

**Planning Committee 17 August 2021
Report of the Planning Manager**

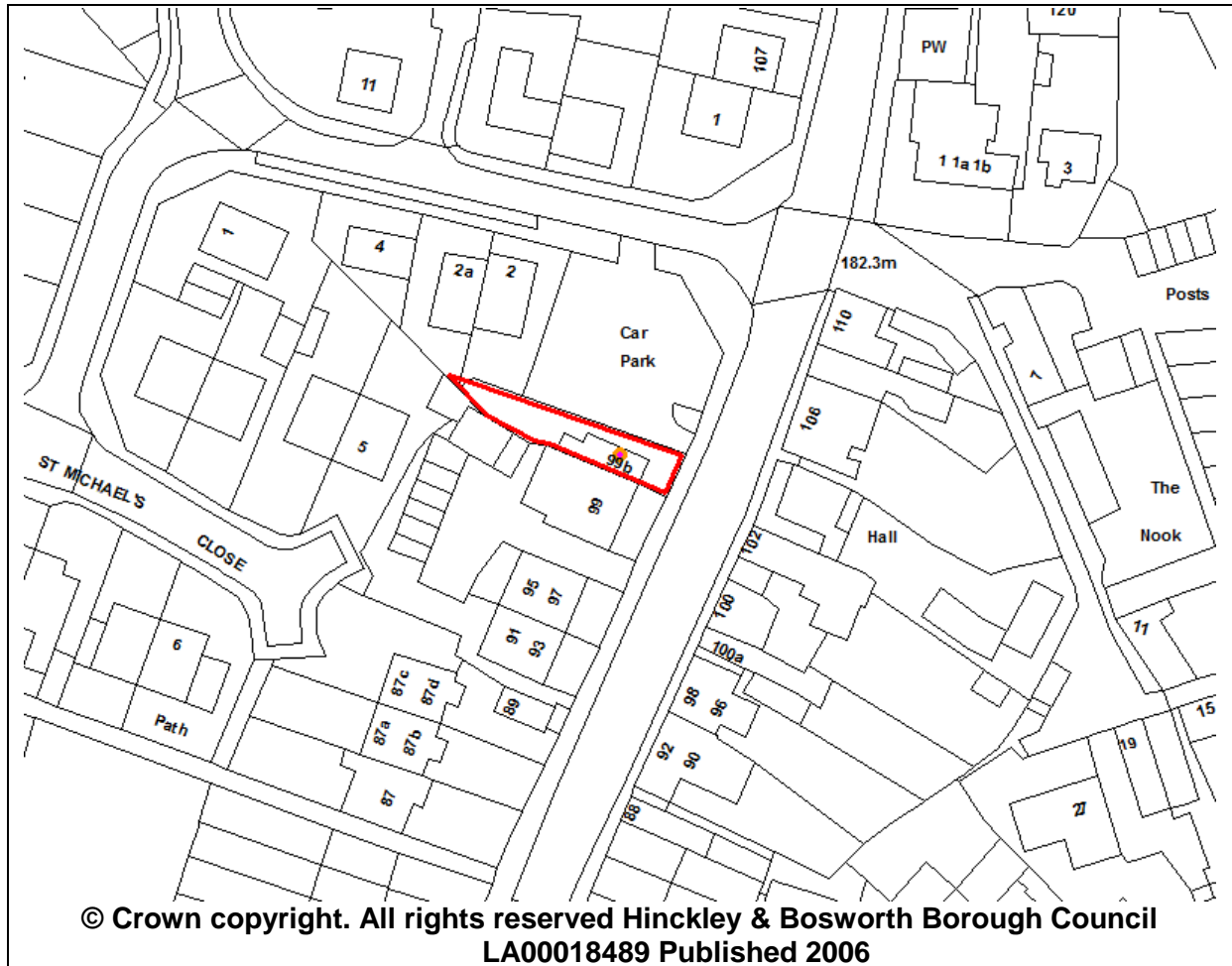
**Planning Ref: 20/01206/FUL
Applicant: Patricia Bown
Ward: Markfield Stanton & Fieldhead**



**Hinckley & Bosworth
Borough Council**

Site: 99B Main Street Markfield LE67 9UT

Proposal: Change of use from shop to hot food take away, ventilation flue



1. Recommendations

1.1. Grant planning permission subject to:

- Planning conditions outlined at the end of this report

1.2. That the Planning Manager be given powers to determine the final detail of planning conditions.

2. Planning application description

- 2.1.** The application seeks full planning permission for the change of use of the ground floor from retail to a hot food take away. The applicant has stated the premises has

been vacant since October 2020. A ventilation flue at the rear of the property running onto the flat roof area is also proposed. This has been amended by raising the height by 1 metre to level with the existing ventilation flue on the building. Details of anticipated noise levels from the flue have now been provided. The applicant has confirmed hours of use proposed are 16000 to 2300 hours daily.

- 2.2. The application is accompanied by a Planning Statement and a Design and Access Statement.

3. Description of the site and surrounding area

- 3.1. The site relates to a vacant end of row unit located within the Markfield local shopping centre. The unit was previously in use as retail and has a flat on the first floor and a small yard area at the rear. It forms part of a row of three units within the same brick built, two and a half storey building. There is a mix of commercial and residential properties along Main Street and the site is within the settlement boundary for Markfield. There is a public car park to the immediate north of the site. The site is adjacent to but outside of the Markfield Conservation Area. The site is within the National Forest.

4. Relevant planning history

None.

5. Publicity

- 5.1. The application has been publicised by sending out letters to local residents. A site notice was also posted within the vicinity of the site. There have been 5 letters of objection as a result of the publicity making the following points:

- 1) Too many hot food takeaways in Markfield
- 2) Increase in waste and smell
- 3) There should be increased healthier food options available
- 4) Increased parking problems with only a small short stay car park available and roads are already full of cars
- 5) Major eye sore and obstruction from the extraction unit
- 6) Noise disturbance from the extraction unit

6. Consultation

- 6.1. No objection has been received from:
HBBC Conservation Officer
HBBC Environmental Services (Pollution)
- 6.2. No response has been received from Markfield Parish Council.

7. Policy

- 7.1. Markfield Neighbourhood Development Plan
- Policy M10: Design
 - Policy M13: Local and Neighbourhood Centres

7.2. Core Strategy (2009)

- Policy 8: Key Rural Centres relating to Leicester

7.3. Site Allocations and Development Management Policies DPD (2016)

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM7: Preventing Pollution and Flooding
- Policy DM10: Development and Design
- Policy DM11: Protecting and Enhancing the Historic Environment
- Policy DM12: Heritage Assets
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards
- Policy DM22: Vitalising District, Local and Neighbourhood Centres

7.4. National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2021)
- Planning Practice Guidance (PPG)

7.5. Other relevant guidance

- Good Design Guide (2020)
- National Design Guide (2019)
- The District, Local and Neighbourhood Centre Review (2015)
- Planning (Listed Buildings and Conservation Areas) Act 1990

8. Appraisal

8.1. Key Issues

- Assessment against strategic planning policies
- Design and impact upon the character of the Markfield Conservation Area
- Impact upon neighbouring residential amenity
- Impact upon highway safety and parking

Assessment against strategic planning policies

8.2 Paragraph 2 of the National Planning Policy Framework (NPPF) (2021) states that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise and that the NPPF is a material consideration in determining applications. Paragraph 12 of the NPPF confirms 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.

8.3 Paragraph 11 of the National Planning Policy Framework (NPPF) and Policy DM1 of the Site Allocation and Development Management Policies Development Plan Document (SADMP) set out a presumption in favour of sustainable development, and state that development proposals that accord with the development plan should be approved unless other material considerations indicate otherwise. The development plan in this instance consists of the adopted Core Strategy (2009), the Site Allocations and Development Management Policies DPD (2016) (SADMP) and Markfield Neighbourhood Plan.

8.4 The Borough Council is actively promoting the preparation of Neighbourhood Development Plans and is keen to see communities strongly involved in the planning and future growth of villages. Currently the Borough Council has published

the Decision Statement (Regulation 18) for the Markfield Neighbourhood Plan and it has now proceeded to referendum stage and as such can be given significant weight.

- 8.5 Policy M13 of the Markfield Parish Neighbourhood Plan sets out development proposals that will enhance the commercial, business and service functions of the Main Street Local Centre or the Chitterman Way Neighbourhood Centre, defined on Map 12 and the Policies Maps, will be supported. Development proposals that will adversely affect the vitality and viability of the Main Street Local Centre or the Chitterman Way Neighbourhood Centre will not be supported.
- 8.6 Policy DM22 of the SADMP outlines that to ensure the continued vitality and viability of local centres the change of use from A1, or A2 retail or loss of A1 or A2 retail uses within District Centres will only be permitted where the proposal would not detract from the vitality and viability of the local centre in terms of mix and type of use.
- 8.7 Updates to the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 ("The Amendment") came into force on the 1st September 2020, with the intention of reducing restrictions and increasing flexibility in commercial areas. The proposed use is Sui Generis having previously been Class A5, therefore the changes to the use classes order, do not impact upon this proposal. The existing retail use was previously class A1 however it has now been amalgamated in to the broader E class use to allow greater flexibility. As the use classes remain different it is not considered that the changes to the use class order will impact upon this proposal.
- 8.8 Located within a local shopping centre it is considered a hot food take away use would be appropriate subject to retaining the vitality and viability of the centre. The District, Local and Neighbourhood Centre Review, although it is now a few years old stated that the Markfield local centre had an adequate range of essential every day retail uses, with at the time a 100% occupancy rate. The proposal would result in 4 out of the 14 units within the local centre being a hot food take away use. This would equate to 28% of the units within the centre. It can be argued therefore for some of the retail character of the centre being lost. However local or national planning policy does not define what an over concentration of non-retail uses or over proliferation of hot food takeaways should be. However the proposal would result in a vacant unit being brought back into use and the local centre would still retain a retail element providing day to day needs for the community. It is therefore considered that the vitality and viability of the local centre would be retained in compliance with Policy 22 of the SADMP and Policy M13 of the Markfield Parish Neighbourhood Plan.
- 8.9 Concerns have been raised regarding the proposed use and creating unhealthy lifestyles. Section 8 of the NPPF (2021), paragraph 92 focuses on planning policies and decisions enabling and supporting healthy lifestyles especially where this would address identified local health and well-being needs including access to healthier foods. National Planning Practice Guidance (NPPG) emphasises the importance of promoting access to healthier food and the role that local authorities have in considering health and well-being in their plan making and decision taking. It goes on to state that particular regard should be given to issues including proximity to locations where children and young people congregate such as schools, community centres and playgrounds and overconcentration of uses such as hot food takeaways. Whilst Markfield contains schools, community centres and playgrounds it is not considered the proposal is in close proximity to these and as stated above it is not considered there would be an over concentration of such uses in the area.

Design and impact upon the character of the Markfield Conservation Area

- 8.10 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
- 8.11 Section 16 of the National Planning Policy Framework (NPPF) provides the national policy on conserving and enhancing the historic environment. Paragraph 197 of the NPPF require great weight to be given to the conservation of designated heritage assets when considering the impact of a proposed development on its significance, for any harm to the significance of a designated heritage asset to have clear and convincing justification, and for that harm to be weighed against the public benefits of a proposal.
- 8.12 Policies DM11 and DM12 of the Site Allocations and Development Management Policies (SADMP) DPD seek to protect and enhance the historic environment and proposals should ensure the significance of a conservation area is preserved and enhanced. Policy DM10 of the SADMP requires new development to complement or enhance the character of the surrounding area with regards to scale, layout, density, mass, design, materials and architectural features.
- 8.13 Policy M10 of the Markfield Parish Neighbourhood Plan sets out to be supported development must be sympathetic to local character and history and be in keeping with the scale, form and character of its surroundings.
- 8.14 The site adjacent to but outside the Markfield Conservation Area. The property forms the northern part of a terraced property constructed during the mid to latter part of the 20th century. The Borough Councils Conservation Officer has assessed the proposal. They consider the property is not of any historical or architectural merit. There is an existing extraction flue serving number 99E Main Street that emerges from the rear corner of the building. The view of the building including the flue when looking south along Main Street has a minor negative effect on the character of the conservation area.
- 8.15 The proposal comprises a ventilation flue to the rear of the building. It is set back a reasonable distance from the side of the building, and sits well below the ridge line of the building. The visual impact from the flue on the character and appearance of the conservation area is considered to be negligible. No other external alterations are proposed.
- 8.16 Overall the proposal will have a negligible impact on the existing building and the proposal will not have an adverse impact on the Markfield Conservation Area, preserving its significance. The proposal is therefore in compliance with policies DM11 and DM12 of the SADMP, section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and section 16 of the NPPF.

Impact upon neighbouring residential amenity

- 8.17 Policy DM10 of the SADMP states that developments will be permitted providing that the development would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings including matters of air quality (including odour) and noise. Policy DM7 of the SADMP also states that development will only be permitted provided that there would be no adverse pollution impacts.
- 8.18 There are residential properties above the premises and to the rear of the premises. Concerns have been raised over the possible noise impact of the flue. During the

course of the application discussions have been ongoing between the applicant, officers and HBBC Environmental Health (Pollution) regarding the details of the ventilation flue that were originally not provided. Additional technical details of the flue including anticipated noise levels, details of efflux velocity and details of carbon infiltration have now been provided which Environmental Health are now satisfied with. In addition the flue is to be fitted with silencers and anti-vibration mounting. The height of the flue has also been amended to increase in height by 1 metre to improve the discharge of fumes, odour and noise above the building.

8.19 Hours of use proposed are 1600 to 2300 hours daily. Environmental Health do not object to these hours of use with the closing time suitable for a local shopping centre location. However it is necessary to condition these opening hours of the proposed use to control noise and general disturbance to neighbouring properties.

8.20 Subject to suitable conditions the proposal would result in a minimal impact on residential amenity in compliance with policies DM7 and DM10 of the SADMP.

Impact upon highway safety and parking

8.21 Policy DM17 and DM18 of the SADMP states that proposals should ensure that there is adequate provision for on and off street parking for residents and visitors and there is no impact upon highway safety.

8.22 The site is located adjacent to a public car park although some of the objections received state many of these spaces are taken up by local residents with no dedicated parking serving their properties. On street parking is also available although this is time limited, however the nature of the use would dictate that parking is likely to be short term. The site is located within a sustainable location with access to public transport services. Other hot food takeaways in the area do not have dedicated off street parking serving them. It is not considered that the proposal would result in additional parking demand significantly above the retail use that would lead to significant parking and highway safety issues.

8.23 The proposal will therefore result in a minimal impact on parking and highway safety in compliance with policies DM17 and DM18 of the SADMP.

9. Equality implications

9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

(1) A public authority must, in the exercise of its functions, have due regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9.2 Officers have taken this into account and given due regard to this statutory duty in the consideration of this application. The Committee must also ensure the same when determining this planning application.

9.3 There are no known equality implications arising directly from this development.

- 9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Planning Balance and Conclusion

- 10.1. The proposal is located within the settlement boundary of Markfield where there is a presumption in favour of sustainable development. The location of a hot food take away in a local shopping centre is acceptable in principle. The proposal would not result in the over proliferation of non-retail uses within the district centre and would retain the vitality and viability of the local shopping centre in compliance with policy DM22 of the SADMP.
- 10.2. The proposal will not have an adverse impact on the adjacent Markfield Conservation Area, preserving its significance. The proposal is therefore in compliance with policies DM11 and DM12 of the SADMP, section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and section 16 of the NPPF.
- 10.3. The revised proposal would not have a significant impact on the residential amenity of neighbouring properties through noise, vibration, smell and odour in compliance with policies DM7 and DM10 of the SADMP.
- 10.4. The proposal would result in a minimal impact on parking and highway safety in compliance with policies DM17 and DM18 of the SADMP.

11. Recommendation

- 11.1 **Grant planning permission** subject to:

- Planning conditions outlined at the end of this report

- 11.2 That the Planning Manager be given powers to determine the final detail of planning conditions.

11.3 Conditions and Reasons

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

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows:

Site location plan received 10 February 2021

Amended plans and elevations ref no 1039/3A received 22 March 2021

Technical details for the ventilation flue received 19 April 2021

Reason: To ensure a satisfactory form of development in accordance with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

- 3) The use hereby approved shall not be open to the public outside the following times:-

16:00 to 23:00 hours daily

Reason: To protect the amenities of the occupiers of neighbouring residential properties from unsatisfactory noise and disturbance in accordance with Policy DM7 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

- 4) The development hereby shall not be brought into use until the scheme for the ventilation of the premises is implemented in accordance with the agreed details submitted and maintained in use thereafter.

Reason: To protect the amenities of the occupiers of neighbouring residential properties from unsatisfactory noise and disturbance in accordance with Policy DM7 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

11.4 Notes to applicant

1. The approved development may require Building Regulations Approval, for further information please contact the Building Control team via e-mail at buildingcontrol@hinckley-bosworth.gov.uk or call 01455 238141.
2. A separate consent may be required under the Town and Country Planning (Control of Advertisement) Regulations 2007 in respect of the display of advertisements on these premises. Advice may be sought from the Local Planning Authority.