

APPLICATION NO: 23/00177/FUL **CASE OFFICER:** Mark Quinn

WARD: Roby **PARISH:**

LOCATION: Simply Food And Drinks , 9 Tarbock Road, Huyton

PROPOSAL: CHANGE OF USE FROM OFF LICENCE (USE CLASS E) TO HOT FOOD TAKEAWAY (USE CLASS SUI GENERIS)

Site Description

This application relates to a retail unit in a major local centre at Tarbock Road, Huyton.

No 9 is located in the middle of the parade of units and the centre contains a convenience store, pharmacy, bookmakers, café, dry cleaners and two hot food takeaways (one is authorised Gold star at No 13 and one is unauthorised Prepfresh at No 15).

There are residential premises above the majority of the ground floor units. To the rear, side and on the opposite side of Tarbock Road are residential premises.

Proposal

It is proposed to change the use of the premises from an off licence (Use Class E) to a hot food takeaway (Use Class Sui Generis). A flue system for fume extraction purposes would be installed up the rear wall of the premises in close proximity to the windows in the first floor flat.

Consultations

Environmental Health - Raise objection due to insufficient information on control of odours, soundproofing and details of external plant.

Highway Authority - No objections.

Public Health - Health Improvement And Health Protection - Raise objection as the number of hot food takeaways would exceed 10% of the units as set out the Town Centre Uses SPD.

Representations

This application has been publicised by letters sent to 84 neighbours. It has also been advertised by Site Notice

There has been 1 letter of objection. The representation is summarised as follows:-

- There are already odours from the existing premises including the café and chip shop.
- 50% of the shops sell food and drink
- Litter bins to rear are overfilled with lids open resulting a big rat problem
- Another shop with all the smells will have a big impact on the value of the resident's house.
- Resident pays a high price in rates to KMBC for all the smells and wisher to object to this application.

The impact on property values is not a material consideration in the determination of the application, the other matters are covered in the text below. Any existing problems relating to vermin and odours would be a matter for the Environmental Health department .

Planning History

None relevant

Relevant Policy

Paragraph 11 of the National Planning Policy Framework (NPPF) states that planning decisions should apply a presumption in favour of sustainable development. This means approving development proposals that accord with an up-to-date development plan without delay; or where the development plan is absent, silent or out of date planning permission should be granted unless the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

Paragraph 12 of the NPPF clarifies that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan, permission should not normally be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

The development plan in Knowsley comprises the Saved Policies of the Replacement Unitary Development Plan, the Core Strategy Local Plan and the Joint Waste Local Plan. The following policies are relevant to the determination of this application.

KNOWSLEY LOCAL PLAN: CORE STRATEGY

CS2 - Development Principles

CS7 - Transport Networks

CS19 – Design Quality and Accessibility in New Development

Town Centre Uses SPD (2022)

SAVED POLICIES - KNOWSLEY REPLACEMENT UNITARY DEVELOPMENT PLAN (ADOPTED JUNE 2006)

ENV2 - Noise and Vibration

S2 – Diversification of uses within existing centres

S7 - Local Centres and Parades

H5 - Development within Primarily Residential Areas

National Planning Policy Framework

Article 35 Statement

The Local Planning Authority has acted positively and proactively in determining this application

within a timely manner. However the proposed development raises fundamental issues which are contrary to local and national planning policies and which are incapable of being addressed within this application. The Local Planning Authority is willing to meet with the applicant to amplify the reasons for refusal.

Assessment

Principle of Development

Saved Policy S2 states “ *Proposals for new buildings, or for the change of use or alteration of existing buildings, to provide town centre uses (as defined in Appendix 7) within existing town and district centres will be permitted provided that the following criteria are met:*

c) The use would not (by reason of smells, noise, visual intrusion or general disturbance) have a detrimental impact on the environment of the surrounding area; or on the amenity of any neighbouring residents; “

In terms of food and drink uses Policy S2 states :-

*“a) Any external ventilation and extractor systems which are necessary would be provided without causing harm to the external appearance of the building or street scene and would not harm the amenity of neighbouring properties through noise or odour; and
b) The proposal will not be permitted in a local centre or in any property (either within or outside an existing centre) that is close to existing or proposed residential uses unless the applicant has submitted convincing evidence that the impact on residential amenity would be acceptable “*

Saved UDP Policy S7 states :-

“The Council will grant planning permission for the re-use or re-development of properties within local shopping centres or parades for small scale town centre uses within Use Classes A1, A2, A3, A4, A5, B1, C3, D1 and other miscellaneous town centre uses (see appendix 7) provided that:

*a) The development accords with policy S2; and
b) Local shopping needs would still be met by existing shopping facilities within safe and convenient walking distance of where people live in the surrounding area.”*

Local Plan policy CS19 states that

To enhance the local distinctiveness, identity and accessibility of places, new development within Knowsley will be expected to:

2) To maintain a good standard of amenity for all existing and future occupants of land and buildings, development proposals will be required to:

*a) Avoid unacceptable impacts on existing residents, business occupiers, and future occupiers;
b) Minimise crime, fear of crime and anti-social behaviour, including good levels of natural surveillance and security; and
c) Accommodate future maintenance and long term management requirements.*

The Town Centre Uses Supplementary Planning document (SPD) provides the following background and guidance on proposals for Hot Food takeaways.

“Hot food takeaways are increasingly common within retail centres: they can complement the retail function of a centre, contributing to its vitality and viability and ensuring a mix of day and evening uses. However, an over concentration of hot food takeaway uses can also undermine the role and function of retail centres; and it is recognised that hot food takeaways have a greater potential than retail uses to have a detrimental impact on residential amenity, environmental quality, and the health of the local population.

In Knowsley, obesity is a significant issue, with 66% of residents classed as being overweight or obese. In addition, rates of childhood obesity are rising faster than in other, less deprived areas.

Early national research indicates that rates of consumption of hot food takeaways has risen during the pandemic¹. Combined with other factors impacting food choices and physical activity during this time have caused a faster growth in overweight and obesity levels than seen in previous years. However, this has been unequal with rates in the more deprived areas rising faster than in the least deprived. As one of the most deprived areas in England this is particularly significant for Knowsley.

The borough’s retail centres are currently facing many challenges as a result of changing shopping patterns and behaviour, including reduced levels of spending following the recession, increasing levels of internet shopping, and the role of large supermarkets in meeting local needs. Due to these changes in shopping patterns, many retail centres in England are experiencing high proportions of vacant units. Filling these units with non-retail uses including hot food takeaways can benefit a centre by bringing the units back into use.

However, an over proliferation of hot food takeaways could potentially have an adverse impact on the centre’s vitality and viability. Vitality refers to how busy a centre is at different times of the day, whilst viability is about the centre’s capacity to attract new investment. Hot food takeaways are also often closed in the daytime, which can result in the appearance of “dead” frontages with a resultant negative impact on the character and vibrancy of a centre. This is particularly apparent where there is a concentration of takeaways, i.e., two or three such uses adjoining one another or located close together

Hot food takeaways also have the potential to raise residential amenity and anti-social behaviour issues, as well as health concerns. This is because such uses can generate levels of noise, traffic, odours and litter which are detrimental to residential amenity.”

In accordance with the data contained in the Town Centre uses SPD the number of Hot Food takeaways in the Tarbock Road local centre increased from 1 in 2016 to 2 in 2021.

¹ [Pandemic drives households to increase spend - KPMG United Kingdom \(home.kpmg\)](#)

The Town Centre uses SPD then provides Guidance for Appropriate Concentration of Hot Food Takeaways in Retail Centres.

This guidance states:-

“1. Planning permission for a hot food takeaway within town, district, major or medium local centres, or local shopping centres / parades will not be granted if it causes an unacceptable grouping of hot food takeaways which would have a negative impact on the character of the centre.

2. In operating this requirement, the following thresholds should not be exceeded:

- a) More than 5% of units within town centres being hot food takeaways; or**
- b) More than 10% of units within district, major or medium local centres, or local shopping centres / parades being hot food takeaways; and**
- c) More than two directly adjoining hot food takeaways in a single centre's or parade's frontage; and**
- d) Less than two non-hot food takeaway units between individual or groups of hot food takeaway units in a centre or parade.**

Exceeding these thresholds would be considered as creating an unacceptable grouping of hot food takeaways which would have a negative impact upon the character of the centre.

3. When applying the thresholds set out in part 2 above:

- a) Only ground floor non-residential units will be counted; and**
- b) When rounding percentages, they should be rounded down.”**

The SPD provides the following justification for the above guidance.

Whilst it is recognised that hot food takeaways can provide a popular service for local communities and add to the diversity of uses within retail centres, it is important to ensure that hot food takeaways do not detract from the primary retail function of a centre in line with saved UDP Policy S2: Diversification of Uses.

The grouping of hot food takeaways can lead to unattractive vacant frontages during the daytime when hot food takeaways are closed, which can undermine the retail function and general attractiveness of a retail centre. An unacceptable grouping of hot food takeaway uses can potentially have an adverse impact upon the amenity of the surrounding area to the detriment of local residents, contrary to the aims of Local Plan Core Strategy Policy CS19: Design Quality and Accessibility in New Development.

Therefore, this SPD seeks to control the grouping of hot food takeaways in the borough's designated town, district, major or medium local centres, or local shopping centres / parades. This is identified in the adopted Local Plan Core Strategy. The purpose of the guidance is to protect the vitality and viability of centres and ensure an appropriate mix of uses within centres which is consistent with Core Strategy Policy CS6: Town Centres and Retail Hierarchy and saved UDP Policy S2: Diversification of Uses within Existing Centres and S7: Local Centres and Parades.

The application site is located within a primarily residential area on the Knowsley Local Plan Policies Map. A hot food takeaway can in principle be an acceptable use in a primarily residential area subject to compliance with the relevant Local Plan, saved UDP and Supplementary Planning Documents listed above.

In the Tarbock Road local centre there are 11 units at ground floor level. There are currently two hot food takeaways in the centre (Gold Star at No 13 & Prepfresh at No 15) however Prepfresh is unlawful as it does not have the required planning permission to operate as a hot food takeaway (this will be investigated separately to this application which must be considered on its own merits).

Discounting the unauthorised use there is currently one lawful hot food takeaway in the centre amounting to 9% of the units. A second hot food takeaway would increase that percentage to 18% which would be in excess of the 10% requirement for the maximum hot food takeaways in any retail centre or shopping parade.

This proposal would therefore be contrary to part 2 b) of the Guidance for Appropriate Concentration of Hot Food Takeaways in Retail Centres set out in the Town Centre Uses SPD and would be contrary to Local Plan policies CS6 & CS19 and saved UDP policies S2 & S7.

Residential Amenity

Local Plan Policy CS2 states :-

"Minimising negative impact upon flood risk, air quality, water quality, land quality, soil quality, and noise or vibration levels and ensuring any negative impacts are appropriately mitigated.

Development that will have an unacceptable impact upon any of the above will only be permitted where the benefits of the proposal clearly outweigh the harm."

Local Plan policy CS19 states *"To maintain a good standard of amenity for all existing and future occupants of land and buildings, development proposals will be required to:*
a) *Avoid unacceptable impacts on existing residents, business occupiers, and future occupiers;"*

Saved UDP policy H5 states *"New development within the Primarily Residential Areas (or proposals for the change of use or redevelopment of existing buildings) which is for uses appropriate to a residential area will be permitted provided that the development (either by itself or in conjunction with other developments) would not: a) Have an unacceptable impact on the amenity of neighbouring occupiers by reason of noise, disturbance, overlooking, visual intrusion, smells, fumes, on-street parking or other causes;"*

Saved Policy S2 states *" Proposals for new buildings, or for the change of use or alteration of existing buildings, to provide town centre uses (as defined in Appendix 7) within existing town and district centres will be permitted provided that the following criteria are met:*

c) The use would not (by reason of smells, noise, visual intrusion or general disturbance) have a detrimental impact on the environment of the surrounding area; or on the amenity of any neighbouring residents; "

The policy goes on to provide specific guidance for Food and Drink uses stating :-

"b) The proposal will not be permitted in a local centre or in any property (either within or outside an existing centre) that is close to existing or proposed residential uses unless the applicant has submitted convincing evidence that the impact on residential amenity would be acceptable "

Saved UDP policy ENV2 on Noise and Vibration states:-

"1. Development that will either cause an unacceptable increase in noise or vibration levels or itself be subject to unacceptable noise or vibration from an existing source will not be permitted."

On protecting residential amenity the Town Centre uses SPD states :-

1. To protect residential amenity, the Council will apply the following guidance in considering planning applications for new hot food takeaways:

- a) Proposals close to residential properties will only be allowed where there will be no detrimental impact on residential amenity in terms of odour, noise, visual intrusion or general disturbance, for example, connected with vibrations, traffic or parking disturbances, litter or hours of operation resulting from the proposed use;***
- b) Applications for hot food takeaways are unlikely to be approved if a party wall is shared with a residential dwelling; and***
- c) If there is a residential flat above the premises, planning permission will not be granted unless the operator can demonstrate that the flat will be used in relation to the hot food takeaway. If a residential***

dwelling were to be approved, this would be a condition in terms of the occupancy.

On odours and cooking smells The Town Centre SPD states :-

1. All new hot food takeaways must provide appropriate extraction systems to effectively disperse odours. Such systems must:

- a) Be designed so as to minimise their impact on visual amenity, including in terms of their location and external finish (as a material alteration to the external appearance);***
- b) Be acoustically insulated;***
- c) Not have an unacceptable impact on the amenity of neighbouring occupiers, for example by virtue of vibration or odour;***
- d) Be properly operated and maintained;***
- e) Be installed within the building wherever practicable. This is particularly important where the proposal is within a Conservation Area, Historic Park or Garden or within the setting of a Listed Building; and***
- f) Minimise physical impacts to the appearance or physical fabric of any Listed Building, Historic buildings within a Conservation Area or a Registered Historic Park or Garden.***

The main issues associated with proposals for hot food takeaways that could impact on residential amenity are odours, noise from external plant, visual impact of external plant /flues and noise impacts from the hot food takeaway to adjoining residential occupiers or to residential occupiers of the floor above the hot food takeaway.

Following an assessment of the proposal it has been concluded that insufficient information has been submitted with regards to odours, soundproofing to the flat above and external plant.

Odours

From the information submitted it is unclear how will the odours from the hot food takeaway will be controlled. A risk assessment would be required to have been completed in line with the EMAQ document, "Control of Odour and Noise from Commercial Kitchen Exhaust Systems". This then informs the operator of the hot food takeaway what equipment is needed to control the emissions and how this equipment would fit within the premises.

Soundproofing

Details of what soundproofing measures will be in place to ensure that noise from the proposed use does not impact the resident(s) living in the flat above would be required prior to determination of the application.

External Plant

It is unclear if there will be any external plant, for example extraction fan(s), and how will the noise and vibration from it be controlled. Noise from any fixed plant would be required to be at a level that is 5dB below the existing background level, when measured at the relevant time and at the closest affected window. Information on how this will be achieved would need to be provided prior to the determination of the application.

Anti vibration mountings would be required to be used when attaching structures, with the potential to cause vibration, to the walls. Confirmation that these fittings would be used is also required.

Notwithstanding the above issues the Town Centre Uses SPD states in part c) that if there is a residential flat above the premises planning permission would not be granted for a hot food takeaway unless the operator can demonstrate the flat above will be used in relation to the hot food takeaway as this would be a condition in terms of the occupancy. There is no information submitted with the application in relation to the occupancy of the flat above No 9 Tarbock Road. In which case the proposal would also be contrary to this guidance in the SPD.

Visual impact of Flue

The odour extraction flue would run up the rear wall of the premises. The flue would exit the wall at a height of 2.2m above ground level and then run up to first floor level (0.6m above eaves height). The flue would have a diameter of 300mm and would be sited 0.5m from a main habitable window in the rear elevation (assumed to serve a bedroom or living room) and 0.3m from a small window in the side elevation (assumed to serve a bathroom).

If the flue was painted or powder coated a dark colour e.g. black then its impact would be reduced and on balance would not have a significant impact on the amenity of nearby/adjacent occupiers. From a wider visual perspective the flue would not be visible from Tarbock Road however it could be viewed from the rear access yard and to a degree from the rear elevations of adjacent dwelling in Wilton Road (at a distance of approximately 35m). On balance it is not considered that the flue as submitted would have any significant impacts to visual or residential amenity to warrant a refusal of permission.

In conclusion it has been determined that insufficient information has been submitted to be able to sufficiently assess the impact on odours/odour control, soundproofing between the shop premises and the flat above, details pertaining to external plant and details relating to the occupancy of the flat above. As such the proposal would fail to comply with the above local plan policies and guidance in the Town Centre uses SPD.

Highway Safety

Saved UDP policy H5 states *"New development within the Primarily Residential Areas (or proposals for the change of use or redevelopment of existing buildings) which is for uses appropriate to a residential area will be permitted provided that the development (either by itself or in conjunction with other developments) would not: a) Have an unacceptable impact on the amenity of neighbouring occupiers by reason of noise, disturbance, overlooking, visual intrusion, smells, fumes, on-street parking or other causes;"*

Local Plan Policy CS7 Transport Networks states:-

"New development will be required to be:

a) Located and designed to prioritise accessibility and sustainable modes of travel through a choice of walking, cycling, public transport, and incorporate access for private vehicles...." And

d) In compliance with adopted cycle, car, disabled and service vehicle parking standards for different types and scales of new development;"

The Town Centre Uses SPD provides the following guidance for Hot Food takeaways on Highway Safety :-

1. In determining planning applications for new hot food takeaways, the Council will consider the impact on the safety of pedestrians and road users with regard to:

- a) The existing or previous use;**
- b) Existing traffic conditions;**
- c) Accessibility by public transport, cycling and walking;**
- d) The availability of public parking provision near to the premises, including on-street parking;**
- e) Provision for delivery staff parking if the premises offer a delivery service. This includes all modes of transport and allowing for the increase in delivery vehicles following the growth in popularity of food delivery services;**
- f) Proximity to traffic controls, junctions, and crossings; and**
- g) The availability of safe and legal loading areas near the premises.**

The unit sits within a suburban shopping parade which has a communal car parking area (short stay – max 3 hours) to the front. A disabled parking bay is situated close by within the parking area. The proposed unit is not expected to generate significant additional vehicle trips, and its peak is likely to be in the early evening when other shops are less busy or closed.

The site has adequate access for visitors on foot with controlled crossings over Tarbock Road and Archway Road; cycle stands and a bus stop are in close proximity.

In conclusion in terms of its impacts on car parking and highway safety the proposal is considered to be acceptable and would be in compliance with the above planning policies and guidance.

Conclusion

The proposed use would lead to an over proliferation of hot food takeaways in the local centre which could have an adverse effect on the centres character, vitality and viability and the health of the Knowsley residents. The proposal would exceed the threshold set out for an appropriate number of hot food takeaways in a parade or local centre.

Insufficient information has been submitted to support the application relating to odour control, soundproofing, external plant and kitchen equipment and as such it is not possible for the proposal to be fully assessed.

There is a flat above the premises and it has not been demonstrated that the flat will be used in relation to the hot food takeaway to the detriment of the amenity of the occupiers of the flat 9A Tarbock Road.

The proposal would therefore be contrary to Local Plan policies CS2, CS19, Saved UDP policies H5, S2 & S7 and Town Centre Uses SPD (2022).

Recommendation

That Planning permission be refused for the following reasons: -

1. The proposed development would exceed the threshold for the percentage of hot food takeaways within the Tarbock Road local centre as set out in the Town Centre Uses SPD. This would create an unacceptable grouping of hot food takeaways at the centre which would have a negative effect upon the character of the centre, potentially the vitality and viability of the centre and an unacceptable impact on the health of Knowsley residents. Contrary to saved policies S2 & S7 in the Knowsley Replacement Unitary Development Plan (adopted 2006) and Town Centre Uses Supplementary Planning Document (Revised 2022).

2. Insufficient information has been submitted to fully assess the impacts of odour
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Signed Case Officer²: Mark Quinn

**Signed Authorising
Officer³:** K Foster

Date: 23 May 2023

² I confirm that I do not have a personal relationship with the applicant, agent or other interested parties; I also confirm that I do not have a financial interest in the site or the development proposed

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Appendix 1 – Site Photographs







