



Planning Committee

Report of Head of Planning and Building Control on 21 June 2021

Plans List Item Number: 12

Reason for bringing to committee

Significant Community Interest

Application Details

Location: 66 A, High Road, Willenhall, WV12 4JQ

Proposal: CHANGE OF USE FROM SUI GENERIS (BETTING SHOP) TO A5 (HOT FOOD TAKEAWAY) AND INSTALLATION OF AN EXTRACTION FLUE PIPE

Application Number: 20/1041

Case Officer: Claire Woodcock

Applicant: Maruthainar Vijayaratnam

Ward: Short Heath

Agent: MKM Design & Construction Ltd.

Expired Date: 21-Oct-2020

Application Type: Full Application: Change of Use

Time Extension Expiry: 11-Feb-2020

Recommendation

Grant Planning Permission Subject to Conditions



Proposal

Proposed change of use from a betting shop in Sui Generis Use to a hot food takeaway also a sui generis use (as of 1st September 2020 previously ClassA5 use) with installation of a flue pipe to the rear of the property.

The applicant has indicated the proposed hot food would be Southern Fried Chicken and Pizza. The predicted majority of the sales would be local walking customers and home deliveries. There will be no facilities proposed for customers to consume the food on the premises.

The application site is a two-storey property, consisting of a commercial premises at ground floor and a residential flat above. The application site is currently vacant.

The proposed change of use will not increase the footprint of the existing building, with internal changes only proposed.

The proposed takeaway use would employ 2 full time staff

Proposed hours of operation are: 12.00 pm (noon) to 11.00pm Monday to Thursday, 12.00pm (noon) -12.00 am (midnight) on Friday and Saturdays, 3.00pm-11.00pm on Sundays. During bank holidays the shop will be closed

Dimensions of proposed rear flue:

0.4 metres wide

1.3 metres high above roof slope, 1.8m above eaves

Site and Surroundings

The property is located on High Road Willenhall surrounded by a mix of residential and commercial properties. The building is an existing Sui Generis betting shop within a surrounding area which is predominately Retail, Offices and residential.

Relevant Planning History

BC17121P- Section 53 Determination-Alterations to Elevations. 19-Jun-1986

BC17557P - Alterations to Elevations. GSC 28-Jul-1986

08/0854/AD - Illuminated Fascia sign over Shop Front. GSC 08-Aug-2008

08/0855/FL - New Shop Front GSC 08-Aug-2008

Relevant Policies

National Planning Policy Framework (NPPF)

www.gov.uk/guidance/national-planning-policy-framework

The NPPF sets out the Government's position on the role of the planning system in both plan-making and decision-taking. It states that the purpose of the planning

system is to contribute to the achievement of sustainable development, in economic, social and environmental terms, and it emphasises a “*presumption in favour of sustainable development*”.

Key provisions of the NPPF relevant in this case:

- **NPPF 4 – Decision Making**
- **NPPF 6 – Building a strong, competitive economy**
- **NPPF 12 – Achieving well-designed places**

On **planning conditions** the NPPF (para 55) says:

Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved. Conditions that are required to be discharged before development commences should be avoided unless there is a clear justification.

On **decision-making** the NPPF sets out the view that local planning authorities should approach decisions in a positive and creative way. They should use the full range of planning tools available and work proactively with applications to secure developments that will improve the economic, social and environmental conditions of the area. Pre-application engagement is encouraged.

National Planning Policy Guidance

On **material planning consideration** the NPPG confirms- planning is concerned with land use in the public interest, so that the protection of purely private interests... could not be material considerations

Reducing Inequalities

The Equality Act 2010 (the ‘2010 Act ’) sets out 9 protected characteristics which should be taken into account in all decision making.

Development Plan

www.go.walsall.gov.uk/planning_policy

Saved Policies of Walsall Unitary Development Plan

- GP2: Environmental Protection
- ENV10: Pollution
- ENV32: Design and Development Proposals
- S6: Meeting Local Needs
- S7: Out-of-Centre and Edge-of-Centre Developments
- S10: Hot Food Take-Aways, Restaurants and Other A3 (Food and Drink) Outlets
- T13: Parking Provision for Cars, Cycles and Taxis

Black Country Core Strategy

- Vision, Sustainability Principles and Spatial Objectives
- CSP4: Place Making
- ENV3: Design Quality

Supplementary Planning Document

Designing Walsall

- DW3 Character

Consultation Replies

(Officer comments in italics)

Canal and River Trust

No Comment

Coal Authority

No Comment

Environmental Health

Concerns raised:

- It is noted that specifications have been provided in respect of extract ventilation systems and odour control, which are acceptable.
- The public entrance to the premises shall be via a self-closing door and shall not remain open whilst the premises are in use.
- Active ventilation of kitchen and cooking areas shall be supplemented with fresh air intake ventilation arrangements to facilitate the safe use of any gas combustion appliances and to prevent windows and doors being opened for workroom temperature control.
[Note: These should be equipped with guards to prevent the ingress of insects]
- The installation of such ventilation and odour control systems must be in accordance with the details specified in the application
- External windows and doorways serving hot food cooking areas shall remain closed whilst hot food cooking operations are in progress
- No development shall commence until details of a method to prevent grease entering the drainage system have been submitted to and approved in writing by the Local Planning Authority.
- A detailed noise assessment report, as suggested within the application, must be carried out and any recommendations implemented prior to commencement of the proposal.
- Details of the suitability of any proposed sound insulation between the commercial and residential accommodation must be included within the noise assessment report and any recommendations implemented prior to commencement of the proposed business
- The premises shall not be open for business until this approval has been given and the approved details have been fully implemented. The approved equipment shall thereafter be retained and maintained in accordance with manufacturer's or installers requirements.
- Please note that the current plan shows the staff w.c opening directly onto a food room. A suitable intervening space must be provided between these areas. Both the w.c. and lobby must be provided with extract ventilation.

Local Highways Authority Support

Pollution Control

Concerns raised:

It is recommended that comments are sought from Environmental Health who would regulate such premises and investigate any complaints made against the activity.

- noise impacts from external machinery,
- noise impacts (including customer behavioural noise) between the proposed use and adjacent residents,
- odour control systems,
- drainage control systems,
- opening hours and delivery times, etc.

(Comments from Environment Health have been received as above)

- A hot food premises will require fire safety insulation incorporating into their structure, in addition to further compliance with building regulations regarding fire doors, fire escape routes and emergency lighting etc *(would be dealt with at any necessary building control stage)*
- Fire Safety issues may be difficult to overcome with planning conditions alone *(Not a material planning consideration)*
- As there are habitable residential units above, sound insulation will be required to create a minimum sound reduction of Rw 70dB.
- The equipment such as fans, flues and motors can also create noise issues for adjoining residential units
- Pre-commencement conditions should be imposed, requiring the applicant to undertake acoustic mitigation measures and submit further information to ensure that an acceptable level of noise would not be exceeded
- The Applicant has provided some details of the odour abatement system, the external flue (including fans/silencers etc.) and is indicating that their intention is to install a high-efficiency odour control system.
- Pre-commencement conditions can be imposed to require full details of the odour abatement system, the external flue (including fans/silencers etc.), and the grease trap to ensure fat/oil/grease does not enter the drainage system.

Representations

There have been 11 objections from 7 representations:

- Litter and the potential for rat and vermin infestation.
- Smell
- The proposed opening hours
- Parking
- Location of bins
- Where the extractor will go
- Litter and anti-social behaviour
- No requirement for anymore hot food takeaways

- Noise
- Anti-social behaviour
- Existing Food place next to property

Determining Issues

- Principle of Use
- Design & Character of Area
- Impact to Neighbouring Properties
- Parking
- Other Material Considerations

Assessment of the Proposal

Principle of Use

Policy S10 of the UDP identifies a hot food takeaway (sui generis use- previously class A5 use) as appropriate uses within Town, District and Local Centre uses, subject to policy S4. Whilst policy S4 states that proposals should not detract from the general retail function of centres, a supporting trade of hot food takeaways would similarly serve the local community. There are 4 existing hot food takeaway premises within the Lane Head, Willenhall local centre, however, the majority of other units remain in class E(a) retail use (formerly Class A1), hence this proposal would not unacceptably reduce the number of retail units. In line with policy S10, a condition can be imposed that requires the premises to close business at 23:00 on Monday-Friday & Sundays and at 23:30 on Saturdays. As there are residential properties to the adjacent to the property, and potentially at neighbouring first floor levels, this would help to minimise impacts on these occupiers.

The proposed opening hours from 12.00pm Mondays-Thursdays, from 12:00pm onwards on Friday and Saturday and from 15.00 on Sundays would provide an open shopfront within shopping hours, thus would not contribute to a 'dead frontage'. Subsequently, this is considered acceptable to accord with policy S4 & S10 of the UDP.

Given the recent and on-going Covid19 pandemic, which has resulted in widespread economic hardship and forced many people to stay at home, additional consideration is given to the supporting of businesses and the re-opening of former vacant premises. Particularly considering the reliance on takeaway functions recently, this proposed use is considered to be in the public interests at this time.

No details have been submitted for proposed external shop front for the display. The agent has confirmed that separate planning application would be submitted for shop front and advertisement consent. A note to clarify this is recommended.

Design & Character of Area

The change of use in itself is not considered to have any detrimental impact the character and the appearance of the area. The key impact is that of the flue, which will be set at the rear of the property and mainly hidden from the street scene. The position of the flue will not mask the windows of the flat above the premises and there will be a distance of 24 metres between the positioning of the flue and the properties set at the rear of 66a High Road.

To protect the character of the area, a condition can be imposed, requiring the proposed extractor flue to be non-other than powder-coated black in appearance.

No details have been submitted for proposed external shop front for the display. The agent has confirmed that separate planning application would be submitted for shop front and advertisement consent.

Impact to Neighbouring Properties

The properties to the north-east of No 66a High Road are commercial in use and the properties to the south and rear are residential.

Policy S10 of the UDP seeks to support hot food take-away provided they do not affect the amenities of existing neighbouring dwellings by reason of noise, smell, disturbance or traffic impact.

Neighbouring commercial and residential occupiers have objected to the proposal with regard to potential anti-social behaviour. There is no evidence to suggest that the proposed takeaway will exacerbate any existing anti-social behaviour issues in the area. Furthermore, these issues are matters for the Police to investigate.

With regards to comments regarding smell, Environmental Health are content with the details of extract ventilation systems and odour control and conditions are recommended.

Neighbouring commercial occupiers have stated there are a number of hot food take-aways in the High Road. There are no policies within the Development Plan that restrict the number of hot food take-aways. Business competition is not a material planning consideration and to refuse an application based on this would be considered unreasonable, as there are no development plan policies that would support this conclusion. Furthermore, the proposed take-away would provide customers with a choice of food options.

Neighbouring commercial and residential occupiers have objected to the proposal on the grounds of late-night noise, litter and increase in vermin. Environmental Health have raised no objection to the proposed change of use or opening hours. Policy S10 of the UDP supports hot food take-aways to be open until 11pm Mondays to Fridays and until 11.30pm on Saturdays with Sunday opening being considered on their

merits. In this case, the application has sought 11pm opening Mondays to Thursdays. It is considered an 11pm opening on a Sunday in an established district centre is not unreasonable. A planning condition can be attached to ensure a litter bin is provided within the serving area of the premises.

A planning condition is recommended to ensure deliveries are only undertaken during normal day Mondays to Saturdays to protect neighbouring occupier's amenities.

With regard to noise, the Applicant has submitted an acoustic report for consideration with the Application – 'Noise impact assessment', Ref. YA314.P1, by Yacoustics Ltd, April 8, 2021. The report is focused on noise from the Plant (Extraction Fan). Whilst noted that noise levels should be reduced by the proposal to locate the fan within the building and in an acoustic enclosure, together with the use of anti-vibration mounts, however no consideration has been given to the transmission of other noises from the shop to the accommodation above from other activities.

Although the Design & Access Statement mentions improving the sound insulation of the building, the Applicant should note that in Walsall it is a requirement that the sound insulation between a commercial and residential activity provides a sound reduction, R_w , of 70dB. This sound insulation requirement exceeds those required by Part E Building Regulations, which is aimed at sound insulation for residential to residential uses. A pre-commencement condition shall be imposed, requiring the applicant to undertake acoustic mitigation measures and submit further information to ensure that an acceptable level of noise would not be exceeded

The Council's Environmental Health team consider the proposal is acceptable subject to imposing noise, smell, deliveries conditions to control the use. Part of this, will to require the flue to terminate at least 1 metre above the highest part of the building to assist in dispersing noise and odour. It is considered these suggested conditions would go some way to minimising the impact on neighbours and the wider community for noise and disturbance to residents particularly into the evening.

Following concerns raised from Environmental Health revised plans have been submitted with detail of self-closing doors to the staff W.C. and separate doors to the storage area and kitchen, which are acceptable to the Environmental Health team.

As such the proposals as they currently are would have no greater adverse impact on resident's amenities for surrounding occupiers, including those in the flats above the shops over and above the current situation, particularly given the locality within an established centre.

It is considered, the proposed change of use to a hot food takeaway in the local centre accords with the council's planning policies including UDP Saved Policy S2, S6, S10 and BCCS Policy CEN5 plus SAD policy SLC1.

Parking

There is off-street parking available to the front of the premises, providing two car parking spaces and three motor bike spaces, and The Highways Authority have not objected to the proposal.

Other Material Considerations

The comments regarding fire safety from Pollution Control have been noted, however the premises will need to comply with national building regulations standards at the Building Control stage and as such is not a planning requirement at this stage.

The refuse and recycling bins are proposed to be stored at the rear of the premises and can be brought through the shared side access for collection, the same as the current arrangement for the shop. The Highways Authority have raised no objection to this arrangement.

Conclusions and Reasons for Decision

The principle of the use at this local centre location is supported by policy S10 of the Unitary Development Plan.

This use is considered appropriate within the street scene and does not harm the visual amenities of the area. Therefore, it is in accordance with saved UDP policies: GP2 and ENV32 and SPD Designing Walsall.

The proposed use has the potential to impact nearby residential units, however this can be controlled through a series of conditions that would ensure an acceptable level of amenity for these properties. Therefore, the residential amenities will remain protected and the proposed development is in accordance with saved UDP policies GP2 and ENV32 and SPD Designing Walsall.

There is off-street parking available to the front of the premises, providing two car parking spaces and three motor bike spaces, and The Highways Authority have not objected to the proposal.

On balance, it is concluded that this application should be recommended for approval.

Positive and Proactive Working with the Applicant

Officers have spoken with the applicant's agent and in response to concerns raised regarding comments raised by Pollution Control and Environmental Health, amended plans and details have been submitted which enable full support to be given to the scheme.

Recommendation

Delegate to Head of Planning & Building Control Services to grant permission subject to the amendment and finalising of conditions.

Conditions

1: The development hereby permitted shall be begun not later than 3 years from the date of this permission.

Reason: To ensure the satisfactory commencement of the development in accordance with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2: The development hereby permitted shall not be carried out otherwise than in accordance with the following approved plans details and documents:

- Existing and proposed plans drawing number MKM/20/HIG66A/PL03 page 01/03 received 08-06-2021
- Existing and proposed front and side elevations drawing number MKM/20/HIG66A/PL023 page 02/03 received 08-06-2021
- Existing and proposed rear and side elevations drawing number MKM/20/HIG66A/PL03 page 03/03 received 08-06-2021
- Noise impact assessment reference YA314.P1 received 08-04-2021
- Specification of kitchen extraction system received 26-08-2020
- Silencer datasheet received 26-08-2020
- Panel filter details received 26-08-2020
- Odour control details received 26-08-2020
- Duct fan details received 26-08-2020
- Design and access statement received 26-08-2020
- Activated carbon panels details received 26-08-2020

Reason: To ensure that the development undertaken under this permission shall not be otherwise than in accordance with the terms of the application on the basis of which planning permission is granted, (except in so far as other conditions may so require).

3a: Notwithstanding the details as submitted and prior to commencement of the use hereby permitted, a scheme of noise insulation measures shall be designed between the ground floor development and first floor residential premises. The scheme of sound insulation measures shall be designed to achieve a Sound Reduction Index of not less than R_w 70 dB. This shall be submitted to and agreed in writing by the Local Planning Authority.

3b: Prior to the first occupation and commencement of the use, the scheme shall be fully implemented in accordance with the approved details. And a validation report by an independent acoustics specialist shall be submitted in writing to and approved in writing by the Local Planning Authority.

3c: The development hereby permitted shall not be carried out otherwise than in accordance with the agreed mitigation measures and such measures shall thereafter be retained for the lifetime of the development.

Reason: To safeguard the amenities of the occupiers of the adjoining premises and the wider area to ensure the satisfactory functioning and appearance of the

development, in accordance with saved UDP policies S10, GP2 and ENV32.

4a: Notwithstanding the details as submitted and prior to commencement of the use hereby permitted, details of the odour abatement system and mechanical extraction system of all fumes from the food preparation area shall be submitted and be agreed in writing by the Local Planning Authority. The assessment shall include details of a de-odorising filter, details of the extraction equipment including the chimney and the manufacturer's guidelines.

4b: Notwithstanding the details as submitted an extraction flue shall not be installed otherwise than with the extraction flue terminating at least one metre above the highest part of the building.

4c: The development hereby permitted shall not be carried out otherwise than in accordance with the extraction flue being powder coated black BS381C 3012 and shall thereafter be retained for the lifetime of the development.

4d: The development hereby permitted shall not be carried out otherwise than in accordance with the agreed mitigation measures and such measures shall thereafter be retained for the lifetime of the development.

Reason: To safeguard the amenities of the occupiers of the adjoining premises and the wider area to ensure the satisfactory functioning and appearance of the development, in accordance with saved UDP policies S10, GP2 and ENV32.

5a: Notwithstanding the details as submitted and prior to commencement of the use hereby permitted a scheme to control odour and noise (including vibration) associated with kitchen ventilation and extraction equipment shall be submitted in writing to and approved in writing by the Local Planning Authority. The assessment shall include details of recommendations for mitigation measures to ensure a Noise Rating Curve level of NR35 is not exceeded, 1 metre from the window in any facade of any habitable room of any dwelling.

5b: Prior to the first occupation a validation report by an independent specialist in noise and odour control shall be submitted to and approved in writing by the Local Planning Authority.

5c: The development hereby permitted shall not be carried out otherwise than in accordance with the agreed mitigation measures and such measures shall thereafter be retained for the lifetime of the development.

Reason: To safeguard the amenities of the occupiers of the adjoining premises and the wider area to ensure the satisfactory functioning and appearance of the development, in accordance with saved UDP policies S10, GP2 and ENV32.

6a: Notwithstanding the details as submitted and prior to commencement of the use hereby permitted, a system to control grease, oil and fat discharges to drainage /

sewerage systems shall be submitted to and agreed in writing by the Local Planning Authority.

6b: The grease control system shall be fully implemented in accordance with the approved details and maintained and serviced in accordance with the manufacturers and the Local Planning Authority's recommendations. The grease control system shall be thereafter retained for the lifetime of the development.

Reason: To ensure the premises is served with adequate grease trap details to enable to satisfactory functioning of the hot food take-away in accordance with Policies S10, GP2 and ENV32 of the UDP.

7: The use hereby permitted shall not be open to customers otherwise than between the hours of 08:00am hours to 23:00pm hours Mondays to Fridays and 08:00am hours to 23:30pm hours on Saturdays and 10:00am hours to 22:00pm hours on Sundays, Bank and Public Holidays.

Reason: To protect the amenities of nearby residential occupiers in accordance with saved UDP policies S10, GP2 and ENV32.

8: No deliveries shall be taken to or despatched from the site otherwise than between the hours of 08:00am hours to 23:00pm hours Mondays to Saturdays and 10:00am hours to 22:00pm hours on Sundays, Bank and Public Holidays.

Reason: To protect the amenities of nearby residential occupiers in accordance with saved UDP policies GP2 and ENV32.

9: Prior to the first occupation of the premises as a hot food take-away, a litter bin shall be provided within the serving area of the premises and thereafter retained and maintained as such for the lifetime of the development.

Reason: To protect the amenities of nearby residential occupiers in accordance with saved UDP policies GP2 and ENV32.

10: Notwithstanding the submitted details, the external flue shall not be installed otherwise than in a black powder coated finish and thereafter retained and maintained as such for the lifetime of the development.

Reason: To protect the visual amenities of nearby residential occupiers in accordance with saved UDP policies GP2 and ENV32.

Notes for Applicant

West Midlands Fire Service

- The building shall be designed and constructed so as to provide reasonable facilities to assist fire fighters in the protection of life.

- Reasonable provision shall be made within the site of the building to enable fire appliances to gain access to the building.

Pollution Control

- It is appropriate that the applicant have reference to: EMAQ (2018) "Control of Odour and Noise from Commercial Kitchen Exhaust Systems".

This document includes guidance on:

- Preparation of an assessment for odour
- Identification of the potential risk of odour (very high, high, medium, low)
- Odour mitigation techniques appropriate to the level of risk
- Recommendations for best practice maintenance and equipment
'Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems',
- BS 8233:2014 'Guidance on sound insulation and noise reduction for buildings'.
- The Applicant will need to seek Building Control approval for any scheme. Walsall Council Building Control can be contacted on 01922 652600 (Email: buildingcontrol@walsall.gov.uk) for further information/advice on how to meet the requirements and any applications that you may need to submit to them and/or the Fire Officer.
- The London Fire Service guide for fire safety and living above restaurants, see <https://www.london-fire.gov.uk/safety/property-management/living-above-business-premises-fire-safety-guide/>

Environmental Health

- The main activity at these premises is such that Walsall Council Environmental Health would enforce the requirements of Food Safety and Hygiene (England) Regulations 2013 and relevant European Community Regulations and Health and Safety at Work etc. Act 1974. The premises is required to comply with the requirements of this legislation and the application should consult with Environmental Health regarding legal requirements.

Shop Frontage

- This permission is for a change of use only and does not grant permission for any significant alterations to the exterior/shopfront of the premises which would require planning permission including
- This permission does not grant consent for any signs or advertisements, illuminated or non-illuminated. A separate application may be required under the Town and Country Planning (Control of Advertisements) Regulations 1992 or subsequent legislation.

END OF OFFICERS REPORT