

Reference: 14/01283/COU

Applicant: Mr Tuhel Miah

Location: 23 Station Road Ratby

Proposal: Change use from restaurant to a mixed use restaurant and hot food takeaway (retrospective)

RECOMMENDATION:- 1. Refuse planning permission
2. Authorise enforcement action to cease the unlawful use

Introduction:-

This application is to be considered at Planning Committee in accordance with the Scheme of Delegation, as Councillors O'Shea and Boothby have requested that a decision be made by Planning Committee so that members can consider how the development affects highway safety and impacts upon local residents.

Application Proposal

The application seeks retrospective planning permission for the change of use from a restaurant to a mixed use of a restaurant and hot food takeaway. The change of use, if permitted would allow the hot food take-away element to operate from the premises alongside the restaurant which is lawful.

Site and Surrounding Area

The property sits on the corner of Station Road and Chapel Lane with the majority of the premises fronting onto Station Road. The site is located within the Ratby conservation area, which is within the settlement boundary.

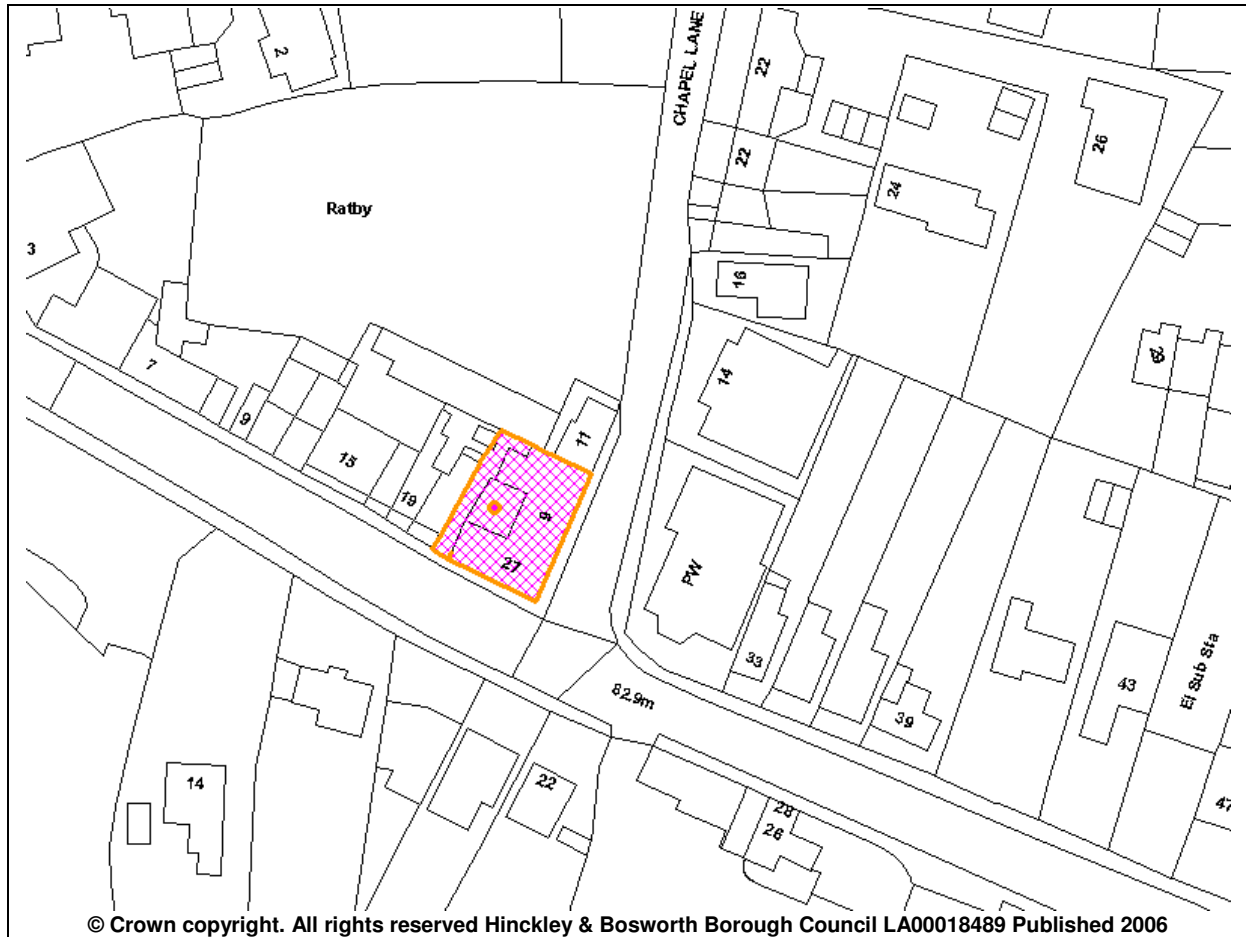
The property features large windows along Station Road elevation as part of a traditional shop frontage with the door to the premises located on the corner of Station Road and Chapel Lane. To the rear of the premises is a yard accessed via a passageway between No. 21 and the building, used for the storage of waste bins.

Adjacent to the premises is a row of traditional terraced residential properties No. 15 - No. 21. To the other side of Chapel Lane is Ratby Methodist Church. Directly opposite the site are a number of detached residential properties Nos. 16, 18 and 20 which are set back from the highway behind front gardens/driveways.

There is no off-street car parking within the site. Parking is available on street to the front of the property. Adjacent to the premises is a row of terraced houses which have on street parking available, on the opposite side of the road there are no restrictions in terms of parking and wait times.

Relevant Planning History:-

13/00350/COU	Change of use from A1 (Shop) to A3 (Café) (retrospective)	Approved	30.07.13
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Consultations:-

Environmental Health (Pollution) have raised concerns in regard to the application stating that the intensification of the use of the kitchen as a result of the takeaway service may increase odour in the area and impact on residential premises may arise. If the application is recommended for approval an appropriate condition to improve the ventilation of the premises would be required.

Conservation Officer - No objections

Leicestershire County Council (Highways) has objected to the application, raising concerns about vehicle parking and loading/unloading taking place in the public highway in the immediate vicinity of the site, in proximity to a road junction which impedes from the free flow of traffic, and leads to additional dangers to road users.

A site notice was displayed, an advert displayed in the Leicester Mercury and neighbours consulted on the application. Eight letters of objection have been received raising the following concerns:-

- a) no parking area for customers especially in the evening when the restaurant is open and resident's cars are parked on the street
- b) vehicles parking outside residential driveways obstructing visibility of residents who want to leave the property, due to vehicles parking in dangerous positions
- c) odour has become worse since a takeaway has been operating from the premises
- d) noise generated from the takeaway is unbearable
- e) growing amount of litter being generated to the front of the restaurant.

Policy:-

National Policy Guidance

The National Planning Policy Framework (NPPF) 2012

Hinckley & Bosworth Local Plan 2001

Policy BE1: Design and siting of development

Policy T5: Highway design and vehicle parking standards

Appraisal:-

The main considerations in determination of this application are:-

- Principle of development
- Impact on residential amenity
- Impact upon highway safety
- Enforcement Issues

Principle of Development

The premises is able to lawfully operate as a café/restaurant, which was granted planning permission in 2013. A variation to the restaurant's opening hours was approved in 2014. The site is located within the settlement boundary of Ratby. This is a sustainable location, being close to other community facilities. The principle of using this site for a food and drink use has been established by the grant of planning permission in 2013 and 2014. Introducing a take-away element to the use therefore does not conflict with the presumption in favour of sustainable development as set out in the National Planning Policy Framework.

Impact on Residential Amenity

Policy BE1 of the adopted Local Plan is considered to have a high degree of conformity with the NPPF and can therefore be given significant weight in the determination of this application. The policy relates to the design and siting of development and seeks a high standard of design to safeguard and enhance the existing environment through a criteria based policy. Policy BE1 (criterion i) seeks to ensure that the development does not adversely affect the occupiers of neighbouring properties.

When considering this application one of the impacts is on noise and disturbance caused to local residents by the running of the take-away. With the running of a take-away there are more frequent customers visiting the premises which can result in more noise generated to local residents. There is also the concern that the customers visiting the premises will only be there for a short period of time, resulting in frequent and regular comings and goings. This constant movement of people in such close proximity to houses causes disturbance to local

residents. The situation is worse during the summer months when residents are more likely to spend time in their gardens or when occupiers open their windows.

There are neighbouring residential properties opposite and adjacent to the premises on Station Road. Concern has been raised by residents about the existing ventilation system. If the application is approved, environmental health has stated that a more substantial ventilation system would be required to disperse the odours away from residential properties. Ventilation for the existing café was considered acceptable by virtue of the fact that a limited range of hot food was prepared. Whilst ventilation is not part of the determination of this application, a number of complaints have been received by the Local Planning Authority in regard to noise and odour being generated from the current ventilation system. With the operating of a takeaway facility from the site this has intensified the use and introduced wider range of goods being cooked. This intensification in use is causing additional odour problems that is not being mitigated the installed ventilation system, which is having an adverse impact on the residential amenity of the neighbouring properties.

It is also worth noting that even if adequate changes are undertaken to the ventilation system, due to the proximity of the take-away to neighbouring residential properties the odour is likely to be difficult to disperse.

It is therefore considered that the change of use is having and would continue to have an adverse impact on the occupiers of neighbouring properties and is contrary to Policy BE1 (criterion i) of the adopted Local Plan.

Impact upon Highway Safety

Policy T5 of the Local Plan requires a suitable amount of off-street car parking to be provided to alleviate pressure for on-street parking. This is to avoid congestion and safety problems on the highway. Leicestershire County Council (Highways) have objected to the application stating that the nature of a takeaway use has resulted in vehicle parking and loading/unloading taking place in the public highway in the immediate vicinity of the site. This is in proximity to a road junction which impedes the free flow of traffic. As the premises faces onto Station Road there is no off-street car parking available, only street parking that is shared with local residents. This limits the amount of vehicles that are able to park on the street, particularly during evening hours when residents return from work.

It is considered that the intensification in the use of the premises has had an adverse impact upon highway safety. Furthermore, it has created an additional demand for on-street car parking which takes space away from local residents. Leicestershire County Council (Highways) has stated that the take-away encourages indiscriminate on-street car parking outside people's properties and close to the road junction. This view is supported by local residents. The take-away creates parking issues and impedes traffic flows and creates obstructions; the proposal is considered to be contrary to Policy T5 of the adopted Local Plan.

Enforcement Issues

The introduction of a hot food take-away into the restaurant has created a mixed-use business that does not have planning permission. For the reasons set out above, the intensification in the use of the premises is causing problems in relation to residential amenity and highway safety. As the use conflicts with planning policies, it is considered expedient to take enforcement action to cease the hot food take-away element of the use.

Members should be aware that as the use has changed to a mixed-use, planning conditions on the 2013 or 2014 permissions are no longer enforceable because the use is not operating

in accordance with either permission. This adds weight to the need to take enforcement action so that the use does not operate without controls in place relating the hours of use.

Conclusion

The continued use of the premises as a mixed restaurant/hot food take-away would cause problems in respect of noise and disturbance and highway safety, contrary to Policies BE1, and T5 as well as guidance contained within the NPPF. Furthermore, it is recommended that authorisation be given to take enforcement action to ensure that the hot food take-away element of the business ceases.

RECOMMENDATION 1:- Refuse planning permission.

Summary of Reasons for Recommendation and Relevant Development Plan Policies :

In dealing with the application, through ongoing dialogue and the proper consideration of the application in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, the local planning authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the planning application. In this instance the matter of adverse impact on highway safety and impact on residential amenity remains in conflict with the development plan.

Reasons:-

- 1 In the opinion of the Local Planning Authority the use of the premises as a mixed restaurant / hot food take away has an adverse impact on the local road network due to an increase in the amount of vehicle parking and loading/unloading on the public highway. This is having and would continue to have an adverse impact upon highway safety contrary to Policy T5 of the adopted Hinckley & Bosworth local Plan and the overarching principles and intentions of the National Planning Policy Framework.
- 2 In the opinion of the Local Planning Authority, the use of the premises as a mixed restaurant/hot food take away has an adverse impact on the neighbouring residential properties due to noise, disturbance and odour in the surrounding area. This is contrary to Policy BE1, of the Hinckley & Bosworth Local Plan and overarching principles and intentions of the National Planning Policy Framework.

RECOMMENDATION 2:- That enforcement action be authorised to either:

- a) Cease the use of premises as a mixed restaurant/ hot food take-away; or
- b) Cease the hot food take-away element and revert the business back to a restaurant in accordance with planning permission ref. 14/00277/CONDIT

Time for Compliance: 2 Months from the date when the notice takes effect.

Contact Officer:- Craig Allison Ext 5700