

The information, recommendations and advice contained in this report are correct as at the date of preparation, which is more than two weeks in advance of the Committee meeting. Because of these time constraints some reports may have been prepared in advance of the final date given for consultee responses or neighbour comment. Any changes or necessary updates to the report will be made orally at the Committee meeting.

Case Officer	Katie Ingram
Application No.	18/00734/FULPP
Date Valid	12th October 2018
Expiry date of consultations	25th December 2018
Proposal	Change of use from A1 Retail to A5 Hot Food Takeaway
Address	<b>165 North Lane Aldershot Hampshire GU12 4SY</b>
Ward	North Town
Applicant	Mr Akeel Rehman
Agent	Mr Andy Ward
Recommendation	<b>Grant</b>

### **Consultee Responses**

Environmental Health	No objection subject to a pre-commencement condition requiring further details of the ventilation system and a condition controlling hours of operation
Planning Policy	Raised concerns that the proposal would have an adverse effect on the retail core function of the North Town Local Neighbourhood Facility and would not comply with the Core Strategy but evidence showing the A1 is not viable has been provided in accordance with requirements of the draft submission Local Plan
Community - Contracts Manager	No objection

### **Description**

The application site relates to a ground floor retail premises on the western side of North Lane. It is in a parade of shops with two levels of residential above at the southern end of the parade on a corner plot, with a side boundary to Canning Road. There is a service area at the rear entered from Canning Road for deliveries and bin storage. The site is currently vacant and was previously occupied by a secondhand furniture shop.

There is an external staircase on the rear elevation of the shop providing access to the first and second floor flats above. There is a terrace level at first floor level. There is no planning history on file for the site.

The site is designated as being within a Local Shopping Centre/Local Neighbourhood Facility by Policies SS1 (Spatial Strategy) of the Core Strategy (2011) and SS2 of the Draft Submission Local Plan (2017) and 'Saved' Policy S1 (Local Shopping Centres) of the Local Plan Review (1996-2011) and Policy LN6 (Local Neighbourhood Facilities) of the draft submission Local Plan apply.

The site is also in a Neighbourhood Renewal Area area as designated by Core Strategy Policy SP7.

The application is seeking planning permission for a change of use from A1 (retail) to A5 (hot food takeaway) called 'Rooster Shack'. Internal works comprise installation of a serving counter, cooking and chilling equipment and a mechanical ventilation system. Rubbish bins would be stored in the rear service area. Hours of operation would be the subject of a condition restricting them to between 10.00am and 11pm Monday to Saturday and 10.00am to 10.30pm on Sundays and Bank Holidays.

The application was accompanied by specifications of the mechanical extraction system and a letter confirming how the tenancy has been marketed. Amended plans have been received during assessment of the application removing a shop window from the side elevation, amending the location and design of the extract flue and confirming the location of the bins.

### **Neighbours notified**

A site notice was erected and 7 letters were sent to adjoining properties. Following receipt of amended plans, neighbours and objectors were renotified.

### **Neighbour comments**

6 letters of objection from five different addresses were received in the first notification period, from 165A and 167A North Lane, 27 Canning Road, 7 Woodland Walk and an objection from Ward Councillor Keith Dibble. Following renotification 7 more letters of objection were received from 167A North Lane, 24 Farm Road, 241 and 239 North Lane, 2 Holbrooke Way, 56 Brookfield Road and a confirmation from Ward Councillor Keith Dibble that his original objections stand.

The letters objected on the following grounds:

- (a) There are already 4 take aways in North Town, and a café, and a KFC and McDonalds on Ash Road having a potentially harmful impact on the health of the local community by way of increased levels of obesity and diabetes
- (b) It is putting profits before health
- (c) Site is located close to a primary school.
- (d) It is contrary to neighbourhood renewal policy in the area and will do nothing for the community

- (e) It will have an unacceptable impact on amenity of occupants of flats above by way of cooking smells from the extraction flue especially when considered cumulatively with other restaurants in the parade and that the flue is level and close to the first floor terraces of the flats above.
- (f) 11.30pm is too late to be open for those living above the unit with noise from clients coming and going and the extraction system. (*Officer note – opening hours are the subject of a proposed condition*).
- (g) The parade was built when the units were occupied by shops closing at 5pm so substituting this with late evening outlets will impact residential amenity and their quality of life
- (h) There is limited parking availability in the area
- (i) People will park unsafely on the junction of North Lane and Canning Road
- (j) Smells from the bins will be unacceptable
- (k) There will be a higher fire risk in the block
- (l) There is a big problem with rats in the block already which will get worse
- (m) It will harmfully impact property values of the flats above
- (n) It will contribute to existing litter problems in the street
- (o) Plans show there are eat-in areas when it is advertised as a take away

## **Policy and determining issues**

The site is in a designated Local Shopping Centre and Neighbourhood Renewal Area. Policies SS1 (Spatial Strategy), CP1 (Sustainable Development Principles), CP2 (Design and Heritage), CP16 (Reducing and Managing Travel Demand) and SP7 (Neighbourhood Renewal) of the Rushmoor Core Strategy (2011) and 'saved' Local Plan Policies ENV17 (General Development and Design Criteria), S1 (Local Shopping Centres) and S5 (Restaurants and Hot Food takeaways) of the Rushmoor Local Plan Review (1996-2011) apply.

The Inspector's Report was received on 14 January 2019 confirming that the draft Rushmoor Local Plan (2017-2032) is sound subject to modifications. It is anticipated that the modified draft Plan will be formally adopted by the Council at its next meeting on 21 February 2019. The draft submission Local Plan therefore carries considerable weight. Policies relevant to this application are SS2 (Spatial Strategy), IN2 (Transport), DE1 (Design in the Built Environment), LN5 (Neighbourhood Deprivation Strategy) and LN6 (Local Neighbourhood Facilities).

Also relevant are the Council's adopted supplementary Planning Documents (SPDs) 'Parking and Cycle Standards' and 'Shop Fronts Design Guide'.

The main issues in the determination of this application are the principle of the development, impact on the appearance and character of the site and surrounding area, impact on adjoining and nearby residents, parking and highway safety, health and well-being and access for people with disabilities.

## **Commentary**

### **Principle of the development**

The application is seeking planning permission for a change of use from A1 (retail) to A5 (hot food take away). The property was formerly a secondhand furniture shop and has been vacant since July 2017.

The National Planning Policy Framework (2018) states that planning policies and decisions should aim to achieve healthy, inclusive and safe places which, among other things, protect strong neighbourhood centres. (para.92, Chapter 8).

Policies SS1 (Spatial Strategies) of the Core Strategy and SS2 of the draft submission Local Plan state that the retail and local service function of Local Shopping Centres/Local Neighbourhood Facilities 'will be protected to provide for the day to day needs of local residents'.

Policy SP7 (Neighbourhood Renewal Area) of the Core Strategy identifies North Town as a priority area for renewal and states that development will only be permitted provided that 'it protects the vitality and viability of local centres by the retention of a retail core'.

'Saved' Policy S1 (Local Shopping Centres) of the Local Plan Review states that 'the Council will not normally grant planning permission in Local Shopping Centres if it would result in more than 40% of the units being in non-A1 use'. However, supporting text to emerging policy LN5 (Local Neighbourhood Facilities) of the draft submission Local Plan states that they will be expected to retain 'about 50% of uses as Use Class A1'.

Policy LN6 (Local Neighbourhood Facilities) of the draft submission Local Plan states that development will be permitted in a Local Neighbourhood Facility provided that:

- a) *It would not undermine the dominant local retail and service function of the Local Neighbourhood Facility, and the proposed use would attract footfall from the local area;*
- b) *It creates an active frontage; and*
- c) *A change of use from A1 will not result in an over-concentration of the number of non-A1 units to the detriment of the retail function of the Local Neighbourhood Facility, unless the A1 use is considered to be no longer viable and there is evidence of appropriate marketing for a minimum period of 12 months'.*

The North Lane Local Shopping Centre contains four retail units on the eastern side which are currently vacant pending demolition as part of the North Town Regeneration Project. Excluding these, the total number of units is fourteen under the emerging new Local Plan.

This application would bring the number of units in an A1 use in the Local Neighbourhood Facility to six comprising Homes Funeral Directors, One Stop, Messheads, Headcase barber shop, Turners & Sons butchers and the Co-Op. This is a percentage of 43% which does not comply with the 50% requirement prescribed by draft Policy LN6.

Supporting text to the policy states that where an individual use is considered to be no longer viable, the policy can be 'applied flexibly to take account of the scale and mix of uses in individual Local Neighbourhood Facilities, and ensure that they can provide for a range of goods and services'.

The application site has been vacant since July 2017 and this is confirmed by the Council's own retail surveys. A letter from the property management company confirms that the site has been advertised with 'To Let' boards on the building and on four different property portals since April 2017.

In terms of retail uses North Lane Local Neighbourhood Facility has a supermarket, a large convenience store, two hairdressers, a butcher's shop and a funeral directors. Non-A1 uses comprise a tanning salon, a café, an Indian take away, a Chinese take away, a kebab

takeaway and a fish and chip shop.

On balance, it is considered that this mix and number of A1 uses are able to meet the day to day goods and services needs of the local community and would also result in an acceptable level of variety and viability in the parade. Concept drawings submitted with the application indicate that the site will have a high standard of external and internal finishes which will also contribute to the visual interest and vitality of the shopping centre.

Given that the Core Strategy and 'saved' policies of the Local Plan Review are likely to be superseded by the adoption of the draft submission Local Plan at the next full Council meeting on 21 February 2019, it is not considered reasonable to refuse this application on its failure to meet the requirement of retail uses in 'saved' Policy S1.

A number of representations were received objecting on the grounds that there are already four take aways in the centre as well as two well-known fast food restaurants 800m south of on Ash Road and that the Council has a responsibility to discourage development which would have a detrimental impact on the health of the Borough's residents. The site is also 200m walking distance from the nearest school Alderwood Infants School.

The relationship between health and planning is well established. The National Planning Policy Framework (2018) supports development that would enable healthy lifestyles, especially where this would address identified local health and well-being needs through for example the provision of access to healthier food, among other things (paragraph 92).

Most of the policies in the draft submission Local Plan in relation to health and well-being relate to the provision of facilities such as open space and leisure, enabling opportunities for walking and cycling, providing a good quality living environment and ensuring access to health facilities, and do not prevent uses or activities or limit consumer choice. Draft Policy LN6 (Local Neighbourhood Facilities) seeks to retain the retail core of the Local Neighbourhood Facilities and as it can be applied flexibly based on market influences, the application has been found to comply with this Policy.

'Saved' policy S5 (Take-away hot food establishments) seeks to control the growth of hot food take-away restaurants based on their impact on residential amenity, vitality of the area and highway safety. The application is considered to have an acceptable impact on all these issues subject to conditions (see paragraphs below).

Given the above, it is considered that the principle of the development in this location is acceptable.

### **Impact on visual amenity and character of the environment**

Due to its prominent location within a busy shopping Parade, the existing vacant state of the premises detracts from the visual amenity of the street frontage. The shop front will not change in design or proportions as a result of the new use, and the window openings, doorway, fascia and stall riser remain the same, so that it will be in keeping with the other shop fronts in the parade and comply with the 'Shop Fronts Design Guide' SPD.

Concept drawings submitted during assessment of the application demonstrate that the external and internal finishes will be of a high standard.

The external extract duct would protrude 1.2m above the roof of the rear chiller room and would be finished with materials to match the existing building. It would be set back 2.5m

from the southern side elevation of the building reducing the visual impact it would have on views from Canning Road. Although the duct would be visible it is not considered that any material and harmful impact upon the character and appearance of the area as a whole would arise.

Whilst objectors express concern about the potential additional litter that could be generated by the proposed takeaway, this is a matter that would be beyond the control of takeaway operator and a generated by customer behaviour once they have left the premises. There are three litter bins in the parade within the vicinity of the application site. It is considered that the issue of litter is largely a matter for environmental protection legislation and not a planning matter. Environmental Food Premises regulations require that any waste generated by the proposed takeaway operation and kitchens be collected on a regular basis. In this case the application property has a rear yard area where such bins will be stored and a condition on any approval will be issued to ensure the bins are retained in this position.

Given the above it is considered the proposal would have an acceptable impact on the visual appearance of the site and surrounding area and comply with the relevant design policies of the Core Strategy, draft submission Local Plan and the Shop Front Design Guide SPD.

### **The impact on adjoining and nearby residents**

Above the shops in the parade there are two levels of residential flats. It is not unusual to find takeaway premises below residential flats in shopping parades and provided that the amenities of occupiers of nearby residential properties are adequately protected from cooking fumes, and suitable controls over hours of opening and noise and vibration from imposed condition, they are usually considered to be acceptable.

The site is located within in a busy shopping parade on a busy through road where a degree of late night noise and activity already occurs. The applicant originally proposed operating hours of 11am to 11.30pm seven days a week. However, to be in line with operating hours of other take away restaurants in the parade, a condition will be imposed on any approval issued that hours of operation are to be 10.30am to 11pm Monday to Saturday and 10.30 am to 10.30pm on a Sunday and Bank Holidays, which has been agreed by the applicant. It is considered that this would have a satisfactory impact on neighbouring amenity by way of noise emerging from the late night use.

It is noted that amended plans were received during assessment of the application removing a large shop window on the southern side elevation as it was considered this may have had a detrimental impact on residential amenity of the occupants of the flats at 163 North Lane on the opposite side of Canning Road.

Concern has been raised that the extraction flue will have a detrimental impact on amenity by way of cooking odours, particularly given the location of the flue close to the rear terrace of the first floor flat next to the shop, which has an established use as outdoor amenity space.

The elevation plan and specifications submitted with the application demonstrate that the extraction equipment will include pre-filters, carbon filters and extraction capabilities at point of exit so that it will be in line with up to date recommendations of DEFRA in their "Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems". The Council's Environmental Health Officer has reviewed this information and in principle found it to be acceptable but has requested further details to be submitted prior to the commencement of the use on the site, to ensure that the system will not lead to unacceptable impacts on residential amenity by way of noise or cooking odours.

The applicant submitted amended plans on 28 January 2019 moving the internal ducting so that the extraction flue will now emerge on the southern side of the rear chiller room, to increase the separation distance to the adjoining terrace from 0.4m to 2.9m.

It is considered that this will be sufficient to mitigate any unacceptable impact on residential amenity in terms of odours and noise from the flue.

Concerns have been expressed that the refuse from the restaurant will worsen an existing problem in the block with vermin. Amended plans received during assessment confirm that the bins will be stored in the rear service area where they are able to be secured shut. Environmental health legislation requires the regular removal of the rubbish on the site by a private contractor. Problems with vermin are operational and management matters that are addressed through Environmental Health Food premises legislation and inspections and now that the location of the bin storage area has been secured this is not a matter for consideration in this planning application.

It is considered that the proposed takeaway would not give rise to sufficient material planning harm to the amenities of neighbours to justify the refusal of planning permission.

### **Parking and Highway safety**

Under the Parking and Cycle Standards SPD the existing retail use has a parking quantum of 1 space per 30sqm of retail floor space requiring 3 car parking spaces (rounded up), as it has a retail floor area of 74sqm. Eating and drinking establishments have a requirement of 1 space per 5sqm of dining area. It is calculated that the proposed take away use has a front dining area of approximately 20sqm requiring 4 car parking spaces. The furniture shop did not benefit from any off street parking. Principle 2 of the Parking Standards states that where a change of use would result in a higher parking standard, additional spaces need only be provided for the extra demand. The rear service and delivery area does not have any spaces specifically allotted to the site for the purposes of parking.

Given the takeaway use customers are not expected to dwell for long in the shop and a proportion of customers are expected to reach the site on foot. There is public parking on both sides of North Lane in the Local Shopping Centre providing approximately 25 spaces. It is therefore considered that the impact on highway safety of a shortfall of one parking space would not warrant a reason for refusal of this application.

Concerns have been raised that the use will give rise to illegal parking on the corner of Canning Road and North Lane. Any business operating from the site may have the potential to cause unacceptable parking, enforcement in this regard is a matter for the County Highway Authority or the Police and it is not considered to be a ground on which planning permission could reasonably be refused.

In light of the above, the proposed takeaway is considered to have an acceptable impact in terms of the safety and convenience of highways users.

### **Access for people with disabilities**

The proposed shopfront is of a conventional design and access for people with disabilities would be a matter for consideration under the Building Regulations. It is considered that appropriate provision would be made for the needs of people with disabilities visiting the premises. Level access can be provided.

## Conclusion

The proposed change of use is considered to be acceptable in principle, would have an acceptable visual impact upon the character and appearance of the area, is not considered to impact unduly upon the amenities of occupiers of adjoining and nearby residential dwellings, and would have an acceptable impact upon highway safety. Adequate provision for people with disabilities would be made. The proposals are therefore considered acceptable having regard to Core Strategy Policies SS1, CP1, CP2, CP16 and SP7, 'saved' Local Plan Review Policies ENV17 and S1, and draft submission Local Plan 2032 Policies SS2, IN2, DE1, LN5 and LN6.

## FULL RECOMMENDATION

It is recommended that permission be **GRANTED** subject to the following conditions:

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason - As required by 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 permission hereby granted shall be carried out in accordance with the following approved drawings - Drawing numbers:

Location and existing and proposed floor and elevation plans Rev E 28/01/2019

Reason - To ensure the development is implemented in accordance with the permission granted

- 3 The development hereby permitted shall not commence until technical details of the means of suppressing and directing smells and fumes from the premises have been submitted to and approved in writing by the Local Planning Authority. These details shall include specifications of the extract system, anti-vibration measures and the height, position, design, materials and finish of the proposed external vent. The development shall be implemented in accordance with the details as approved prior to the first use of the hot food take-away hereby approved and retained and maintained thereafter for the life of the development.

Reason - To safeguard the amenities of neighbouring property.\*

- 4 The proposed refuse and recycling storage shown on drawing number Rev E 28/01/2019 hereby approved, shall be provided prior to the first use of the hot food take-away hereby approved, and retained thereafter for the life of the development.

Reason - To meet the functional needs of the development and safeguard the amenities of the area.

- 5 The use hereby permitted shall not be open to customers outside the following times:  
10:00am to 11:00pm Mondays to Saturdays and  
10:00am to 10:30pm on Sundays.

Reason - To safeguard the amenities of neighbouring occupiers.

## Informatives

- 1      INFORMATIVE – The Local Planning Authority’s commitment to working with the applicants in a positive and proactive way is demonstrated by its offer of pre-application discussion to all, and assistance in the validation and determination of applications through the provision of clear guidance regarding necessary supporting information or amendments both before and after submission, in line with the National Planning Policy Framework.
  
- 2      INFORMATIVE - REASONS FOR APPROVAL- The proposed change of use is considered to be acceptable in principle, would have an acceptable visual impact upon the character and appearance of the area, is not considered to impact unduly upon the amenities of occupiers of adjoining and nearby residential dwellings, and would have an acceptable impact upon highway safety. Adequate provision for people with disabilities would be made. The proposals are therefore considered acceptable having regard to Core Strategy Policies SS1, CP1, CP2, CP16 and SP7, 'saved' Local Plan Review Policies ENV17 and S1, and draft submission Local Plan 2032 Policies SS2, IN2, DE1, LN5 and LN6.It is therefore considered that subject to compliance with the attached conditions, and taking into account all other material planning considerations, including the provisions of the development plan, the proposal would be acceptable. This also includes a consideration of whether the decision to grant permission is compatible with the Human Rights Act 1998. 98.
  
- 3      INFORMATIVE - The applicant is reminded that the premises should be made accessible to all disabled people, not just wheelchair users, in accordance with the duties imposed by the Equality Act 2010. This may be achieved by following recommendations set out in British Standard BS 8300: 2009 "Design of buildings and their approaches to meet the needs of disabled people - Code of Practice". Where Building Regulations apply, provision of access for disabled people to the premises will be required in accordance with Approved Document M to the Building Regulations 2000 "Access to and use of buildings". The Rushmoor Access Group would welcome the opportunity to give further advice and guidance.
  
- 4      INFORMATIVE - The applicant is reminded that under the provisions of the Food Safety Act 1990 there is a requirement to register all food premises with the Local Authority at least 28 days before the commencement of any business operations. The applicant must therefore contact the Head of Operational Services for advice.



