **REFUSE**

1. Insufficient information has been submitted to demonstrate that there are no available sequentially preferable sites within the adjacent Littleborough Town Centre for the town centre uses proposed. The application therefore fails to demonstrate that the proposal would not harm the vitality and viability of the Littleborough Town Centre and is contrary to policy E1 of the adopted Rochdale Core Strategy and the National Planning Policy Framework.

2. The proposed hot food takeaway use would result in increased cooking at the site and an intensification of use into the evening. This would result in an unacceptable increase in noise and odour from the site and cause unacceptable levels of nuisance and disturbance for adjoining residents contrary to policies G9 and DM1 of the adopted Rochdale Core Strategy and the National Planning Policy Framework.

Procedure Statement

The proposal would not improve the economic, social and environmental conditions of the area nor does it comply with the development plan and therefore does not comprise sustainable development. There were no amendments to the scheme, or conditions which could reasonably have been imposed, which could have made the development acceptable and it was therefore not possible to approve the application.

Notes for Applicant:

INFORMATIVE:
For the avoidance of doubt, this Decision Notice relates to the following drawings :-

- Location Plan
- Existing and Proposed Plans and Elevations – Drawing no. 1743/2
- Extraction Details

Report Author Rachel Carney