



Planning Committee

Report of Head of Planning and Building Control on 7 March 2024

Plans List Item Number: 2

Reason for bringing to committee

Community Interest

Application Details

Location: 41, HIGH STREET, PELSALL, WALSALL, WS3 4LT.

Proposal: RETENTION OF CHANGE OF USE TO HOT FOOD TAKEAWAY AND INSTALLATION OF EXTERNAL FLUE.

Application Number: 22/0416

Case Officer: Ann Scott

Applicant: Mazzameals Ltd

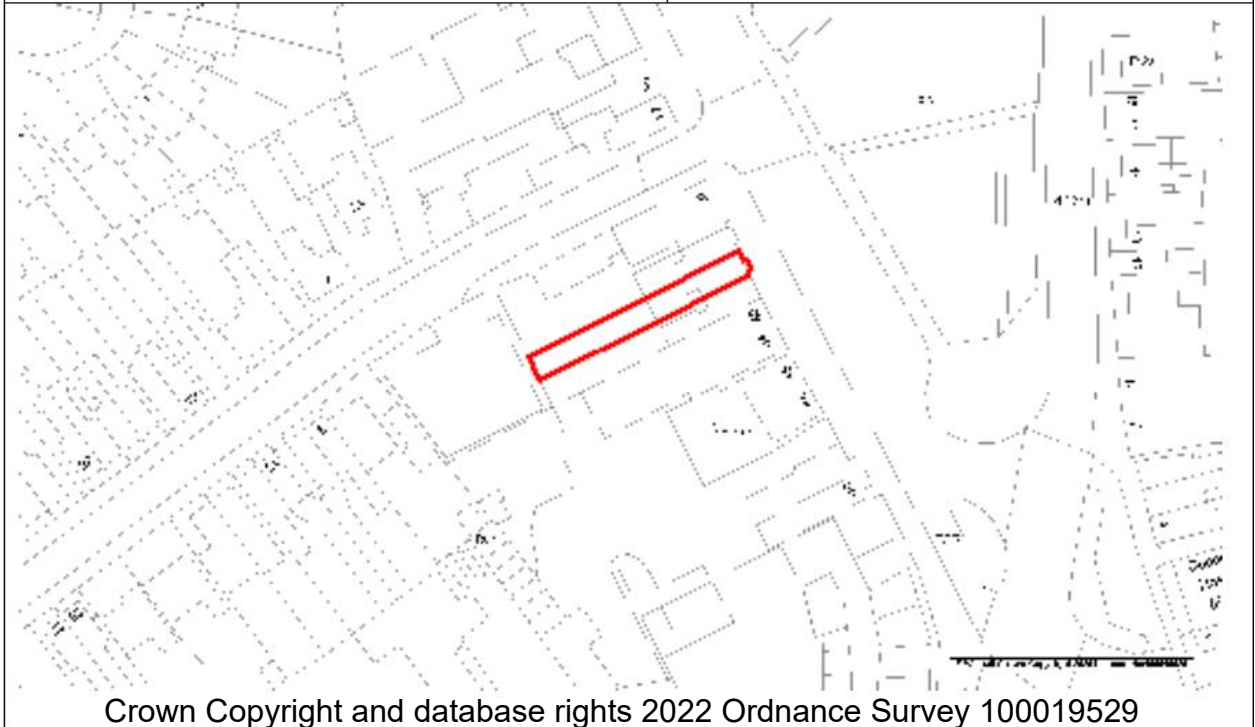
Ward: Pelsall

Agent: CT Planning

Expired Date: 29-Jun-2022

Application Type: Full Application: Change of Use

Time Extension Expiry: 14-Mar-2024



Recommendation

Grant subject to conditions

Proposal

The application proposes the retention of a change of use to hot food takeaway and installation of external flue at 41 High Street Pelsall, Walsall.

Site and Surroundings

The application site is known as Mazza's takeaway and forms part of a parade of two storey shops facing Pelsall Common. The site is situated within the Pelsall Common Conservation Area. The application site is situated in Flood Zone 1 as defined on the Environment Agency Flood Map for Planning. The site is situated in a high-risk area for legacy coal mining development and is situated within the Cannock Chase SAC.

Planning History

06/01431 New Steel Staircase in rear year – Approved 26 October 2006

07/0045/FL Change of use to Café A3 use – Approved 25 February 2007

10/1580/FL Variation of condition 2 of planning approval 07/0045/FL to vary the opening hours from 08:00 – 17:00 Hours Monday to Saturday to 08:00 to 22:00 hours Monday to Saturday and 09:00-22:00 hours Sunday – Approved 21 January 2011.

20/1182 - Temporary permitted development for change of use from class A3,A4 and Mixed (A3/A4) to hot food takeaway until 23rd March 2021. Now extended to 23rd March 2022 under permitted development as set out in Class DA Part 4 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020. – Permitted Development 05 October 2020. Extended to 23 March 2022.

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*". The NPPF is a material consideration in the determination of a planning application.

Human rights and reducing inequalities

The provisions of the Human Rights Act and principles contained in the Convention on Human Rights have been taken into account in reaching the recommendation

contained in this report. The articles/protocols identified below were considered of particular relevance:

- Article 8 – Right to Respect for Private and Family Life
- THE FIRST PROTOCOL – Article 1: Protection of Property

Section 149(1) of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it (the Public Sector Equality Duty or 'PSED'). There are no equality implications anticipated as a result of this decision.

Walsall Council Development Plan - www.go.walsall.gov.uk

Planning law requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

Our Development Plan includes:

- Black Country Core Strategy (BCCS)
- Walsall Site Allocations Document
- Unitary Development Plan
- Walsall Town Centre Area Action Plan

Planning guidance is published within a number of Supplementary Planning Documents. Those of relevance will be referenced in this assessment.

Public consultation has been carried out in accordance with the Development Management Procedure Order and the council's Statement of Community Involvement.

Consultee Comments (Officer Summary)

Conservation Officer – Concerns regarding the flue stack and recommends it is enclosed in a brick chimney to reduce the visual impact on the character of the Conservation Area.

Strategic Planning Policy - Proposal is in Pelsall Local Centre. UDP Policy S10 allows for hot-food takeaways in centres subject to considerations including not affecting the amenity of existing dwellings (including on upper floors) by noise smell, disturbance, or traffic impact. Permission will not be granted where there is inadequate off-street parking and where fume extraction causes pollution or nuisance to neighbours.

There is publicly available off-street parking outside the proposal site either side of High Street. Whilst there is a residential unit above the proposal takeaway any loss of amenity appears to be considered with the submission of details of the flue and fan, silencer and building survey to provide an accurate assessment of potential impact, which appears to be mitigated.

The requirements under UDP Policy S10 regarding Planning Conditions over restricted opening times and residential amenity should be considered in the event of any permission being granted.

West Midlands Fire Officer – No Objections

Highways Officer – No objection the premises are located in the District Centre where hot food takeaway uses are expected. General public parking is available on the highway.

Environmental Health – No objections. EH have reviewed the application and have found the proposed odour extraction to be suitable.

Environmental Protection – No objection. The application relates to a commercial food premise; therefore, comments need to be sought from Environmental Health who would regulate the activity and investigate any nuisance complaint.

Environmental Protection's usual comments relate to requiring for an Applicant to address matters arising prior to any business commencing. Unfortunately, this application relates to a site where a hot food business has historically operated for several years, they have obtained a certificate of lawful use, and is retrospective with the business itself being operational for over a year.

On this basis, Planning Officers need to check with Environmental Health, whether they have received any complaints about noise and odour from the activity, which would usually have been addressed via planning conditions, if this application were to be made because of a new planning application. Environmental Protection have no separate comments to make.

West Midlands Police Architectural Liaison Officer – No objections

Public Health – Objection based on the number of hot food takeaways in the vicinity.

Officer comments – noted however, there is no policy basis for a refusal on these grounds.

Community Safety Team - It is recognised that on first opening, there were a number of issues of Antisocial Behaviour raised in the wider Pelsall community. Visitors to the business engaged in a number of nefarious activities which caused disturbance to residents. Therefore, the business was engaged by both the Community Protection Team and the Community Safety Team to resolve these issues. It should be noted that all the requests made to the proprietor were met with compliance. This site has, as a result been monitored and although subsequent complaints have been received and investigated, they cannot be evidenced despite many man hours dedicated to CCTV review etc. There have been no complaints that I am aware of with regard to the flue and its impact on local amenity.

Neighbour and interested Parties Comments (*Officer comments in italics*)

20 comments received objecting to proposal for the following reasons:

- Antisocial behaviour late at night
- Littering
- Inconsiderate parking outside the premises
- Noise and disturbance
- Loss of residential amenity
- Too many takeaways in Pelsall High Street

Determining Issues

- Principle of development
- Heritage assessment
- Cannock chase SAC and HRA
- Design, layout and character
- Amenity of neighbours and future occupiers
- Highways
- Flood Risk / Drainage
- Ground Conditions and Environment
- Planning Obligations
- Other key determining issues

Assessment of the Proposal

Principle of Development

The principle of development has been established during the period of time since the application site was the subject of a certificate of lawful use to change from a Café A3 use to a hot food takeaway A5 use. The application site business employs 5 full time employees.

UDP Policy S10 allows for hot-food takeaways in centres subject to considerations including in Local Centres not affecting the amenity of existing dwellings (including on upper floors) by noise smell, disturbance, or traffic impact. Permission will not be granted where there is inadequate off-street parking and where fume extraction causes pollution or nuisance to neighbours.

Walsall Site Allocation Document SLC1- Local Centres and **SLC2** – Local Centre Development opportunities.

Walsall UDP Saved **Policy EN5 Development in Conservation Areas**
Walsall UDP saved Policy T7 and T13 Car parking standards.

Saved UPD Policy EMP1 Providing for economic growth.

Saved UPD Policy ENV2 Historic character and Local distinctiveness.

National Planning Policy Framework 2023 Chapter 7 Ensuring the vitality of Town Centres. Paragraph 90 Planning policies and decisions should support the role that town centres play at the heart of local communities.

National Planning Policy Framework 2023 Chapter 8 Promoting Healthy and Safe Communities. Paragraph 96 Planning policies and decisions should aim to achieve healthy, inclusive and safe places in beautiful buildings which a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other through mixed use development, strong neighbourhood centres, street layouts that allow for pedestrian and cycle connections. b) are safe and accessible so that crime and disorder, and the fear of crime do not undermine the quality of life or community cohesion. Through the use of well-designed clear and legible pedestrian and cycle routes which encourage active and continual use of public areas; and c) enable and support healthy lifestyles, especially where this would address local health and wellbeing needs.

National Planning Policy Framework 2023 Chapter 16 Conserving and enhancing the historic environment. Paragraph 200 in determining applications Local Planning Authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made to their setting.

Heritage Assessment

Paragraph 200 of the NPPF states “the LPA should identify and assess the significance of any heritage asset that may be affected by the proposals”. The site is within Pelsall Common Conservation Area, a designated heritage asset as defined by the NPPF. Paragraph 201 of the NPPF requires the applicant to describe the significance of the any heritage asset affected including their setting. An amended Heritage Statement has been submitted which states: “The flue is located in a visually constrained location in relation to the vast majority of the Pelsall Common Conservation Area and from the front of number 41 High Street. The flue is visible from near and middle-distance views from various points along the Eastern section of Ashtree Road, from appr the level of number 21 up to the access yard to the rear of the PDA. It is also visible from Ashtree Road Long Stay car park, from buildings around the outside of the yard, and the yard itself, whist the very top of the flue is visible above the single storey building fronting Ashtree Road, near the junction with High Street. All these viewpoints are within the Conservation Area. The materiality of the flue along with its dimensions and height make it an obtrusive feature, in the viewpoints described in the paragraph above. Whilst it is at odds with the surrounding historic built form and fails to enhance and preserve the character and appearance of the Conservation Area, it does not necessarily detract from the ability to appreciate and understand the key archaeological, historic and architectural factors which make up the significance of the Conservation Area as a whole.”

The Conservation Officer suggests that the flue is entirely clad in brick to match the vernacular-built form of the surrounding area. Brick cladding around the flue could be constructed to appear to all outward appearances as a chimney stack which would be in keeping with the historic built form of the Conservation Area. Amended drawings have been provided to demonstrate the flue being enclosed in a false brick chimney.

The construction of a false chimney stack around the flue to full height would offer a

solution negating adverse impacts on the character and appearance of the Conservation Area. In accord with Paragraphs 200 to 202 of the NPPF which requires the Local Planning Authority to assess the harm to the significance of the designated heritage assets and to assess whether the harm equates to substantial harm or less than substantial harm. The retention of the use and the flue would have less than substantial harm to the significance of Pelsall Common Conservation Area, the scale of harm would be weighed as low. The proposal is considered to comply with the following policies NPPF 2023 Chapter 16 Paragraphs 200 to 202. The Walsall Unitary Development Plan saved policies GP2 General Principles, ENV29 Conservation Areas, ENV32 Design and Development Proposals, and the Black Country Core Strategy Policies ENV2 Historic Character and Local Distinctiveness, and ENV3 Design Quality.

Cannock Chase SAC and HRA

This proposed application is located within the 15km zone of influence of the Cannock Chase SAC and proposes a net increase of 0 dwelling/s. The Conservation of Habitats and Species Regulations 2017 (“Habitats Regulations”) place a duty on competent authorities (in this case Walsall Council) to consider the potential for effects upon sites of European importance prior to granting consent. This site does not include additional dwellings and therefore the LPA consider that the proposal would not adversely affect the Cannock Chase SAC.

Design, Layout and Character

The proposal to retain the use as a hot food takeaway following the temporary permitted development rights granted in 2020 to help cafes and food outlets keep trading during pandemic to help mitigate the effects of lockdown, the UK government introduced temporary changes in March 2020 to Planning Regulations for England, allowing food retailers to open for takeaway services beyond ‘ancillary’ level without needing to apply for planning permission through permitted development rights. Businesses are required to notify their local authority when they implement Permitted Development Rights.

The Introduction of these permitted development rights meant that businesses were free to switch between classes in order to meet the needs of the public while remaining in operation, albeit in a different capacity, that is, a restaurant could operate as a takeaway without planning permission. These rights were initially introduced for a period of 12 months (until March 2021). This was then extended by the Government until December (2021). This application seeks to retain the use for a hot food takeaway which was implemented in 2020 following the permitted development change of use rights. The application site is situated in a parade of existing shops within the Pelsall Local Centre. The application site is known as Mazza’s.

There is no significant change in appearance of the premises other than the flue installed which is being sought for retention as part of the current application. A condition to secure the brick cladding materials is considered appropriate and a condition requiring the the implementation of the cladding. The relevant planning policies for consideration are as follows; the saved Walsall Unitary Development Plan

Policy G2, General Principles, Policy S1 Definition of Town Centre Uses, S2, the hierarchy of centres, Policy S4 The Town and District Centres General Principles, S10 Hot food takeaways, restaurants and other A3 food and drink outlets. A3 use has now changed to Class A5 which is the sale of hot food for consumption off the premises. The Black Country Core Strategy CEN5 District and Local Centres.

Amenity of Neighbours and Amenity of Future Occupiers

There are a number of comments from third parties with regard to the loss of amenity to the nearby locality from the operation of this temporary use as a hot food takeaway and do not wish to see this use made permanent. These include alleged noise and disturbance, inconsiderate parking, and littering/antisocial behaviour. The proposed use to be retained is considered to be appropriate to the character of a local area centre and other hot food establishments operate within the High Street Area of Pelsall. Due to government legislation changes allowing temporary permitted development rights for the use of Cafes to an A5 hot food takeaway to allow them to continue trading the use is established and appropriate to the local centre. If there are concerns regarding crime and anti social behaviour these are not solely related to the use of these premises as a hot food takeaway but reflect a wider range of societal issue that have increased this type of problem in recent years. Rowdy and inconsiderate behaviour and littering are issues which has been highlighted however there are other establishments in the local area such as other take away and restaurant establishments and public houses that may contribute to this behaviour. The area is covered by close circuit television cameras which are regularly monitored to assist in keeping the public safe in Pelsall. There are several public refuse bins within the vicinity of the application site for the disposal of refuse.

The application site use has been operating within the following hours since the use for a hot food takeaway has been implemented these are 1600 to 23:00 Monday to Saturday and 16:00 to 22:00 on Sundays and bank holidays. These can be controlled by a planning condition. Saved policy S10 of the Walsall UPD relates to Hot Food Take-Aways, Restaurants and other food and drink outlets. Considers these uses in town centre areas and in some shopping and commercial centres. Provided that the use must not adversely affect the amenities of existing or proposed dwellings including those on upper floors. In such locations the Council will impose conditions requiring the premises to close at 23:00 Mondays to Fridays and 23:30 hours on Saturdays. The proposed hours of operation are considered acceptable in relation to Policy S10.

There are no objections from the Environmental Health Section, Environmental Protection or Public Health regarding the use of the site for a hot food takeaway although public health does mention health concerns about additional hot food establishments in the locality. It is also worth noting that the lawful use of the property was a cafe. Which was in operation for a number of years prior to the use of the site as a hot food takeaway, so therefore no substantial change of use has occurred.

The Community Safety Team advises that it is recognised that on first opening, there were a number of antisocial behaviour issues raised in the wider Pelsall community. Visitors to the business engaged in activities which caused disturbance to residents.

Therefore, the business was engaged by both the Community Protection Team and the Community Safety Team to resolve these issues. It should be noted that all the requests made to the proprietor were met with compliance. This site has, as a result been monitored and although subsequent complaints have been received and investigated, they cannot be evidenced despite many man hours dedicated to CCTV review etc.

Fear of Crime

Paragraph 135 (f) of the National Planning Policy framework seeks to ensure that planning policies and decisions create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

It is considered that there are no planning policy reasons why the proposed use could not be granted a permanent permission subject to conditions to control the hours of operation. The proposal is considered to comply with Unitary Development Plan Policies GP2 (Environmental Protection) and ENV32 (Design and Development Proposals, and ENV3 (Design Quality) and SPD Policies Designing Walsall annexe D, DW1, Sustainability, DW2 Safe and welcoming places, DW3 Character, the Designing Walsall urban design document. Together with the design advice in Chapter 12 of the revised NPPF 2023 Achieving well-designed places.

Highways

The Highways Authority have no objections in principle to the proposed use for a hot food takeaway which is expected in a local area shopping centre. In addition the Highway authority advises there is sufficient public parking available in proximity to the site including on street and public car parking within the Pelsall Green local area. The proposal is therefore considered to accord with the “saved policies” T7 - Car Parking, T13: Parking Provision for Cars, Cycles and Taxis, and the Black Country Core Strategy Policy TRAN2: Managing Transport Impacts of New Development and paragraph 115 of the NPPF 2023.

Flood Risk / Drainage

The application site is situated in flood zone one as defined on the Environment Agency Flood Map for Planning. The proposal is not considered to adversely affect the site and surrounding area from an increase in flood risk in accord with the Black Country Core Strategy ENV5: Flood Risk, Sustainable Drainage Systems, Urban Heat Island and NPPF Chapter 14.

Ground Conditions and Environment

The site is situated in an area at high risk of legacy coal mining development but does not involve built development but the ongoing use of an existing building. In accordance with the NPPF Paragraph 189 and saved policies GP2 and ENV14 of

Walsall's Unitary Development Plan apply in relation to legacy coal mining and ground conditions.

Another key determining issues

It is considered that the imposition of safeguarding conditions in this instance to address the harm this development has brought to the location in relation to crime and antisocial behaviour, is considered reasonable. The restriction of opening hours of use to achieve a secure and safe environment for existing and future occupiers is recommended. In accordance with saved UDP policy ENV32, Designing Walsall SPD and the NPPF.

A key aspect being sustainable development creating better places for communities to live and work. Local Planning Authorities are expected to be clear about design expectations. Development Plans should set out a clear design vision of which the Designing Walsall SPD forms the Design Policy as part of the adopted Walsall Development Plan. A condition relating to the flue chimney is also recommended. The proposed development would provide an acceptable level of amenity to existing and future occupiers and is in accordance with the Unitary Development Plan Policies GP2 (Environmental Protection) and ENV32 (Design and Development Proposals, and ENV3 (Design Quality) and SPD Policies Designing Walsall annexe D, DW1, Sustainability, DW2 Safe and welcoming places, DW3 Character, the Designing Walsall urban design document. Together with the design advice in Chapter 12 of the revised NPPF 2023 Achieving well-designed places.

Conclusions and Reasons for Decision

Grant

On balance, this application is considered acceptable when assessed against the local and national planning policies and guidance as set out in this report. Account has been taken of the measures to mitigate the visual impact of the installed flue and encase within a false brick chimney to minimise the visual impact on the character of the Pelsall Common Conservation Area. In addition, the matters raised regarding amenity are considered in relation to the control of the hours of operation of the development to be retained.

Considering the above factors, it is considered that the application should be recommended for approval.

Decision Recommendation

Grant subject to conditions

Conditions

1. This development must be begun not later than 3 years after the date of this decision.

Reason: Pursuant to the requirements of Section 91 of the Town and Country Planning Act, 1990 (as amended).

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

- Site location plan received 31 March 2022.
- Amended Elevations Drawing 1547 received 29 January 2024
- Extraction silencer details received 31 March 2022

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).

3. The development hereby permitted shall not be open to customers otherwise than between the hours of 1600 hours to 23.00 hours Mondays to Saturdays and 16:00 hours to 2200 hours Sundays, Bank and Public Holidays

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

4a) Notwithstanding the details as submitted on drawing 'Amended Elevations Drawing 1547 received 29 January 2024' and within 3 months of the date of this decision, prior to the installation of the brick chimney hereby permitted to screen the extraction flue details of facing materials that match, in size, colour and texture, as those which are used in the existing building and a scheme of implementation for the works shall be submitted to and agreed in writing with the Local Planning Authority.

4b) The development shall not be carried out otherwise than in accordance with the approved details and the approved materials shall thereafter be retained for the lifetime of the development.

Reason: To ensure the satisfactory appearance of the development and to comply with saved policies GP2 and ENV32 of the Walsall Unitary Development Plan.

Notes for Applicant

1. The Planning system recognises the following days as bank/public holidays, Easter Monday, last Monday in May, Last Monday in August, 26 December if it is not a Sunday and the 27 December in a year which 25 or 26 of December is a Sunday.

END OF OFFICERS REPORT