
**Change of use of A1 (shops) use to an A5 (Hot food takeaway)
use**

**Report Item No
A3**

119 Belvoir Road Coalville Leicestershire LE67 3PH

**Application Reference
19/00017/FUL**

**Grid Reference (E) 442422
Grid Reference (N) 313922**

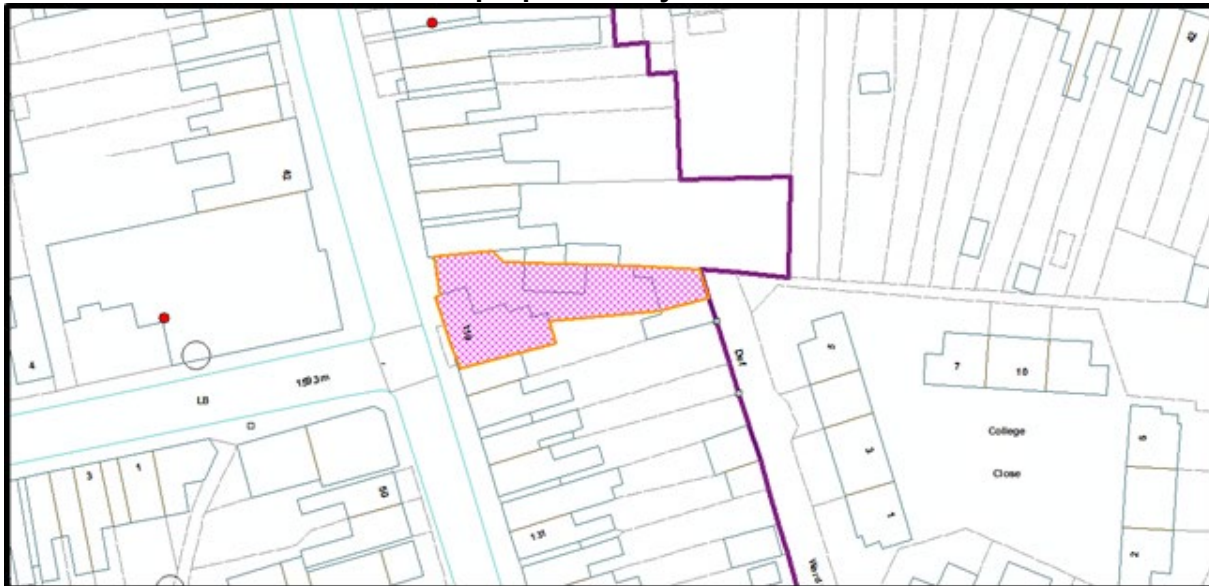
**Date Registered:
11 January 2019
Consultation Expiry:
1 May 2019
8 Week Date:
8 March 2019**

**Applicant:
Mr Mizan Uddin**

**Case Officer:
Anna Edwards**

**Recommendation:
PERMIT**

Site Location - Plan for indicative purposes only



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Executive Summary of Proposals and Recommendation

The planning application was previously considered at the planning committee meeting which took place on the 4th June 2019. The application was deferred at this meeting pending additional information at the request of councillors. The original submission has been updated with amended scaled floor plans which show a previously missed existing window opening to the rear elevation of the food prep room; amended scaled existing and proposed elevation drawings to show the site and premises accurately depicted; specification details for soundproofing and fire boarding and details of the walls and ceilings to be treated; detail of the contractor whom will be undertaking the works; and, an updated car parking plan.

The Leicestershire Fire and Rescue Service has been consulted on the application. The consultation response states that *the fire service do not generally make comments on planning applications/consultations. As far as the Fire Service is concerned as this is only at the proposed stage there is no life risk at the premises at the moment. Once the premises is occupied if you have concerns please let us know.*

The Council's Environmental Environmental Protection and Building Control team have been consulted on the updated information. Updated comments will be reported on the Update Sheet.

The application is reported again to the Planning Committee. It is an application of significant public interest and raises matters which should be referred to the Planning Committee for consideration. Ward Councillor John Geary has called the application in for Planning Committee consideration on the grounds of highway safety and residential amenity.

Proposal

Planning permission is sought for the change of use of A1 (shops) use to an A5 (hot food takeaway) use at 119 Belvoir Road, Coalville. The proposal also includes the installation of extraction equipment located to the rear elevation.

Consultations

Statutory consultees have raised no objections to the application subject to the imposition of conditions.

Ward Councillor John Geary has called the application in for Planning Committee consideration on the grounds of highway safety and residential amenity.

Letters of objection have been received from 6 individuals. Two petitions have been received, one with 43 signatures and one with 37 signatures.

Planning Policy

The application site is located within the Limits to Development, located within Coalville Town Centre. The application has been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance.

Conclusion

The key issues arising from the amended application details are:

- The principle of a takeaway use on the site
- Impact on visual amenity and design
- Impact on surrounding residents
- Impact on highway safety/parking

The report looks into the key planning issues in detail, and officers conclude that the details are satisfactory. The detailed scheme meets the requirements of the relevant policies of the Councils adopted Local Plan and the adopted Good Design for North West Leicestershire SPD.

RECOMMENDATION - PERMIT subject to the following conditions:-

Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment, and Members are advised that this summary should be read in conjunction with the detailed report.

MAIN REPORT

1. Proposals and Background

Planning permission is sought for the change of use of A1 (shops) use to an A5 (hot food takeaway) use at 119 Belvoir Road, Coalville. The proposal also includes the installation of extraction equipment located to the rear elevation.

The application site comprises the ground floor of a two storey building and outside hard standing area to the eastern side of Belvoir Road, Coalville.

The premises is currently un-occupied, with the premises previously being used as a stoves and fire shop (Class A1).

The first floor of the building is used for living accommodation in the form of a flat and the neighbouring dwelling, No. 121 Belvoir Road, partially overlaps the site at first floor level, in a flying freehold arrangement.

To the north of the building is an area of hard standing, providing off road parking for the premises.

The site is situated within the defined Coalville Town Centre but located outside of the Primary Shopping Area.

There are a range of uses within the immediate vicinity of the site, including residential and commercial as well as hot food takeaways.

Internally, the layout of the existing shop would be altered to accommodate the proposed use.

Externally, the application proposes the installation of extraction equipment. This would include a flue from the kitchen at the eastern/ rear elevation of the building.

The application has been accompanied by a product specification document for the extraction unit.

Throughout the course of the application, amended and additional details have been requested by the case officer. These have been subject to full re-consultations.

No recent relevant planning history found in relation to this site.

2. Publicity

15 neighbours notified

Site Notice displayed 25 January 2019.

3. Summary of Consultations and Representations Received

Ward Councillor John Geary called the application in for planning committee consideration. The following concerns were raised in the call in request:-

- Concerns with regard to adverse impacts on residential amenity as a result of smells and general disturbance of people coming and going late in the evening;
- Highway safety concerns with regard to the lack of parking provision.

Further concerns raised by Cllr Geary during the course of the application include ensuring adequate noise insulation and fire separation.

Leicestershire County Council Highway Authority - raised no objections subject to conditions to ensure that adequate off street parking provision is made.

NWLDC Environmental Protection raised no objections subject to conditions to ensure that a noise insulation scheme is submitted and agreed and that the cleaning and maintenance of the extraction system is adhered to.

Third Party Representations

Letters of objection have been received from 6 individuals, raising the following concerns:-

Principle

- There are already a 5 Indian takeaways located in Coalville
- Legislation for the evening economy on food and drink in the Coalville area - 3 takeaways on the same street within 20 properties
- UK already statistically the most obese country in Europe. Adding more shops is encouraging people to buy takeaways

Residential amenity, noise and disturbance

- The takeaway would be situated in an area built up by a number of properties
- Traffic increase and customers would cause a massive rise in noise
- Late opening hours
- Takeaway will overlook a number of houses
- Strong odours and smells
- The flue would be downwind from daughter's bedroom window - unable to have the windows open due to the stench
- Flying freehold- neighbours daughter's bedroom located over the kitchen (preroom)
- Neighbour would never get any peace or feel comfortable in own home, impact upon mental health
- Neighbouring walls so thin that every noise would be heard
- Lack of sleep for neighbours children due to noise affecting health and schooling
- The shop may attract drunk or unsociable people
- Mice rats and flies
- Litter problems

Highway Considerations

- Located near to a junction
- Not suitable for the business it will attract
- Cause constant congestion of traffic
- Not safe for road users or members of the public
- No parking to the property as the shop has double yellow lines all round
- No suitable parking at the premises for customers
- Nowhere for delivery vans to park

Other Matters

- Immense fire risk leaving neighbouring property at risk
- Neighbouring access through No119 back yard concern it may be restricted or blocked or people may unlawfully gain access to the neighbouring property.
- Negative affect upon neighbouring house prices

Two standard objection petitions have been received with 43 and 37 signatures. No grounds for objection were stated upon the petitions.

The full contents of all the letters of representation are available for members to inspect on the case file.

4. Relevant Planning Policy

National Planning Policy Framework (2019)

The following sections of the NPPF are considered relevant to the determination of this application:

- Paragraph 7 and 8 (Achieving sustainable development);
- Paragraph 11 (Presumption in favour of sustainable development);
- Paragraph 85 (Ensuring the vitality of town centres);
- Paragraphs 127 (Requiring good design);
- Paragraph 55, 56 (Planning conditions and obligations)

Adopted North West Leicestershire Local Plan (2017)

The following policies of the adopted Local Plan are consistent with the policies in the NPPF and should be afforded weight in the determination of this application:

- S2 - Settlement Hierarchy
- D1 - Design of New Development
- D2 - Amenity
- IF4 - Transport Infrastructure and New Development
- IF7 - Parking Provision and New Development
- Ec8 - Town and Local Centres: Hierarchy and Management of Development

Other Policies/Guidance

- National Planning Practice Guidance
- Leicestershire Highways Design Guide (Leicestershire County Council)
- Good Design for North West Leicestershire SPD - April 2017

5. Assessment

Updated Assessment

The original submission has been updated with amended scaled floor plans which show a previously missed existing window opening to the rear elevation of the food prep room; amended scaled existing and proposed elevation drawings to show the site and premises accurately depicted; specification details for soundproofing and fire boarding and details of the walls and ceilings to be treated; detail of the contractor whom will be undertaking the works; and, an updated car parking plan.

The additional information and consultation responses received so far do not alter the original assessment which is outlined below.

In accordance with the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the starting point for the determination of the application is the Development Plan which, in this instance comprises the adopted Local Plan 2017.

This application proposes to change the use of an existing retail unit to a hot food takeaway.

The application site is situated within the defined Coalville Town Centre. A5 hot food takeaways are referred to in the NPPF as a main town centre uses. Policy Ec8 of the Local Plan highlights that proposals for main town centre uses will be expected to be located within town centres. The proposal for a hot food takeaway is therefore considered to be an acceptable use in principle in the town centre location.

Concerns were raised within the letters of objection that there are already 5 Indian takeaways located in Coalville. The question was asked by an objector "what legislation is there for the evening economy on food and drink in the Coalville area, there are 3 takeaways on the same street within 20 properties".

Specifically in relation to the change of use to hot food takeaways, in terms of the principle acceptability, Policy Ec11 1 (a) requires that clusters of such uses should be avoided. However this is only applicable within defined primary shopping areas. As the application is located outside of the defined primary shopping area, the proposed town centre location has no applicable policy restriction on the number of hot food takeaways in principle.

A neighbour letter of objection raised concern that the UK was already statistically the most obese country in Europe. Adding more shops is encouraging people to buy takeaways. A cabinet paper (North West Leicestershire Health and Wellbeing Strategy) dated 5th February was brought to the attention of the case officer by Councillor Geary. The paper highlighted a planning policy need for health and wellbeing to be considered when determining whether new premises should open. However there is no relevant adopted planning policy at this time that relates to this issue.

Overall, the use proposed is considered to be an acceptable use in principle within a town centre. The proposal is therefore in conformity with policy Ec8 of the adopted Local Plan and is considered acceptable in principle subject to other material considerations discussed within this report.

Design and Impact upon Character

The proposal includes the installation of an extraction flue to the eastern/ rear elevation of the property. The position and design of the proposed extraction equipment has been influenced by its functional requirements. The visual impact of the proposed flue would be limited due to the location to the rear of the premises and as such views would not be taken from the street scene. The design of the flue is considered to be appropriate for the intended use and acceptable in terms of visual impact upon the property and the surrounding area.

Overall, the proposal is considered to have an acceptable design that would be in keeping with the character and appearance of the existing building and the surrounding area. Therefore, the proposal is considered to be in accordance with Policy D1 of the adopted Local Plan, the Council's Good Design SPD and the advice contained in the NPPF.

Impact upon Residential Amenity

Concerns have been raised within the letters of representation on grounds that the proposal would result in various unacceptable impacts in terms of residential amenity by way of noise and disturbance, odour and smells, late opening hours, negative health impacts, drunks and unsociable people and litter and vermin.

The site is located in an area characterised predominantly by retail and residential properties. There are residential uses to the first floor of the application site and attached to the southern elevation of the subject premises.

Policy D2 of the Local Plan states that development should be designed to reduce its impacts on residential amenity. Criterion (1) requires that development should not have an adverse impact through loss of privacy, overshadowing or be overbearing and criterion (2) states that proposals should not generate a level of activity, noise, vibration, pollution or odour, which cannot be mitigated to an appropriate standard.

As previously stated, the site is situated with the defined Coalville Town Centre. In such areas a degree of noise and disturbance is expected as a direct consequence of the range of uses present. Within the principle section above, it has already been established that hot food takeaway uses are acceptable uses within such areas.

In terms of disturbance, the opening hours for the proposed use would be 16:30 -21:30 seven days a week. These hours are considered to be later than that of a typical A1 (shops) use. The proposal would result in more coming and goings from the premises in the evening time.

The opening hours proposed are shorter and earlier than the operating hours at Sun Hing Chinese located at 111 Belvoir Road to the north of the site, which are Monday and Wednesday 17:00-23:00, Thursday, Friday and Saturday 12:00-14:00, 17:00-23:00, Sunday 17:30-23:00 and closed Tuesday. As such, it would not be reasonable to impose further restrictions on this use/property. Subject to a condition restricting the hours of operation to those stated, it is not considered that the proposal would result in a significantly harmful impact in terms of disturbance.

Given the unusual layout of the first floor, with the neighbouring flying freehold arrangement, it is considered that the bedroom to no. 121 Belvoir Road situated above the proposed food preparation room would be subject to potential noise nuisance. However it is considered that noise disturbance could be mitigated by a condition to ensure that satisfactory noise insulation is fitted to the walls and ceiling of the food preparation room. Subject to an appropriate condition, it is considered that potential noise impacts to the neighbouring property would not be to a level that would be significantly detrimental to the occupiers of the neighbouring property and to warrant refusal of the application on those grounds.

The site is situated within the Town Centre, where there is a concentration of activity and a level of disturbance from a range of sources over a prolonged period of the day. With the nature of the town centre location taken into consideration, it is not considered that the operation of a hot food takeaway would result in any further significant impacts in terms of noise or disturbance.

In terms of noise and odour, the extraction system would be fitted with a carbon filter system to ensure that the air which is expelled is as clean as possible. The fan would have a silencer to reduce noise and the ducting supports would be mounted upon anti-vibration supports to stop reverberation noise.

Whilst it is accepted that there would be a level of smell/odour emitted from the cooking process which would affect neighbouring and nearby properties, the details of the application together with the product specification document for the extraction unit has been considered by NWLDC Environmental Protection who have raised no objection on the basis that the cleaning and maintenance requirements of the extraction system are complied with. This would be managed by way of a suitably worded planning condition.

Subject to the imposition of relevant planning conditions referred to above, it is considered that there would be no significant detrimental impacts upon neighbouring residential amenity in

terms of noise, smells and disturbance to warrant refusal of this application.

Concerns have also been raised on grounds of overlooking. As the proposal would not include any new or enlarged windows and as the unit already benefits from a public use, the proposed use would not result in any further impacts upon the privacy of surrounding residential properties.

Objections have also been raised on grounds that the proposal would attract drunks and unsociable people. This application proposes a generic A5 use, as such, the unit could therefore be host to a wide range of occupiers. Notwithstanding this, the planning system is unable to control/restrict customers in this regard and, as such, behaviors of the end user. There is no evidence to substantiate these claims and therefore this issue cannot be taken into consideration in the determination of the application.

Concerns have been raised that the proposal would result in increased litter. Whilst the plans do not include commercial waste provision or a litterbin it is considered that there would be adequate space on the site to accommodate such provisions, therefore a condition would be imposed to secure the provision and maintenance of both. The imposition of this condition would ensure such concerns are addressed.

It has also been expressed that the proposed use would attract vermin and flies. This is not a material planning consideration. Appropriate refuse facilities would be required to serve the premises, but increased levels of vermin would be subject to control by NWLDC Environmental Health.

On balance, although the proposal could result in some additional impacts in terms of residential amenity, given that the site is situated within the defined Town Centre, against this backdrop and subject to relevant conditions, any impacts over and above those existing are not considered to result in a material level of harm that would warrant refusal of the application on these grounds. No objections are raised by NWL Environmental Protection.

There are no other materially harmful impacts identified in this regard that would result in the scheme being unacceptable on such grounds. Therefore, the proposed development is considered to be in accordance with Policy D2 of the adopted Local Plan and the Council's Good Design SPD.

Highway Considerations

Numerous objections have been raised within the letters of objection on highways safety grounds and on the basis of inadequate parking provision.

The subject site benefits from an area of hard standing/ parking provision within the curtilage of the application site. The site access off Belvoir Road would remain unchanged. The highway to the property frontage is no parking enforced by double yellow lines.

The County Highways Authority have been consulted on the application. No objections were raised as in its view the residual cumulative impacts of the development can be mitigated and are not considered severe in accordance with the National Planning Policy Framework 2019 (NPPF).

The County Highway Authority advise that it has carried out its own Trip Rate Information Computer System (TRICS) assessment in order to quantify trip generation at the site.

The existing Use Class of the premises is A1 (shops); for this quantum of development there would be a total of 23 two-way trips to the site.

In comparison, Use Class A5 (take-away), would attract a daily total of 54 two-way trips, more than double the level of trips. Notwithstanding this, the letter received from the planning agent dated 5th February 2019 details that the premises would be open between 16:30-21:30.

The TRICS data has therefore been interrogated to assess the level of trips that the premises would attract during opening hours, 16:30-21:30, which would equate to a total of 25 two-way trips.

Therefore, during the opening hours of the premises, 2 additional trips would be generated on a daily basis in comparison to those in connection with an A1 use. It is acknowledged that there would be additional trips outside of these hours by employees, however that level of trips would be minimal.

The CHA further assess the impact of additional trips on the highway network where 30 or more two-way trips are proposed in peak periods, therefore the trip generation above has identified that no further assessment is required.

In addition to this, as previously outlined, there is a public car park in close proximity to the site, therefore the customers may choose to park there and walk to the premises, therefore potentially further reducing vehicular trips to the site.

It has been accepted by the Local Highway Authority that customer parking at the nearby public car park (situated within 100 m of the site) would be acceptable for customer parking. The site is located within a Town Centre which is served by a good range public transport, by virtue of its central location, the site is also within walking distance of the settlement it would serve.

It is anticipated that the duration of customers visits would be short, which would result in a quick turnover of available public parking. On the basis of the information provided by the CHA the amount of vehicle movements is not considered to be significantly higher than those created by the existing use of the shop.

The parking provision to the north of the site is capable of providing 3 standard size car parking spaces in line with LHDG standards which would accommodate for staff and delivery vehicles. The proposal is not considered to result in any further harm in terms of highway safety above and beyond the use of the premises as a shop and the proposed parking provision is considered adequate. A planning condition would be imposed to ensure that 3 spaces are marked out and available for use at all times.

Paragraph 32 of the NPPF advises that applications should only be refused on highway grounds where the cumulative impacts are severe. On the basis of the above, it is not considered that the proposal would conflict with the principles of this paragraph or the aims of Policy IF4 or IF7 of the adopted Local Plan.

Other Issues

It has been raised in a letter of objection and by Councillor Geary that the proposal would be an immense fire risk leaving neighbouring property at risk.

The Councils Building Control Section have stated that the fire separation requirement should already be in place from the use of the premises as a shop. In the interests of clarity, at this

stage it is necessary to highlight that fire safety is not in the control of planning parameters. However the Building Control officer has advised that the material change of use from a shop to hot food takeaway would not trigger the requirement for further enhancement from a building control or fire regulation perspective.

It has been brought to the attention of the case officer via Councillor Geary that under the Regulatory Reform Fire Safety Order 2005 a suitable and sufficient risk assessment needs to be carried out by a responsible person as defined at Article 3 of the Order as employers and/or building owners or occupiers and it must be kept up to date. On the basis of this information, it is recommended that a note to applicant is attached to any planning permission granted to ensure that the applicant is made aware of these fire safety requirements.

Concerns have been raised that neighbouring access through No.119s back yard may be restricted or blocked or people may unlawfully gain access to the neighbouring property. There is no evidence to support this claim and as such this concern has no bearing on the council's decision-making process.

Concerns have been raised that the proposal would have a negative effect upon neighbouring house prices. This is not a material planning consideration.

In respect of all other matters reported in the third party representation section above that have not been addressed in the assessment section of this report, these are not considered to be material planning considerations and have no bearing on the decision making process.

Conclusion

The principle of new takeaway uses within the Town Centre of Coalville are acceptable. In the case of this application the proposal is not considered to have any significant detrimental design, residential amenity or highway related impacts. There are no other relevant material planning considerations that indicate planning permission should not be granted. The proposal is considered to comply with the relevant policies in the adopted Local Plan and the advice within the NPPF. Accordingly the application is recommended for planning permission, subject to the imposition of planning conditions.

RECOMMENDATION - PERMIT subject to the following conditions:-

1. Time limit
2. Approved plans
3. Hours of operation
4. Noise condition - noise insulation
5. Maintenance of extraction system
6. Provision of a scheme providing commercial waste and a litterbin
7. Parking provision - 3 spaces to be laid out and maintained