

Development Management Report

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Summary of Application

<u>Application Number:</u> 18/05584/FUL	<u>Parish:</u>	Shrewsbury Town Council
<u>Proposal:</u> Change of use from A1 retail to A5 hot food takeaway restaurant and associated alterations to the building		
<u>Site Address:</u> 41 Wood Street Shrewsbury SY1 2PN		
<u>Applicant:</u> Mr Khan		
<u>Case Officer:</u> Jane Raymond	<u>email:</u> planningdmc@shropshire.gov.uk	

Grid Ref: 349324 - 313641



Recommendation: Grant Permission subject to the conditions set out in Appendix 1.**REPORT****1.0 THE PROPOSAL**

- 1.1 This application relates to change of use from A1 retail to A5 hot food takeaway restaurant and associated alterations to the building.
- 1.2 The latest amended plans indicate that the external alterations now include the erection of a traditional brick chimney to conceal the extractor ventilation shaft, a new entrance door in place of one window on the front Ellesmere Road elevation and the removal and blocking up of two windows.
- 1.3 The proposed opening hours have been amended to 12 midday to 11pm seven days a week.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site is an existing retail premises (last used as an off licence and corner shop) with unrestricted opening hours that is adjacent to a dwelling which is also in the ownership of the applicant.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The town council objects to the application and the Local Member has requested that it be referred to the relevant Planning Committee within 21 days of electronic notification of the application and agreed by the Planning Services Manager in consultation with the committee chairman or vice chairman to be based on material planning reasons

4.0 Community Representations**4.1 - Consultee Comments****4.1.1 SC Regulatory Services:**

- 1. The hours of evening operations should be conditioned to finish at 2300hrs. To protect the amenity of residents from noise.
- 2. Odour - the high level extraction of the flue at ridge height along with the described filters, odour abatement and maintenance system would appear to be adequate to reduce odour.
- 3. Noise - The noise report itself is accepted in that the predicted noise levels would be relatively low at this location, in accordance with guidance this is based on hours before 0700- 2300hrs.

- 4.1.2 **SC Highways:** Whilst the premises is currently closed, it formerly operated as a convenience store and off-licence and therefore the store was open throughout the day and evening. Whilst the current proposal seeks a Takeaway A5 use, the opening of the building would be limited to certain parts of the midday and early into

late evening periods. To some extent therefore the trading pattern of the building use would change from its former use to that currently proposed, in terms of attracting customers and therefore this would have some influence on the likely short stay parking demand in the locality.

It is difficult however to predict the former and likely customer on-road parking demand in relation to the proposed A5 use class of the building as the site is located within a residential area and reasonable walking distance to the facility, although as with all Takeaway facilities, customers will be attracted from further afield by car.

Whilst it is accepted that on-street parking demand is high in this area due to the lack of residential off-highway parking, particularly during the evening period when the Takeaway usage is at its peak trading period, it is considered that an objection on highway grounds would not be sustainable, particularly in light of the building's former A1 use class.

The highway authority therefore raise no objection to consent being granted.

- 4.1.3 **WSP on behalf of SC Drainage:** We have no comment from the drainage and flood risk perspective

4.2 - Public Comments

- 4.2.1 **Shrewsbury Town Council:** Objects to this application as they consider a takeaway will have a detrimental impact on the neighbouring residential properties by causing additional noise disturbance until midnight every day, including Sundays and Bank Holidays. Members also have concerns about the parking arrangements. Wood Street is already congested with parked vehicles and with no off street parking available, this takeaway restaurant will only exacerbate the problem. The committee also considers the large, unsightly ventilation stack which will be clearly visible from the road will have a detrimental impact on the street scene.

- 4.2.2 **Cllr Alex Phillips:** Though I do not object in principle to commercial activity taking place on this site, the current application is a departure from what has taken place previously. I do not believe that a takeaway restaurant is appropriate on this site, primarily for the following reasons.

1. Parking. There is no off street parking, meaning that cars will have to park on the already congested Wood Street (where parking spaces are already hard to find, particularly later on at night when a takeaway would be busy). If they don't then they may park illegally on Ellesmere Road, a busy Road with obvious safety risks from this parking.

2. Noise. People coming and going from the takeaway will cause noise late at night in a residential area (after the 11pm threshold when noise abatement complaints can often be triggered) from custom at the takeaway, particularly if people visit by car and have to park on residential streets.

Simply, this is the wrong activity for this site. As other residents have noted, a site

such as the one at Greenfields Spice on Ellesmere Road (has parking, plus other commercial properties adjacent, so is an established commercial zone) is more appropriate.

4.2.3 3 letters of support summarised as follows:

- ☐ Another takeaway is just what is needed in the area with all the new houses that have been built and will be excellent for local residents who do not drive.
- ☐ It will provide an extra service to the area and is easily accessible.
- ☐ This will be welcomed and very handy for many residents wanting to grab some fast food on the way home.
- ☐ The shop has been empty and up for rent for over a year with two estate agents without success.
- ☐ The premises looks run down and will look better than being boarded up.
- ☐ There is no direct parking outside many takeaways in Shrewsbury including EFFEs that has been trading for years.
- ☐ It will provide employment.
- ☐ The applicant is a hard working business man who runs a successful restaurant in the town centre called Ramni Balti.

4.2.4 25 letters of objection summarised as follows:

- ☐ Smell and odour from cooking
- ☐ Antisocial behaviour and noise and disturbance in the area
- ☐ Unsociable hours
- ☐ Littering of the adjacent area
- ☐ The parking space at the rear of the property could fit a maximum of 3 vehicles at any one time
- ☐ Lack of parking for staff, deliveries and customers
- ☐ Lack of parking exacerbating the existing shortage of parking spaces for residents and taking valuable parking spaces that are used by residents.
- ☐ No parking spaces in the area which will lead to unsafe traffic use and dangerous parking on a busy main road within 20 metres of a pedestrian crossing and use being made of the pavement area causing obstruction for pedestrians.

- ☐ Increased traffic in the area increasing the risk of accidents.
- ☐ Concerned vehicles will block the access to Wood Street Gardens
- ☐ The proposed waste flue is unsightly for a residential area.
- ☐ Loss in property value
- ☐ No need for another takeaway in the area and will put an existing business at risk.
- ☐ A deli, pharmacy or bakery would be a more welcome use

4.2.5 **A petition with 79 signatures objecting to the proposal**

4.2.6 **Shrewsbury Civic Society:** We have no objection to the re-use of this building, or its use as a “take-away”. We understand how some objectors worry about increased traffic and parking difficulties. However, our objection concerns the planned ventilation shaft.

The small row of pleasant Edwardian homes leading towards the railway bridge make a respectable entrance to Shrewsbury. Coming into the town along the Ellesmere Road, the end of this row is very prominent with 41, Wood Street as a single storey shop preceeding it. The planned ventilation shaft would be highly prominent and likely to render the area unpleasant and utilitarian. This look is exactly what this end of Ellesmere Road has been seeking to avoid, with new homes and a care block of pleasant design.

Not only is the planned ventilation shaft likely to be of galvanised metal but it would stand well above the roofline of the neighbouring houses and consequently be extremely visually prominent. Drawing PE17-49-PRO1, is misleading in this respect, as the shaft cannot be attached to a gable end.

No 20 Ellesmere Road is the first of a row of well-designed elderly homes with quoined brick corners and hipped roofs etc. A ventilation shaft in the planned position would seriously undermine its architecture.

We object to the shafts, height, position and material. However, we think that there may be solutions to this objection and have talked with the architect.

5.0 **THE MAIN ISSUES**

Principle of development
Impact on residential and local amenity
Parking and traffic
Visual Impact

6.0 **OFFICER APPRAISAL**

6.1 **Principle of development**

- 6.1.1 Core Strategy Policy CS15 established Shropshire's network of centres, and the principle that town centres are the preferred location for new retail, office, leisure, entertainment and cultural facilities, and other town centre uses. SAMDev policy MD10a (Managing Town Centre Development) refers to secondary and primary frontages within the town centre primary shopping area with an emphasis on maintaining A1 use.
- 6.1.2 The site is outside of the designated primary and secondary street frontages and outside of the Shrewsbury Town Centre area on the SAMDev proposals map and the loss of a retail use is acceptable.
- 6.1.3 The proposed change of use from A3 retail to A5 take away of a unit that has been vacant for over a year is considered to be an appropriate and acceptable use in this location. Although there is an existing takeaway in the locality it is considered that the proposal would not result in an over concentration of hot food takeaway restaurants in the area and competition is not a material planning consideration.

6.3 **Impact on residential and local amenity**

- 6.3.1 Policy CS6 and MD2 seek to ensure that development contributes to the health and wellbeing of communities, including safeguarding residential and local amenity.
- 6.3.2 Regulatory services requested a noise assessment and additional information regarding the proposed extraction equipment and that the stack should reach at least ridge height of the main roof to enable adequate dispersion of any odours. They also requested that the closing time should be amended to 11pm as they considered that there might be a licensing impact for any proposed late night refreshment licence after 11pm with the potential for customer sourced noise disturbance to occur at these later hours.
- 6.3.3 The amended plans indicate that the height of the brick built chimney now proposed to conceal the ventilation stack will be higher than the ridge height of the adjacent house. Regulatory Services have confirmed that together with the described filters, odour abatement and maintenance system the proposed extraction system would appear to be adequate to reduce odour.
- 6.3.4 Regulatory services are also satisfied with the submitted noise report and accept that the predicted noise levels from the proposed equipment would be relatively low at this location based on hours between 0700- 2300hrs.
- 6.3.5 The applicant has now confirmed that the premises will close at 11pm and not 12pm (7 days a week) and Regulatory Services have confirmed that a condition to ensure that all operations finish at 2300hrs will protect the amenity of residents from noise. It is considered that the use of the premises as a takeaway up until 11pm each evening will not result in any significant increase in noise and activity in the area compared to its previous use as an off-licence and corner shop.

6.4 **Parking and traffic**

- 6.4.1 The majority of the public concern is due to lack of parking and an increase in traffic

as a result of the proposal.

- 6.4.2 Whilst it is accepted that parking provision might be considered to be inadequate (both for customers, staff and deliveries) and that off-street parking spaces are limited within the vicinity and operate on a first come served basis, as with determination of all applications for change of use consideration should be given to the previous use or earlier planning permissions for the site often referred to as the fall-back position.
- 6.4.3 The premises although currently closed could open again as a shop or an off-licence without the need for planning permission and it is considered that the amount of customers and associated vehicular activity would not be significantly different to its existing use.
- 6.4.4 Therefore considering this fall-back position Highways have confirmed that an objection on highway grounds would not be sustainable and officers therefore consider that refusal of this application due to lack of parking or perceived highway safety implications would not be justified.

6.5 Visual Impact

- 6.5.1 SAMDev Policy MD2 (Sustainable Design) and Core Strategy Policy CS6 (Sustainable Design and Development Principles) requires development to protect and conserve the built environment and be appropriate in scale, density, pattern and design taking into account the local context and character and should also safeguard residential and local amenity. MD13 and CS17 seek to ensure that development protects and enhances the local character of the built and historic environment.
- 6.5.2 The application when first submitted included a metal flue, and it was considered that this would be visually prominent and have an adverse visual impact. The applicant was advised that the proposed metal shaft and its supports would appear incongruous in this residential setting and would be unacceptable and the application would be recommended for refusal for this reason.
- 6.5.3 The latest amended plans indicate a traditional brick built chimney to the side elevation of the adjoining house owned by the applicant. It is considered that this proposed addition would have no significant adverse visual impact on the character and appearance of the building.
- 6.5.4 The proposed change of use will bring a vacant unit (that is currently boarded up and in poor condition) back into use and along with the proposed alterations will enhance the appearance of the building and the locality.

7.0 CONCLUSION

- 7.1 It is considered that the proposed change of use to takeaway is acceptable in principal and that the parking provision is acceptable given the fall-back position of an A1 retail use. It is also considered that the new use and the associated alterations would have no material adverse impact upon the character and appearance of the buildings or on local or residential amenity subject to the

imposition of the recommended conditions. The proposal is therefore considered to comply with the most relevant local plan policies CS6 and MD2.

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

There are two principal risks associated with this recommendation as follows:

- ❑ As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- ❑ The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

8.2 Human Rights

Article 8 gives the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

9.0 Financial Implications

There are likely financial implications if the decision and / or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – insofar as they are material to the application. The weight given to this issue is a matter for the decision maker.

10. Background

Relevant Planning Policies

Central Government Guidance: NPPF

Core Strategy and Saved Policies: CS6 and MD2

11. Additional Information

List of Background Papers

18/05584/FUL - Application documents associated with this application can be viewed on the Shropshire Council Planning Webpages <https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=PJ87IATDIBF00>

Cabinet Member (Portfolio Holder) - Cllr R. Macey

Local Member - Cllr Alex Phillips

Appendices

APPENDIX 1 – Conditions

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Conditions

STANDARD CONDITION(S)

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

Reason: To comply with Section 91(1) of the Town and Country Planning Act, 1990 (As amended).

2. The development shall be carried out strictly in accordance with the approved plans and drawings

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

CONDITION(S) THAT REQUIRE APPROVAL DURING THE CONSTRUCTION/PRIOR TO THE OCCUPATION OF THE DEVELOPMENT

3. An extraction and ventilation system (including the odour and noise mitigating components) shall be installed in full in accordance with the submitted Design Specification for Freshseal Ltd (reference EQ1408-737) and the Noise assessment by MACH Group (reference RP 190301) and concealed by a chimney as indicated on the approved drawings (or in accordance with an alternative extraction and ventilation system to be submitted to and approved in writing by the LPA) prior to the takeaway first being open to the public, and maintained according to the manufacturers' instructions in perpetuity.

Reason: To protect the amenity of the area and nearby residential properties.

4. The chimney shall be constructed of brick to match the appearance of the chimney of the adjoining building.

Reason: To ensure a satisfactory external appearance.

CONDITION(S) THAT ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT

5. The premises shall not be open for customers and no deliveries shall take place from the premises outside the following hours:

1200 - 2300 Mondays to Sundays

Reason: To protect the amenity of the area and nearby residential properties.