

Development Management Report

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Summary of Application

<u>Application Number:</u> 19/04715/FUL	<u>Parish:</u>	Shrewsbury Town Council
<u>Proposal:</u> Change of use from (A1) shop to (A5) hot food takeaway restaurant; associated alterations and the provision of 2No. off-street car-parking spaces		
<u>Site Address:</u> 41 Wood Street Shrewsbury SY1 2PN		
<u>Applicant:</u> Mr Khan		
<u>Case Officer:</u> Jane Raymond	<u>email:</u> planning.northern@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 includes the provision of 2 dedicated parking spaces for customers and deliveries.
- 1.2 The proposal also includes the erection of a traditional brick chimney to conceal the proposed extractor vent, a new entrance door in place of the window on the front Ellesmere Road elevation and the removal and blocking up of two windows and the enlargement of one window on the Wood Street elevation.
- 1.3 The proposed opening hours are 11am to 11pm seven days a week.
- 1.4 The application is a re-submission of an earlier application recommended for approval by officers, refused at the Central Planning Committee by members in April and dismissed at appeal.
- 1.5 This re-submitted application is different in that it includes the provision of two dedicated parking spaces within the red line of the application and the submission of a Highway report. The opening hours have also been amended with an earlier closing time of 11pm instead of midnight.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 The site is an existing retail premises (previously in use as an off licence, corner shop and post-office) with unrestricted opening hours. It is situated at the junction of Wood Street with Ellesmere Road 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 have objected to the application and the Local Member has requested that the application be referred to the relevant Planning Committee within 21 days of electronic notification of the application and agreed by the Principal officer 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:** In relation to this application 19/04754/ FUL, I generally refer to my previous comment contained in the application for the same premises in 18/05584/FUL. However, I would note that this application and associated documents, being a 'new' application, does not have the supporting documents in relation to noise or odour abatement. I therefore offer the following comments

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 is welcome, but there doesn't appear to be any specification of plans or the actual equipment to be used. The attachment shows a number of ventilation company catalogue entries or screenshots showing more products from odour neutralisers through to a page full of differing fans and electrical wiring guides. The applicant should engage a competent company who can advise on a proper and appropriate system with regard to the EMAQ/DEFRA 2018 "Guidance on Noise and odour from kitchen extraction units".

Previous comments (made in relation to the noise and odour abatement information previously submitted that has now been submitted with this application.

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:** It is noted that a similar development, at this location, was previously refused and upheld at appeal, on the grounds of the potential risk to local highway safety. Therefore, the decision of the Planning Inspector, should not be dismissed in determining this application.

From a highways and transport perspective, it is considered that the case being presented for this development is not ideal. Emphasis has been made in attempting to compare this proposed small scale local "takeaway" restaurant with predominantly national mid to large scale branded/chain/franchise restaurants with takeaway facilities, which are not comparative and potentially indicate a worst-case scenario. Thereby, upholding the decision made by the Planning Inspector.

A more appropriate way of determining the potential risk to highway safety would have been for the Applicant to compare the likely traffic generation for the existing use class (A1) shop/post office. Whereby, patrons would be likely to park their vehicles throughout the extended day (7am to 11pm) Not only on Wood Street, but most likely along the arterial route of Ellesmere Road when the risk is greatest, i.e. at peak times (AM & PM).

Subsequently the argument could then be made that the "takeaway" A5 use, would likely only be open during the evenings (after 6pm) when the traffic flows on Ellesmere are waning, and therefore the potential risk in highway safety is reduced, and demonstrating an element of betterment over the current use class.

From experience, and as can be seen throughout Shrewsbury, at many places where established takeaway services are located adjacent to traffic signals, at busy junctions, in narrow streets, within gyratory routes, etc., yet create very little traffic

congestion or adverse road safety issues.

Previous comments: 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:** Offers an informative note regarding sustainable drainage.

4.2 - Public Comments

4.2.1 **Shrewsbury Town Council:** Objects to this application on the grounds that the Members consider a takeaway will have a detrimental impact on the neighbouring residential properties by causing additional and unacceptable noise disturbance. Members also have concerns about the parking arrangements. Wood Street is already heavily congested with parked vehicles and Members feel that this takeaway premises will only exacerbate existing problems.

4.2.2 **Cllr Alex Phillips:** This application has not materially changed from the previous application on this site. The reasons for rejecting that application, chiefly parking (particularly in the evenings when the surrounding streets are full with cars) have not changed. If anything the parking issue is now worse, with residents at Withywood and others reporting more illegal parking in front of dropped kerbs in the area. The risk of noise and anti-social behaviour in the area from customers late at night has not changed. I object to this application.

4.2.3 **8 letters of support summarised as follows:**

☑ The building has been closed for a long time and is run down and doesn't look good

☑ It would be great for the local community and would be an improvement to

the locality and uplift the area

- ☐ It will provide employment
- ☐ There are many empty premises and this would be of benefit to the local economy
- ☐ Will provide another takeaway in a growing area
- ☐ Has used the applicant's restaurant for many years and located here would benefit this part of Shrewsbury
- ☐ Uses them quite a lot and it would be nice to have them closer
- ☐ Welcomes this business to the area providing a quality takeaway
- ☐ Uses online food services and this would provide a quality service

4.2.4 **16 letters of objection summarised as follows:**

- ☐ Lack of parking on the street for residents already which will be further impacted by visitors to the takeaway
- ☐ Lack of parking was viewed as a bad enough problem last time but now with the council suggesting a loss of some 30 parking spaces in nearby Greenfields, which will no doubt cause an overspill into nearby streets, this plan is less tenable than before
- ☐ Residents suffer from a lack of parking and this will exacerbate this problem
- ☐ Where will the customers, staff and delivery drivers park
- ☐ It is envisaged that cars will drive down Wood Street trying to park then having to reverse back up the street when they can't find a space. This is likely to happen in the late hours and the noise of the cars reversing would be disruptive to the residents of Wood Street
- ☐ Customers will park on Ellesmere road for convenience no matter if there are spaces available behind the take away
- ☐ There are no parking spaces in the area which will lead to dangerous parking on a busy main road within 20 metres of a pedestrian crossing.
- ☐ Parking in the pavement area will cause obstruction for pedestrians including those disabled and parents with pushchairs
- ☐ The proposed two off road parking bays are wholly inadequate for the amount of extra traffic which will ensue.

- ☐ This proposal will only encourage inappropriate parking and unacceptable waiting of vehicles in and around the access to Wood Street
- ☐ Considers there are inaccuracies in the submitted highways report
- ☐ The highways report ignores a reduction in off-road parking from the 3 spaces proposed in the original application and that by widening the access point this new proposal will actually involve a reduction of the on-road parking availability for local residents.
- ☐ There is an error in the report in that properties on the right of Wood street are not able to park at the rear of their houses as they do not have a right of access via Wood Street Gardens which is private
- ☐ There are no further off-road parking space available for Wood Street residents as there is lack of space in the front gardens
- ☐ The proposed rear pedestrian gate is adjacent private land used for the storage of waste bins and a private driveway to Wood Street Gardens.
- ☐ The opening of the Premier shop did not cause the closure of the shop in Wood street as they had co-existed for many years.
- ☐ There is already a local Indian takeaway in Greenfields and there is no need for another so close
- ☐ Could create an abundance of litter and noise in the street.
- ☐ Concerned about the increase in rubbish and potential aggravation and noise from the late-night custom it would attract
- ☐ The proposed large waste flue is unsightly and not suitable (and may well be inadequate to deal with the smell though no doubt this will be refuted) for a residential area
- ☐ 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
- ☐ Those in support are not directly affected by the application as they do not live in the area

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 for 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 A1 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 At the time of the previous application 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 plans re-submitted 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. The noise assessment and details of the extraction system have now been re-submitted and Regulatory Services previously 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 were 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 This re-submitted application confirms that the premises are proposed to close at 2300hrs and not midnight (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 2300hrs each evening will not result in any significant increase in noise and activity in the area.

6.4 Parking and traffic

- 6.4.1 The majority of the public concern is due to lack of dedicated off-street parking for the proposed new use, that there is no on-street parking available in the area particularly in the evening and that dangerous and illegal parking will result and consequently impact on highway and pedestrian safety and make it more difficult for residents to access and park in Wood Street.
- 6.4.2 Whilst it is accepted that parking provision might be considered to be inadequate (both for customers, staff and deliveries) and that on-street parking spaces are limited within the vicinity (particularly after 6pm), consideration needs to be given to the previous and permitted use for the site often referred to as the fall-back position. This includes a consideration of how significant a change to the demand for parking the proposal would result in (and at what time of day a change in demand would arise) and how that demand would affect the severity of the impact on highway safety compared to the fall-back position of the premises re-opening as a shop (without any dedicated customer parking).
- 6.4.3 The premises although currently closed could open again as a shop or an off-licence without the need for planning permission. Following Highway advice, the previous officer report advised members that it was considered that the number of customers and associated vehicular activity would not be significantly different to its existing use. Considering this fall-back position Highways previously confirmed that an objection on highway grounds would not be sustainable and officers advised that refusal due to lack of parking or perceived highway safety implications would not be justified.
- 6.4.4 Members disagreed and refused the previous application for the following reason:

It is considered that the proposed change of use provides in-sufficient off-street parking spaces for both staff and customers. It is acknowledged that the fall-back position is the use of the commercial premises as an A1 retail unit (including use as an off-licence) and that all customers travelling by vehicle would be required to find a space to park in the surrounding streets. However, it is considered that the pattern of use and demand for on-street parking would be significantly different and increased for the proposed A5 use. This increased demand for parking would be generated at times when there is likely to be minimal parking available in the surrounding streets and as such would encourage inappropriate parking or waiting of vehicles and have a detrimental impact on the local highway network contrary to Shropshire Councils adopted policies CS6 and MD2.

- 6.4.5 The applicant appealed the decision and the Inspector dismissed the appeal with the following reasons:

7. Car trips to the proposed takeaway would either exacerbate the parking and car movement problems on Wood Street or lead to drivers seeking to avoid them by parking illegally on Ellesmere Road. In either case, there would be an unacceptable effect on highway safety.

8. As a fallback to the appeal proposal, the shop use could return with unlimited opening hours. However, the appellant's marketing information suggests this is

unlikely to happen. The submitted TRICS figures relate to convenience retail uses with a floor area significantly larger than the appeal property. Therefore, they fail to convincingly demonstrate a retail use would generate more demand for parking than the proposal, particularly in the evening. There is no evidence to demonstrate that a change of use allowed under permitted development rights is likely, or that any such change would result in a similar or greater demand for on-road parking. As such, I attach little weight to the impact of potential alternative uses in my assessment of the appeal.

9. For the reasons given above I conclude the development would cause unacceptable harm to highway safety in relation to parking.

6.4.6 The Inspectors decision is a material consideration in determining this re-submitted application. The Inspector considered that the proposed use as a takeaway would exacerbate the parking and car movement problems on Wood Street and/or result in illegal parking on Ellesmere Road which would unacceptably impact on highway safety. There were two main considerations in reaching this conclusion:

1. The applicant did not convincingly demonstrate that a retail use would generate more demand for parking than the proposed use particularly in the evening and,
2. There is no evidence to demonstrate that a change of use allowed under permitted development rights is likely, or that any such change would result in a similar or greater demand for on-road parking.

The Inspector therefore attached little weight to the impact of potential alternative uses in assessing the appeal. The Inspector also noted that *'the parking area to the rear of 20 Ellesmere Road lies outside the appeal site and therefore is not subject to the proposed change of use'*.

6.4.7 To address the Inspectors decision this re-submitted application includes a revised layout plan and a highway report.

6.4.8 The earlier refused application considered by the Inspector did not include any dedicated parking within the red line boundary. The revised plan submitted with this application includes a larger area within the red line boundary and indicates the provision of 2 dedicated off-street parking spaces and closure of the existing vehicular access and relocating the access adjacent to the access to Wood Street Gardens. Some residents have commented that 3 off-road spaces were previously proposed and as this proposal only includes 2 it represents a reduction. Residents have also commented that moving the access would also result in a reduction in on road spaces.

6.4.9 The Inspectors decision was based on all parking requirements associated with the proposed new use (including customers, deliveries and staff) having no off-road parking provided and gave no regard to the spaces available in the rear garden of the adjacent house that were outside of the red line. However, it should be noted that when the earlier planning application was reported to committee, members were advised within the additional representations schedule that 3 spaces at the rear would be available for staff parking. These 3 spaces (now 2 dedicated

customer spaces) will not be available for staff. The agent has confirmed that a maximum of 4 full-time employees will be present at the premises at any one time and that the employees will be picked up and delivered to the site which is the current practise for the applicant at his existing premises in Wyle Cop.

- 6.4.9 The submitted Highway Report and additional submitted information indicates that the proposed 2 off road parking spaces will be available at all times for customers and deliveries but notes that deliveries to the former shop simply parked on the highway. Legal highway parking provision will remain much as existing with space for 3 cars along the road outside of the premises. A plan has been submitted that indicates that there is only space for 2 cars at present but that the proposed relocation of the access will provide 3 on road spaces. These 3 spaces would however not be dedicated and in the evening are more likely to be taken up by residents permanently parking. WSP (on behalf of Shropshire Council Highways) have commented that many established takeaways are located in similar situations (adjacent to traffic signals, at busy junctions, in narrow streets, within gyratory routes, etc.) with little off road or on road parking available yet create very little traffic congestion or adverse road safety issues. The Highway report notes the following regarding this:

'We note there are a number of similar such takeaways across the town where little or no parking is available and that patrons either walk to the premises or indeed park a distance away and approach again by foot. These premises are in similar areas of residential use and include takeaways such as Chilli Spice on the A5191, Mandarin at Frankwell, Flaming Great along the A458 at Abbey Foregate, to name a few. These appear to operate well with the latter located on the gyratory system in the Abbey Foregate locality where traffic is prohibited from parking on street and with a short walk required to any off-highway parking'.

- 6.4.9 The submitted highways report also includes TRICS data to assess similar such sites and to predict the likely level of traffic the proposal would generate. The report indicates that the peak hour for customers is between 19:00 and 20:00 and concludes that *'the site will provide two spaces for customers with a prediction of 5.729 movements to and from the takeaway in the peak hour. This would suggest that on an average basis there would be one car every 10 minutes, which is considered to be very small'.*
- 6.4.11 WSP has reviewed the information and has confirmed that comparing this proposed small scale local takeaway restaurant with predominantly national mid to large scale branded/chain/franchise restaurants with takeaway facilities, which are not comparative, potentially indicate a worst-case scenario. WSP considers that a more appropriate way of determining the potential risk to highway safety is to compare the likely traffic generation for the proposed takeaway use with the existing retail use. The Highway report states that *'Given the previous use the property could be brought back into operation without further planning which indeed could result in a greater number of traffic movements particularly through the earlier hours of the evening and morning which may well clash with peak hour traffic'.*
- 6.4.10 WSP consider that as a shop, customers would be likely to park their vehicles throughout the extended day (7am to 11pm) not only on Wood Street, but most likely along the arterial route of Ellesmere Road at the time of day when the risk is

greatest, i.e. at peak traffic times (AM & PM). The proposed takeaway would likely be busier during the evenings (after 6pm) when the traffic flows on Ellesmere Road are waning, and busiest between 7pm and 8pm when traffic flows are even less, rather than spread throughout the day (that includes the peak AM and PM periods). WSP consider that the potential risk to highway safety is reduced and demonstrates an element of betterment over the current use class.

- 6.4.11 However, it should be noted that the Inspector gave little weight to the fall-back position of the current use class re-opening indicating that '*the appellant's marketing information suggests this is unlikely to happen*'. That the shop use could return was given less weight by the Inspector than officers previously gave in recommending approval of the earlier application. That the site has been marketed as a shop for several months without success does indicate that the fall-back position is potentially unrealistic. Having regard to the Inspectors decision that the premises re-opening for its current permitted use might be unlikely, an assessment therefore also has to be made on the likely impact of the proposed new use on Highway safety disregarding this fall-back position.
- 6.4.12 Paragraph 109 of the NPPF states that '*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*'.
- 6.4.13 Officers acknowledge that whilst the premises remain closed this offers an improvement to highway safety. Officers also acknowledge that during the evenings the available on-street parking is very limited or non-existent due to resident parking. Future customers (if the 2 dedicated and 4 on road spaces are not available) will likely park anywhere they can (most likely along Ellesmere Road and at the junction with Wood Street) with potential impact for highway and pedestrian safety. However as highlighted by WSP the amount of traffic and pedestrians on the roads is waning after 6pm and therefore any potential conflict between other traffic and pedestrians with customers trying to find a space to park (either legally or illegally) during the takeaways busiest time (7pm – 8pm) is greatly reduced.
- 6.4.15 The TRICS figures submitted indicate that the busiest hour would be between 7pm and 8pm with a combined traffic total of 5.729 movements to and from the takeaway suggesting on an average basis there would be one car every 10 minutes. WSP have confirmed that these figures potentially indicate a worst-case scenario. The number of customers by car would therefore likely be no more than 6 per hour (one every 10 minutes) between the peak hour of 7pm and 8pm and less at other times.
- 6.4.16 Customers will be stopping briefly to collect a takeaway and based on one car or less every 10 minutes it is considered that the provision of 2 dedicated off road parking spaces would be adequate. It is acknowledged that occasionally during peak business times (and if more than 2 customers arrived by car at the same time) there would be some illegal parking for short periods, but it is not considered that this would result in a significant and unacceptable adverse impact on highway or pedestrian safety. The proposal does also include some improvement to the existing on road parking spaces.

6.4 Many of the objectors are also concerned about loss of on-street parking which they rely on. However, customers would not be taking away available on-street parking as most residents are home after 6pm and once they have found a space their cars would remain permanently parked. Any spaces that were available (if the 2 dedicated parking spaces were in use) would only be used for a few minutes by customers collecting their meals and then they would be vacated.

6.4.17 In addition to the above a proportion of the business would be delivered by online delivery services such as Deliveroo and Just Eat helping to reduce the number of vehicle movements and demand for customer parking due to combined trips. The agent has confirmed that a delivery service will be provided for customers and that customers will also be able to make use of internet services such as Deliveroo and Just Eat. The applicant anticipates that some 80% of deliveries could be by internet services as the applicant's existing restaurant premise in Wyle Cop have 70/75% internet sales at present. The 2 dedicated parking spaces will be used for customers and deliveries only.

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 at the time of the first application 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 Amended plans were submitted and have again been submitted with this application and 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 principle and would provide some employment and a service for the community. Any increased demand for parking would be during the evening (when pedestrian and vehicular activity is past its peak) and combined with the provision of 2 off-road parking spaces for use by customers and deliveries only it is considered that the

proposal would not result in a significant and unacceptable adverse impact on highway or pedestrian safety. Having regard to the fall-back position (of the premises opening again as a shop) it is considered that the proposal offers some betterment compared to the premises permitted use where business would likely be busier during the day and at peak AM and PM traffic times.

7.2 It is considered that the proposed use and the associated alterations would also bring a vacant and neglected building back into use and enhance the appearance of the building and the locality and would have no material adverse impact 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

Relevant Planning History:

18/05584/FUL Change of use from A1 retail to A5 hot food takeaway restaurant and associated alterations to the building REFUSE 12th April 2019 Appeal (19/02734/REF) DISMISSED 23rd August 2019

11. Additional Information

List of Background Papers

19/04715/FUL - Application documents associated with this application can be viewed on the Shropshire Council Planning Webpages

Cabinet Member (Portfolio Holder) - Councillor Gwilym Butler

Local Member - Cllr Alex Phillips

Appendices

APPENDIX 1 – Conditions

APPENDIX 1

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 BEFORE THE DEVELOPMENT COMMENCES

3. Prior to the commencement of development further details for the proposed parking of vehicles including the provision of a new dropped kerb and the closure of the existing vehicular access, and details of the new boundary wall shall be submitted to and approved in writing by the Local Planning Authority. Prior to the change of use being implemented the approved details shall be provided in full including closure of the existing vehicular access and the provision of 2 parking spaces which shall be kept clear and maintained at all times and available for customers and deliveries.

Reason: To ensure the provision of off-road parking in the interest of highway safety and local amenity.

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

4. 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.

5. 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

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

1100 - 2300 Mondays to Sundays

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