

Committee Report**Date: 07.07.2021**

Item Number	03
Application Number	21/00004/FUL
Proposal	Change of use from retail shop (A1) to hot food takeaway (sui generis) and installation of extract flue
Location	118 Chatsworth Avenue Fleetwood Lancashire FY7 8EJ
Applicant	Nianqun Guo
Correspondence Address	c/o Richard Tatham 68 Park View Road Lytham FY8 4JF United Kingdom
Recommendation	Permit

REPORT OF THE HEAD OF PLANNING SERVICES**CASE OFFICER - Miss Lucy Lowcock****1.0 INTRODUCTION**

Site Notice Date: 15/1/21

1.1 This application is brought to Planning Committee at the request of Councillor Gerrard. A site visit is recommended to enable Members to understand the site context beyond the photos taken by the case officer.

2.0 SITE DESCRIPTION AND LOCATION

2.1 The application site is an existing shop situated on the northern side of Chatsworth Avenue, Fleetwood. It is in the urban area and in a row of units designated as a Neighbourhood Centre in the Wyre Local Plan.

2.2 The unit has a shop front with a roller shutter door and a fascia sign. There are other shops and takeaways in the row, and one other vacant unit. There is residential accommodation above the units at first-floor.

3.0 THE PROPOSAL

3.1 This application is for the change of use of the ground-floor of the unit from a shop (A1) to a take-away (sui generis). No physical alterations are proposed to the building, except for the installation of an extraction flue at the rear. This would be a galvanised duct off the rear elevation of the property and would extend to above the ridge, with a total height of 6.96m. Ducting and fans to this extraction system would also be provided on an existing flat roof to the rear.

4.0 RELEVANT PLANNING HISTORY

4.1 Application no. 09/00584/FUL
Change of use from Class A1 (retail) to Class A1 and A5 (retail / takeaway) -
Approved

5.0 PLANNING POLICY

5.1 ADOPTED WYRE BOROUGH LOCAL PLAN

5.1.1 The Wyre Local Plan 2011-2031 (WLP31) was adopted on 28 February 2019 and forms the development plan for Wyre. To the extent that development plan policies are material to the application, and in accordance with the provisions of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise.

5.1.2 The following policies contained within the WLP 2031 are of most relevance:

- SP2 Sustainable development
- SP8 Health and well-being
- CDMP1 Environmental protection
- CDMP2 Flood risk and surface water management
- CDMP3 Design
- CDMP6 Accessibility and transport
- EP4 Town, District, Local and Neighbourhood Centres

5.2 NATIONAL PLANNING POLICY FRAMEWORK 2019

5.2.1 The revised National Planning Policy Framework (NPPF) was published by the Government on the 19th February 2019. It sets out the planning policies for England and how these should be applied in the determination of planning applications and the preparation of development plans. At the heart of the NPPF is a presumption in favour of sustainable development (paragraph 11). The policies in the 2019 NPPF are material considerations which should also be taken into account for the purposes of decision taking.

5.2.2 The following sections / policies set out within the NPPF are of most relevance:

- Section 2. Achieving sustainable development
- Section 6. Building a strong, competitive economy
- Section 8. Promoting healthy and safe communities
- Section 9. Promoting sustainable transport
- Section 12. Achieving well-designed places
- Section 14. Meeting the challenge of climate change, flooding and coastal change

OTHER MATERIAL CONSIDERATIONS

5.3 Lancashire County Council Hot Food Takeaways and Spatial Planning
Public Health Advisory Note

6.0 CONSULTATION RESPONSES

6.1 FLEETWOOD TOWN COUNCIL – no comments received

6.2 LANCASHIRE COUNTY COUNCIL HIGHWAYS – no objection. The development site is located with an existing row of shops, where there are other hot food takeaways. There is unrestricted parking at the front of the row serving the existing businesses. It is also noted that the site has had previous planning permission for change of use from Class A1 to A1 and A5 (ref 09/00584/FUL).

6.3 WYRE COUNCIL HEAD OF ENVIRONMENTAL HEALTH AND COMMUNITY SAFETY (AMENITY) – Original response received requested information on odour filtration and noise, collections and deliveries. Second response received confirms satisfied with the risk assessment carried out in relation to odour and the methodology for neutralizing odours. Third (and final) response received confirms no objection to noise assessment submitted and accepts the noise mitigation proposed (to include enclosure of the fan unit case, silencers and anti-vibrational mounts). Conditions are recommended to secure the noise mitigation.

6.4 WYRE COUNCIL HEAD OF ENGINEERING SERVICES (DRAINAGE) – no objection

7.0 REPRESENTATIONS

7.1 Five letters of objection have been received, a summary of comments raised is as follows:

- Important to maintain variety of retail shops
- Anti-social behaviour problems
- Already too many takeaways
- will contribute to traffic problems
- wanting to lease the property themselves as a pet hardware and flower business

7.2 One letter of support has been received, a summary of comments raised is as follows:

- The application is a viable alternative, as yet another shuttered shop is not in anyone's interest.

8.0 CONTACTS WITH APPLICANT/AGENT

8.1 Submitted noise impact assessment 25/5/21

8.2 Submitted odour information 25/2/21

9.0 ISSUES

9.1 The main issues to consider in this application are as follows:

- Principle of development
- Visual Impact
- Impact on Residential Amenity
- Impact on Highway/Parking
- Flood Risk and Drainage

Principle of development

9.2 The site is within the urban area of Fleetwood and also a defined Neighbourhood Centre / Parade. The Wyre Local Plan sets out a hierarchy of different centres within the Borough, based on their size and role. At the top of the hierarchy is town centre, followed by district centre, local centre and finally neighbourhood centre / parade. Policy EP4 of the Local Plan aims to encourage a diversity of uses in these centres to maximise their vitality and viability. Development which will adversely affect the vitality and viability of a defined centre will not be permitted in order to ensure the sustainability of communities. The policy acknowledges that neighbourhood centres are important for the sustainability of the communities they serve. Development which will affect their vitality will only be permitted where the local area is served by alternative provision or the property was marketed in accordance with Policy SP6 (Viability).

9.3 In this parade of units, there are currently two retail shops, a hairdressers, Post Office, two takeaways and two vacant retail units. Therefore, 75% of the units are in or available for retail A1 use. If this proposal were to be approved, this would be reduced to 63%. It is considered that this would still ensure a viable centre that serves the community, with a range of shops and facilities retained. The unit would retain a shop front, and therefore an active frontage. On balance, it is not considered that there would be unacceptable harm to the vitality and viability of the centre as a result of this change of use proposal, and therefore the proposal complies with Policy EP4. A takeaway is sui-generis so cannot change use to a different use without planning permission. A public comment has been received where the person states that they wish to lease the unit and use it as a shop. This is a private matter between the relevant parties, and there is no policy requirement to consider alternative uses / options in this context.

9.4 Policy SP8 of the Wyre Local Plan supports development which promotes healthy communities and opportunities that make it easier for people in Wyre to lead healthy, active lifestyles. Lancashire County Council have produced a document titled 'Hot Food Takeaways and Spatial planning Public Health Advisory Note', which is a material planning consideration to be given some weight. This advises on a 400 metre restriction zone around secondary schools for takeaways. Fleetwood High school is to the south-east. The school buildings are outside the 400m buffer zone. The guidance also advises that applications for new takeaway uses should be restricted in wards where more than 15% of year 6 pupils or 10% of reception pupils are classed as obese. In Rossall ward, the most recent data shows that 28.6% of Year 6 children and 9.1% of reception children are obese. Finally the guidance recommends that clustering of A5 uses in deprived neighbourhoods is to be avoided. According to the 2019 indices of deprivation Rossall has 2 areas that are in the top 10% most deprived lower super output areas (LSOA's) nationally, and this proposal would result in three takeaways in the neighbourhood parade, which could be considered to be a clustering of takeaways. Whilst it is acknowledged that the proposal would be contrary to the LCC guidance in relation to the child obesity and deprivation data this must be balanced against the fact that there is no Local Plan policy on takeaway provision and health. Indeed in preparing Wyre's Local Plan, Wyre's obesity and deprivation levels were considered insufficient evidence to justify such a policy on takeaway restrictions in Wyre. Therefore members are advised that this conflict with the LCC guidance is insufficient reason in itself to justify refusal of the planning application.

9.5 Policy SP2 of the Wyre Local Plan requires development in Wyre to be sustainable and contribute to the continuation or creation of sustainable communities. Relevant in this case is to maintain the vitality of local centres, which is addressed above, as well as to ensure accessible places, reduce flood risk and achieve safe and high quality designed local environments which promotes health and well-being. The site is in the urban area, within walking distance to a number of residential areas therefore is considered suitably accessible. Matters on flooding, design and amenity are assessed below in this report and considered acceptable. The proposal is therefore considered to result in sustainable development and there are no climate change concerns.

Visual Impact / Design / Impact on the street scene

9.6 No physical alterations are proposed to the shop front. An extraction flue is proposed to the rear, with associated extraction set on the existing flat roof extension. This would propose a flue in galvanized metal to marginally above ridge height, attached to an existing rear dormer with brackets. Metal pipework would be set on top of the existing flat roof. The flue would not be visible from the frontage. The extraction would be visible from the rear. Immediately to the rear of the site is a service yard and parking, beyond this are residential properties. There are other smaller flues on the rear of adjacent units, as well as a large UPVC dormer on the rear of the application property and adjoining property. The proposed flue and extraction would be larger and more prominent than existing extraction in this row. However, on the rear elevation, where there are already large dormers, it is not considered that it would be obtrusive, so as to be harmful to the appearance of the wider street-scene. A condition could be added for the colour finish to be agreed, as painting the flue in a darker colour such as black, would likely assist in making it less prominent. Bins can be stored to the rear of the property, which would be visually acceptable.

Impact on residential amenity

9.7 There would be no overlooking or impacts on light from the proposal. The Council's Environmental Health Team has been consulted on the application and initially requested further information on noise and odour. A noise assessment has been provided with mitigation recommended, and Environmental Health officers are satisfied that there would not be an unacceptable noise impact provided that the proposed mitigation, namely enclosure of the fan unit, use of silencers and anti-vibrational mounts, is installed and remains in situ. This can be secured by condition. As the enclosure to the fans would be external, it is considered necessary to condition the agreement of the details of the appearance of this. Information has been provided on odour, and Environmental Health officers are satisfied this would be acceptable. The proposed measures can be secured by condition. The opening hours proposed are 16.30 to 23:00. Again this can be secured by condition to protect neighbouring amenity. Therefore, overall there are no residential amenity concerns and the proposal is considered to satisfy policy CDMP1 of the Local Plan.

Impact on Highway/Parking

9.8 Lancashire County Council Highways have been consulted on the application and have no objections. The site is in the urban area and there is some existing parking provision for the parade. Customers would also be able to walk to the takeaway, just as they can the current shop. The proposal is therefore considered to be acceptable in terms of highway safety and parking and in accordance with policy CDMP6 of the Local Plan.

Flood Risk and drainage

9.9 The site is in Flood Zone 3. Sequential and exception tests are not required to be passed for a change of use application. The change of use application would not involve a change to a 'more vulnerable' or 'highly vulnerable' classification of use. Therefore, there is no requirement to consult the Environment Agency. The plans state that 'proposed floor levels will be no lower than existing floor levels and flood protection measures in accordance with Environment Agency guidelines will be incorporated into the build'. The council's drainage engineer has been consulted on the application and has no objections. As the takeaway use is no more vulnerable than a shop use, it is not considered that there would not be a material impact on the flood risk of the site. The flood risk assessment submitted is therefore considered appropriate and acceptable.

Other Issues

9.10 Comments have been raised about anti-social behaviour. Although this is a material planning consideration, there is no submitted evidence or planning policies, which support that the proposal would contribute towards anti-social behaviour, therefore, it is not considered that there would be planning harm on this matter.

9.11 An informative could be added to any planning permission granted, about the need for advertisement consent. Also, an informative can be used, so that the applicant is aware that if any works were to encroach onto neighbouring property, the owner's consent would be required.

10.0 CONCLUSION

10.1 The proposal is considered to be acceptable in principle, having been assessed to not be harmful to the vitality and viability of a neighbourhood centre. Whilst conflict with the LCC guidance on takeaways is acknowledged, this carries limited weight and in itself is not considered to amount to a reason to refuse planning permission. The proposal would be visually acceptable and would not be harmful to neighbouring amenity, provided that noise mitigation is secured by condition. There are no highway safety or parking concerns with the proposal, and the proposal would not present an unacceptable flood risk. Overall, the proposal has been assessed to comply with the above mentioned Adopted Local Plan Policies and the NPPF.

11.0 HUMAN RIGHTS ACT IMPLICATIONS

11.1 ARTICLE 8 - Right to respect the private and family life has been considered in coming to this recommendation.

11.2 ARTICLE 1 - of the First Protocol Protection of Property has been considered in coming to this recommendation.

12.0 RECOMMENDATION

12.1 Grant full planning permission.

Recommendation: Permit

Conditions: -

1. The development must be begun before the expiration of three years beginning with the date of this permission.

Reason: This condition is required to be imposed pursuant to 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 shall be carried out, except where modified by the conditions to this permission, in accordance with the Planning Application received by the Local Planning Authority on 5 January 2021 including the following plans/documents:

- Proposed side elevation (Job No. CHATS1 Revision ELSV1)
- Proposed plans Drawing number 20-213-1 Revision A
- Location plan 1:1250

The development shall be retained hereafter in accordance with this detail.

Reason: For the avoidance of doubt and so that the Local Planning Authority shall be satisfied as to the details.

3. No development above ground level (save any internal alterations) shall be commenced until details of the materials and colour finish to be used in the construction of the external extraction, and details of the appearance (including elevations, materials and colour finish) of the enclosure to the fan unit cases, have first been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out, and retained thereafter, in accordance with the approved details.

Reason: To safeguard the visual amenities of the locality and in accordance with Policy CDMP3 of the Wyre Local Plan (2011-31).

4. Prior to first use of the development hereby approved, the noise mitigation measures set out in the supporting Noise Assessment submitted with the application [NOVA acoustics 21/5/2021], shall be implemented. The approved noise mitigation measures shall thereafter be retained and maintained.

Reason: To avoid an unacceptable impact on residential amenity by virtue of noise in accordance with Policy CDMP1 of the Wyre Local Plan (2011-31).

5. The premises shall not be open to the public outside the hours of 12:00 to 23:00 on any day.

Reason: In the interests of the amenity of occupiers of neighbouring and nearby residential properties in accordance with Policy CDMP1 of the Wyre Local Plan (2011-31).

6. There shall be no commercial deliveries / waste collections to or from the use hereby permitted outside the hours of 08.00 to 23:00.

Reason: In the interests of the amenity of occupiers of neighbouring and nearby residential properties in accordance with the provisions of Policy CDMP1 of the Wyre Local Plan (2011-31).

7. Prior to first use of the development hereby approved, the odour mitigation measures set out in the supporting information submitted with the application [extraction plan Job No. CHATS1 Revision TVV1, Airclean Technical Bulletin, safe contained ozone generators, and Northern fan supplies Ltd] shall be implemented. The approved mitigation measures shall thereafter be retained and maintained.

Reason: To ensure there is no adverse effect on the health and quality of life of future occupants and to avoid an unacceptable impact on residential amenity by virtue of odour in accordance with Policy CDMP1 of the Wyre Local Plan (2011-31).

Notes: -

1. This permission does not relate to the display of any advertisements which may require consent under the Town and Country Planning (Control of Advertisements) Regulations 1989.

2. If any part of the proposed development encroaches onto neighbouring property the approval of the adjoining owners should be obtained before the development is commenced.

3. The site falls in Flood Zone 3. It is therefore recommended that flood proofing measures are considered by the applicant and incorporated into the development where appropriate.

Further details are available on the GOV.UK website:-

- Improving the flood performance of new buildings: flood resilient construction (<https://www.gov.uk/government/publications/flood-resilient-construction-of-new-buildings>)
- Prepare your property for flooding (<https://www.gov.uk/government/publications/prepare-your-property-for-flooding>)

Further Preparing for Floods guidance is also available on the Planning Portal website at

<http://www.planningportal.gov.uk/buildingregulations/goodpractice/preparingforfloods>