

Planning and Rights of Way Panel 10th March 2020
Planning Application Report of the Head of Planning & Economic Development

Application address: 144 Butts Road Southampton SO19 1BJ			
Proposed development: Proposed change of use from retail (Class A1) to hot food takeaway (Class A5) with installation of rear extraction flue			
Application number:	20/00010/FUL	Application type:	FUL
Case officer:	John Fanning	Public speaking time:	5 minutes
Last date for determination:	13.03.2020 (ETA)	Ward:	Sholing
Reason for Panel Referral:	Five or more letters of objection have been received	Ward Councillors:	Cllr Vaughan Cllr Baillie Cllr Guthrie
Referred to Panel by:	N/A	Reason:	N/A
Applicant: Mr A Ozdemir		Agent: Advoco Planning Limited	

Recommendation Summary	Conditionally Approve
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Community Infrastructure Levy Liable	Not applicable
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REASON FOR GRANTING PLANNING PERMISSION

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. Other material considerations have been considered and are not judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted. In reaching this decision the Local Planning Authority offered a pre-application planning service and has sought to work with the applicant in a positive and proactive manner as required by paragraphs 39 - 42 and 46 of the National Planning Policy Framework (2019).

Saved Policies - SDP1, SDP5, SDP7, SDP16, REI7 of the City of Southampton Local Plan Review (Amended 2015); CS13 and CS19 of the Local Development Framework Core Strategy Development Plan Document (Amended 2015).

Appendix attached			
1	Development Plan Policies	2	Relevant Planning History
3	Minutes of Panel (18/02309/FUL)	4	Summary of management plan

RECOMMENDATION IN FULL
Conditionally approve

1. Background

- 1.1 This application follows a similar application at this address that was approved by the Planning Panel in April 2019. The earlier permission has been implemented, with this application seeking consent for a second takeaway use.

2. The site and its context

- 2.1 The application site contains a 2 storey building on the east side of Butts Road with its own forecourt. The property forms part of a small commercial frontage, with residential units above and the wider surrounding area being residential in nature.

3. Proposal

- 3.1 The application seeks consent for conversion of the ground floor of the unit from Class A1 to Class A5 (takeaway) and the associated installation of extract/ventilation equipment. The applicant seeks hours of use from 5PM-11PM (17:00-23:00) Monday-Sunday. This scheme seeks to add a second A5 use following the previous application approved under 18/02309/FUL.

4. Relevant Planning Policy

- 4.1 The Development Plan for Southampton currently comprises the “saved” policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015) and the City Centre Action Plan (adopted 2015). The most relevant policies to these proposals are set out at Appendix 1.
- 4.2 The National Planning Policy Framework (NPPF) was revised in 2019. Paragraph 213 confirms that, where existing local policies are consistent with the NPPF, they can be afforded due weight in the decision-making process. The Council has reviewed the Development Plan to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.

5. Relevant Planning History

- 5.1 A schedule of the relevant planning history for the site is set out in Appendix 2 of this report.
- 5.2 The site previously formed part of a larger Class A1 retail use. An application was refused in 2015 (15/01864/FUL) for the subdivision of the premises into three separate Class A5 uses on the basis that it would represent an over-intensification of the unit resulting in harm to the amenities of neighbouring occupiers in terms of activity and associated traffic.
- 5.3 A separate application was submitted in 2018 (18/02309/FUL), subdividing the space into 2 units, seeking permission for one half of the unit as an A5 premises and the application site as an A1 unit. This application was approved by Panel on 30.04.2019 (a copy of the minutes are attached in Appendix 3).

6. Consultation Responses and Notification Representations

6.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners and erecting a site notice (21.01.2020). At the time of writing the report **22** representations have been received from surrounding residents (22 representations were received from 15 separate addresses, of which 13 were signed copies of a standard letter). The following is a summary of the points raised:

6.2 ***Noise/smells from takeaway are harmful to neighbouring occupiers***

Response

The Councils Environmental Health team have raised no objection to the proposal on the basis of a scheme of mitigation presented by the applicant.

6.3 ***Will result in additional litter in surrounding area/concerns in relation to anti-social behaviour/impact of late night opening***

Response

Hampshire Constabulary were consulted on the application and have not commented as was the case with the earlier application. It is noted that there do not appear to be any planning restrictions on the operation of the existing A1 use. However, notwithstanding this it is accepted that the proposal does include operation into the evening. The impacts of the associated evening activities are considered in more detail in section 6 below.

6.4 ***Insufficient parking capacity for development/highways safety concerns from additional traffic on busy road/servicing of existing units is disruptive and would worsen as a result of proposal/insufficient refuse storage arrangements***

Response

The application relates to the subdivision of an existing commercial unit which (while currently vacant) has an existing impact on the surrounding area. The application will need to be judged in the context of whether the proposal represents a substantially harmful increase in intensity when compared to the existing use of the premises as a shop (Class A1).

6.5 ***There has been insufficient time to assess impacts of previous consent***

Response

The proposal has been considered in the context of the neighbouring commercial and residential uses and current development framework.

6.6 ***Submitted plans are misleading***

Response

Technical specifications of the proposed extraction equipment have been provided up front with the application and site photographs are available in the officer presentation to provide context for the proposal.

Consultation Responses

6.7 **Environmental Health** – Following the submission of details of a scheme of noise and odour control, no objection is raised to the proposal subject to the development being implemented in accordance with these details prior to first occupation.

6.8 **Highways** – Overall it is considered that while the pattern of visits to the site will change, A5 uses typically generate less trips than the existing A1 use. Servicing of the site is difficult due to the current layout but this would be similar to the existing arrangement. The applicant has proposed smaller servicing vehicles which would likely represent an improvement on the existing A1 use. Overall, no objection is raised subject to suitable conditions to secure the servicing of the development.

6.9 **Licensing** – No comment.

6.10 **Police** – No comment.

6.11 **CIL** - The application is not liable for CIL.

7.0 Planning Consideration Key Issues

7.1 The key issues for consideration in the determination of this planning application are:

- Principle of development
- Intensification of use
- Parking, highways and transport
- Amenities and facilities

7.2 Principle of Development

7.2.1 The site does not lie within an identified local centre but is situated in a small row of commercial premises situated in a wider residential context. There are a mix of different property types in the surrounding area, with flats to the rear and at first floor level in the application site and more typical family residential dwellings in the surrounding area. Broadly no objection is raised to the principle of a takeaway use subject to the development not resulting in noise and disturbance that would be detrimental to the residential amenities of the surrounding. This conclusion was reached by the Council previously when it approved application reference 18/02309/FUL.

7.3 Intensification of use

7.3.1 In 2015 the Council determined that the subdivision of the former A1 unit into 3 A5 uses would be harmful. In 2019, permission was granted for the subdivision of the A1 use into 2 units, with one half being an A5 use (opening midday-10PM Monday to Sunday) and the other being retained as an A1 use.

7.3.2 The current application seeks permission for the remaining vacant A1 unit to also be converted to use as a takeaway with the proposed opening hours being 5PM-11PM (Monday to Sunday). The existing Class A1 use is not restricted in its opening times or serving arrangements and this is a material

planning consideration in this instance as the alternative A5 and its associated activities could be controlled through such conditions. Whilst the proposals result in two A5 uses being located next to one and another, it is considered that the associated noise and disturbance impacts could be controlled through planning conditions. In itself it is not considered that a potential A5 premises is intrinsically more intensive than the existing A1 use subject to the particular features of the Class A5 use being mitigated and addressed by the use of conditions.

- 7.3.3 The application form proposes opening to an additional hour into the evening when compared to the adjoining use (a terminal hour of 11PM instead of 10PM). Whilst the premises does operate as part of a small row of commercial uses, the proposal needs to be considered in the context of the surrounding residential uses above and in the surrounding area. In this context and in order to appropriately mitigate noise and disturbance to neighbouring properties, it is considered that opening hours of 5PM-10PM (Monday to Sunday) are more appropriate opening hours and a condition is recommended to this effect. In addition a condition is recommended to secure refuse and recycling details. It would be difficult to resist any request by the neighbouring takeaway for an 11PM close if this request was supported. The applicant can appeal these hours should they wish.
- 7.3.4 Subject to compliance with these conditions it is considered that the proposed A5 use would not result in adverse harm to residential amenity in terms of noise and disturbance and would represent an appropriate use of a vacant commercial unit in this area.

7.4 Parking highways and transport

- 7.4.1 Local residents have raised significant concerns regarding extant parking issues in the surrounding area, particularly raising concerns that further intensification of the commercial activity in this area will exacerbate existing conflict between customers and immediate local residents.
- 7.4.2 Parking is restricted in the area around the site, with a section to the front of the shops allowing short stay parking. The applicant has outlined that they do not propose to utilise the available forecourt due to concerns with the access (there being no dropped kerb to the immediate frontage of the site). No objection is proposed to this arrangement.
- 7.4.3 Broadly, it is considered that the parking restrictions in the surrounding area will restrict parking in the immediate street scene around the site. It is considered that the pattern of visits would be later in the evening than the existing larger A1 use of the site, however normal parking restrictions would apply and would not result in significant highway safety or amenity concerns. Overall it is not considered that there would be such substantial harm associated with additional visits to the site when compared to the existing A1 use as to justify refusing the application on this basis. No objection has been raised on the grounds of highways safety by the Councils highways team.

7.5 Amenities and facilities

- 7.5.1 The application will involve the installation of extract/ventilation equipment associated with the new use. Unfortunately the application on the adjoining site was occupied without complying with the conditions imposed on the

original consent resulting in a number of issues associated with the noise and odour from the premises. The Councils Environmental Health team are now satisfied that an appropriate scheme of mitigation is in place. In order to avoid any repetition of this circumstance officers have sought details of the proposed scheme of noise and odour control for the current application up front rather than seeking to secure by condition prior to occupation. The previous application also sought a servicing management plan and cycle details, with similar up front submissions being made with the current application (summarised in Appendix 4).

- 7.5.2 As outlined in section 6.7, the Councils Environmental Health team have advised they are satisfied that the proposed scheme will be sufficient to mitigate the harmful impacts of the proposal on neighbouring residential occupiers.

8. Summary

- 8.1 For the reasons outlined above it is considered that the proposal would not result in such substantial harm as to justify refusing the application subject to suitable conditions to control and mitigate the impacts of the use.

9. Conclusion

- 9.1 The application is recommended for conditional approval.

Local Government (Access to Information) Act 1985

Documents used in the preparation of this report Background Papers

1. (a) (b) (c) (d) 2. (b) (d) (f) 4.(f) (g) (vv) 6. (a) (b)

JF for 10/03/20 PROW Panel

PLANNING CONDITIONS

01. Full Permission Timing Condition (Performance)

The development hereby permitted shall begin no later than three years from the date on which this planning permission was granted.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

02. Hours of Use (Performance)

The Class A5 use hereby approved shall not be open to the public outside the following hours:

Monday-Sunday - 17:00-22:00 (5PM to 10PM)

Reason: To protect the amenities of adjoining residential occupiers.

03. Management (Performance)

The development shall be implemented and operate in accordance with the details outlined in the submitted 'Ventilation System Proposal Including Noise and Odour Control' (dated 4th February), 'Internal Noise Assessment' (reference SA-6383) and 'Additional Details' documents. The details outlined in these documents shall be installed prior to first use and thereafter retained in working order as agreed.

Reason: To protect the amenities of nearby occupiers.

04. Litter bin (Performance)

A litter bin shall be provided on the site within the customer area of the floor space and made available for use of patrons of the hot food takeaway hereby approved during trading hours and retained as such for this purpose thereafter.

Reason: To prevent littering in the surrounding area.

05. Refuse & Recycling (Performance)

Before the development hereby approved first comes into occupation, the storage for refuse and recycling shall be provided in accordance with the plans hereby approved and thereafter retained as approved.

Reason: In the interest of visual and residential amenity.

06. Approved Plans

The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority.

Reason: For the avoidance of doubt and in the interests of proper planning.

POLICY CONTEXT

Core Strategy - (as amended 2015)

CS13 Fundamentals of Design

City of Southampton Local Plan Review – (as amended 2015)

SDP1 Quality of Development
SDP4 Development Access
SDP5 Parking
SDP16 Noise
REI7 Food and Drink Uses (Classes A3, A4 and A5)
REI8 Shopfronts

Supplementary Planning Guidance

Residential Design Guide (Approved - September 2006)
Planning Obligations (Adopted - September 2013)
Parking Standards SPD (September 2011)

Other Relevant Guidance

The National Planning Policy Framework (2019)
The Southampton Community Infrastructure Levy Charging Schedule (September 2013)

Relevant Planning History

18/02309/FUL, Proposed change of use of part of the ground floor from retail (A1 use) to hot food takeaway (A5 use) with installation of rear extraction flue and alterations to the shop front
Conditionally Approved, 30.04.2019

15/01864/FUL, Change of use from retail (class A1) to 3x take away units (class A5) with new shop front and installation of extract flue to side.
Refused, 03.12.2015

REASON FOR REFUSAL - Loss of amenities

Having regard to the predominantly residential location of the site, which is not within an identified Local or District Centre where the Council would normally encourage food and drink uses to be located, the provision of three separate hot food takeaway uses (Use Class A5) would materially harm the amenities of the neighbouring and nearby residential occupiers. In particular, the noise and disturbance arising from the intensity and nature of the comings and goings associated with the proposed uses would result in a level of activity which would be discordant within a residential area. Furthermore, the proposed hours of operation would result in disturbance in late evening when residents would expect to enjoy the peace and quiet of their homes in the evenings. As such, the proposal would be contrary to saved policy SDP1(i), REI7 and SDP16 of the Local Plan Review (amended March 2015).

REASON FOR REFUSAL - Highway and Parking

The proposed development, by reason of the level and nature of traffic movements to and from the site would have a detrimental impact on the safety of other highway users, having regard to the existing congestion and vehicle movements resulting from vehicle parking, the nearby bus stop and on-street parking restrictions. Furthermore, the application proposes significantly less parking than permitted by the Council's adopted Car Parking Standards Supplementary Planning Document and it has not been adequately demonstrated that the parking demands generated by the development could be accommodated on the application site. As such, the proposal would adversely affect the safety and convenience of the other users of the adjoining highway and prove contrary to the provisions of Policy SDP1 of the City of Southampton Local Plan Review (Amended 2015), Policy CS19 of the Southampton Core Strategy Development Plan Document (amended 2015) and as supported by the Council's Parking Standards Supplementary Planning Document 2011.

06/01470/FUL, Installation of through the wall ATM.
Refused, 07.12.2006

04/01992/FUL, Installation of an air conditioning/ refrigeration unit to the rear and shop front alterations.
Conditionally Approved, 10.05.2005

04/01640/FUL, Installation of new shop front, ATM and trolley bay to front and air conditioning/refrigeration unit to rear.
Refused, 13.12.2004

Minutes Panel (18/02309/FUL)

The Panel considered the report of the Service Lead, Planning, Infrastructure and Development recommending that conditional planning permission be granted in respect of an application for a proposed development at the above address.

Proposed change of use of part of the ground floor from retail (A1 use) to hot food takeaway (A5 use) with installation of rear extraction flue and alterations to the shop front.

Jill Wilcox (local residents/ objecting) and Richard Goodall (agent), were present and with the consent of the Chair, addressed the meeting.

The presenting officer reported that the police were consulted and had not responded with any concerns about the application. It was noted that the applicant had submitted a parking survey in relation to the proposal. The presenting officer explained that the applicant had agreed to the imposition of pre-commencement/occupation conditions with the exception of Condition 3 (Servicing Management Plan). However, this had only been verbally agreed and not agreed in writing. As such the recommendation was amended to delegate to the Service Lead to approve the application once this confirmation was received or to otherwise refuse the application if such agreement was not forthcoming.

It was noted that the officer report should have referred to the National Planning Policy Framework (2019).

The Panel then considered the amended officer recommendation to delegate permission to grant planning permission. Upon being put to the vote the recommendation was carried unanimously.

RESOLVED

(i) that authority to grant planning permission be delegated to the Service Lead-Planning, Infrastructure and Development approved subject to the conditions set out within the report and any additional or amended conditions set out below; and

(ii) that authority be delegated to the Service Lead-Planning, Infrastructure and Development to refuse the planning permission should no written agreement be received to confirm the applicants acceptance of the amended service management plan.

Amended recommendations

CONDITION 3 SERVICING MANAGEMENT PLAN (PRE-OCCUPATION)

Prior to the first occupation of the use hereby approved a servicing management plan shall be submitted to the Local Planning Authority to include details of how the servicing arrangement for the premises will be undertaken. Any management plan will include a restriction of deliveries to the property outside of the following hours:
08:00-19:00 (8AM-7PM)

The development shall be implemented in accordance with the approved details and maintained as such thereafter.

REASON: To ensure highways safety and the amenities of nearby occupiers.

CONDITION 5 NOISE PLANT AND MACHINERY

The use hereby approved shall not commence until an acoustic report and written scheme to minimise noise from plant and machinery associated with the proposed development, including details of location, orientation and acoustic enclosure, has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details and maintained as such thereafter.

REASON: To protect the amenities of the occupiers of existing nearby properties

Additional Condition

CYCLE STORAGE FACILITIES (PRE-OCCUPATION CONDITION)

Before the development hereby approved first comes into occupation, 2 bicycle parking spaces shall be provided to the Butts Road frontage of the site in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. The storage shall be thereafter retained as approved.

REASON: To encourage cycling as an alternative form of transport and to restrict forecourt parking and associated highway safety issues

Summary of management plan

- All deliveries to take place between 8AM-7PM (Mon-Sat, no deliveries Sunday)
- Delivery vehicles will typically be transit sized and will unload from Butts Road
- Refuse bins will be wheeled to the site frontage on collection days
- Sheffield stand will be installed on forecourt