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**Report of the Chief Planning Officer**

**NORTH AND EAST PLANS PANEL**

**Date: 8<sup>TH</sup> January 2015**

**Subject: 14/03167/FU – Change of use of vacant ground floor shop (use class A1) to take away hot food shop (use class A5), Former Newsagents, Main Street, Collingham, Wetherby, LS22 5AS**

**APPLICANT**  
Mr Ardvis Savarani

**DATE VALID**  
04 June 2014

**TARGET DATE**  
12 January 2015 (Agreed extension in time)

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**Electoral Wards Affected:**

Harewood

Yes

Ward Members consulted

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

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**RECOMMENDATION: REFUSE for the following reason:**

The Local Planning Authority considers that the proposed A5 take-away use by virtue of the later evening use of the premises and associated increase in late evening traffic movements and customer activity would result in a level of disturbance that would have an unacceptably adverse impact on the residential amenity of neighbouring residents. The application is therefore contrary to the requirements of saved Unitary Development Plan (Review) Policy GP5, criteria (i) and (ii) of adopted Core Strategy Policy P3 and guidance contained within the National Planning Policy Framework.

**1.0 INTRODUCTION:**

1.1 The application is presented to Plans Panel at the request of Councillor Rachael Procter, due to concerns over the hours of opening and the land use impacts of the proposed change of use.

- 1.2 The application was considered at the 27<sup>th</sup> November 2014 meeting of North and East Plans Panel, at which the application was recommended for approval, subject to conditions to restrict opening hours to 21.30 hours on any given day.
- 1.3 During debate the applicant's agent advised Members that his client did not feel that the proposed use of the premises would be viable with a 21.30 hours closing restriction, and suggested that a 22.30 hours closing time Wednesday to Sunday inclusive and 21.30 hours on Mondays and Tuesdays would be more workable. Following debate it was resolved that consideration be given to a later opening, and a report should be brought back to the next meeting to provide officer advice on this.

## **2.0 PROPOSAL:**

- 2.1 Planning permission is sought for the change of use of a former newsagents shop (use class A1) to a hot foot take-away (use class A5). The application proposes a small store to the existing garage to the side of the premises, a customer seating area and serving counter to the existing store front, with kitchen and food preparation area to the rear. Bin storage is shown to the rear of the property within its curtilage. The applicant now proposes 22.30 hours closing time on Wednesdays to Sundays inclusive and 21.30 hours closing time on Mondays and Tuesdays.

## **3.0 SITE AND SURROUNDINGS:**

- 3.1 The site lies within Elizabeth Court, an established local shopping centre within Collingham. Attached to the premises is Collingham Village Post Office and Village Store. Other adjacent units include a mixture of retail and non-retail uses. The application building is of random coursed natural stone with a timber shopfront. To the rear are later and flat roofed light brown brick additions. The application building hosts a flat above (use class C3), within the ownership of the landlord, but occupied independently. Customer parking is available within Elizabeth Court with some space to the front of the application building, though it is understood that access rights to the building are along the narrow lane to the east of the site which runs past a number of residential properties.

## **4.0 PLANNING NEGOTIATIONS:**

- 4.1 Since the original submission the applicant was asked how they would deal with the matter of odour from the kitchen. In response a plan detailing a flue running up the rear face of the building was submitted. The flue would be clad in brick to match the existing rear extensions.
- 4.2 Following the receipt of objection with regard to the hours of opening the applicant was been asked to consider hours of opening no later than 21.30. As discussed above however, for cited viability reasons relating to the use, the applicant is only able to agree to closure at 21.30 hours on Mondays and Tuesdays, with a later time of 22.30 hours on Wednesdays-Sundays inclusive.

## **5.0 RELEVANT PLANNING HISTORY:**

31/71/00/FU - Alterations and first floor rear extension to shop and dwelling: approved

## **6.0 PUBLIC/LOCAL RESPONSES**

6.1 The application was advertised by site notice on 13<sup>th</sup> June 2014. Eight letters of objection and one letter of representation have been received. Comment raised therein can be summarised as follows:

- At present the shop is an eyesore and should be used.
- Concerns over noise, disturbance and odour and living conditions of neighbours.
- Concerns over litter and food refuse – the shop should have a bin.
- The car park outside the post office is untidy.
- Concern over keeping cats, dogs and wildlife out of the premises.
- The appearance of the shopfront should be consistent with shop fronts on Elizabeth Court and the post office should be upgraded.
- Highway safety – increased traffic and parking demands.
- Impact on the character of the area.

6.2 Following the Panel resolution to ask for a report back to the next meeting on later hours of opening than were recommended by condition of the previous report a neighbour re-consultation exercise was undertaken. In response a further letter of objection was received, making a total of 9 letters received. The further letter received objects to the later hours of opening, and whilst not objecting to the use in principle, makes the following further points:

- The 1066 Bistro and the fish and chip shop close at 9pm.
- Concerns exist over traffic movements along the lane to the premises.
- Concerns over the adequacy of the lane which lacks passing places.

6.3 Parish Council - The Parish Council comment that there is inadequate parking space and none shown for the residential accommodation, the application form showing incorrect parking provision (20 spaces, but which are within the general shopping area beyond the application site). No vehicular access should be allowed from Elizabeth Court to the Post Office and that there is already a restriction on opening hours in line with Hastings and Elizabeth Court Shops. They further comment that there is already an Italian take-away in the village and that the application could set a precedent for the loss of retail units. The Parish Council request additional litter bins are provided should the application be approved so as to keep the area tidy and litter free.

## **7.0 CONSULTATIONS RESPONSES:**

7.1 Highways – In view of the existing commercial use and that some off-street parking is available it is considered that a highway objection would be difficult to justify. Restriction on use by condition to prevent a change of use to an A3 use recommended.

7.2 Neighbourhoods and Housing – DEFRA 2005 Guidance given on the control of odour and noise from commercial kitchen exhaust systems.

## **8.0 PLANNING POLICIES:**

8.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan for Leeds currently comprises the Core Strategy, saved policies within the Leeds Unitary Development Plan (Review 2006) and the Natural Resources and Waste Development Plan Document (2013).

## Core Strategy

- 8.2 Policy P1 Town and Local Centres – designates Collingham as a lower order local centre. The Core Strategy identifies Collingham as a 'smaller settlement' in the settlement hierarchy. Smaller settlements are defined as those with a population of at least 1500, a primary school, and a shop or pub. The Core Strategy recognises some but not all smaller settlements have a local centre. Elizabeth Court could be reasonably described as such a local shopping centre.
- 8.3 Policy P3 deals with acceptable uses in and on the edge of local centres.
- 8.4 Policy T2 deals with transport provision for development whereas Policy T1 deals with parking provision.
- 8.5 Policy P10 deals with design, including consideration of size, scale, design and layout and seeks to protect the visual and residential amenity of the locality. Waste storage, parking, community safety and accessibility are also considerations under P10.

## Saved Unitary Development Plan Review (2006) policies:

- GP5      Regard to be had to all planning considerations including residential amenity.
- T24      Parking guidelines

## National Planning Policy

- 8.6 National Planning Policy Framework (NPPF, March 2012) gives a presumption in favour of sustainable development and has a strong emphasis on high quality design. It sets out the commitment to economic growth but balances this against the need to protect the environment and amenity for existing and future occupants of land and buildings. In relation to the application Section 2 seeks to ensure the vitality of town centres, whereas Section 7 promotes good design, and Section 8 promotes healthy communities.

## **9.0 MAIN ISSUES**

1. Principle of development / Use
2. Impact on residential amenity
3. Design
4. Highways and Parking
5. Representations

## **10.0 APPRAISAL**

### Principle of Development / Use

- 10.1 The application site is located within Collingham, a smaller settlement as defined in Core Strategy Policy P1 (Town and Local Centre Designations), designated as a lower order local centre. Policy P3 states that in lower order local centres proposals for the change of use of existing retail units to non-retail uses (including restaurants, cafes and take-away hot food shops) will be resisted where the vitality and viability of the centre to meet day to day local needs will be undermined and increase the need to travel, or where the proposal will lead to a concentration of non-retail uses in a

locality which will detrimentally impact on the community. Under Policy P3 proposals for such uses will be considered against the following criteria:

*(i) The cumulative impact of such development, particularly upon the amenity of the area and traffic generation, especially where concentrations of such uses already*

*(ii) Where a proposal involves evening opening, account will be taken of the proposal in relation to the proximity of the premises (and associated parking requirements), to nearby residential accommodation, the nature and character of the neighbourhood parade and existing noise levels,*

*(iii) The availability of public transport, convenient on/off street car and cycle parking provision and impact on highway safety. Where there is insufficient car parking or where traffic movements are such as to create a traffic hazard, planning consent is likely to be refused.*

10.2 The associated text to Core Strategy Policy P3 recognises the importance that the function of neighbourhood shopping parades is not compromised through the loss of retail uses to non-retail uses which could create inactive frontages during the day, or a proliferation of A3, A4 or A5 uses. It also recognises the potential for noise, disturbance, litter and car parking, which can occur when a number of such uses are located in close proximity to each other, and that health issues are a material planning considerations. As such it requires the sensitive control of the number of A3, A4 and A5 uses in a parade/local area, to prevent the loss of the retail function, and the refusal of applications where concentrations of such uses exist that are already causing problems.

10.3 Elizabeth Court contains a travel agent, clothing stores, hairdressers, bathroom furniture shop, deli, café, pharmacy, wine store, post office and fish and chip shop. The existing parade of shops at Elizabeth Court does not therefore contain a concentration of non-retail uses, and only a couple of A3 and A5 uses. The proposal could not therefore be said to result in a concentration of such premises being in close proximity, nor with the nearby Tesco Express would it have any significant impact on the need to travel for day to day local needs. The use will be dormant through the day, however, regard should be had to the fact that the premises is currently closed and unused. The proposed development is not considered to give rise to unduly high levels of additional traffic, with regard to the former A1 shop use, nor is the proposal considered to be likely to give rise to traffic hazards. In this context there is also no evidence to suggest that a new A5 use within the local parade would give rise to public health concerns. Therefore, subject to the consideration of the impact of the proposed use on neighbouring residential amenity which follows below, the proposal is considered to be acceptable in principle.

#### Impact on residential amenity

10.4 A number of objectors are concerned about the impact of the proposal on neighbouring residential amenity, primarily due to the impact of extended hours of opening, traffic, odour, noise and litter. In terms of litter, it is considered that these concerns could be addressed by the use of conditions to require a scheme for the management of commercial and customer waste. A bin storage area is shown to the rear of the premises. Such a scheme could include details of bins to be provided, and the regime for emptying them and storing/collection of commercial waste.

10.5 In terms of odour and noise control, the applicant has been asked to supply details of any flue. The submitted details take the form of a brick enclosed flue up the rear face

of the building. Environmental Health supply advice from DEFRA with regard to such systems. This is an important consideration – uncontrolled odour and noise can easily harm the amenity of neighbours. However, subject to conditions to require the prior approval of precise details of the flue extraction system, these are capable of being addressed.

- 10.6 The land use characteristics of a hot-food takeaway are clearly different to that of a shop and the concerns of residents are therefore perfectly understandable. However, in the location proposed it is not considered that, in principle, a take-away use would unduly harm neighbouring residential amenity - the area is characterised by a number of retail and non-retail uses, such as the fish and chip shop and cafe, though there is not an overly large concentration of such uses, so there would not be any harmful cumulative impact such as that which policy seeks to avoid.
- 10.7 However, a hot-food take away will operate outside normal business hours and will generate additional noise and disturbance during anti-social hours. The existing fish and chip shop operates from 11.00-14.30 and 16.30-21.00. These are considered to be reasonable hours and do not have a harmful impact upon near neighbours. The applicant is seeking to open from 16.30 until 22.30 Wednesdays to Sundays inclusive, and 16.30 until 21.30 on Mondays and Tuesdays, and Members have resolved to receive further advice on these hours of opening.
- 10.8 As set out in the report of 27 November 2014, officers are concerned that opening later in the evening beyond 21.30 until 22.30 will have a harmful impact upon the amenity of surrounding dwellings. The access rights to the premises follow a narrow lane between residential properties, and there is a flatted dwelling above the premises and others elsewhere in the near locality. The character of the use is different to that of a newsagent where earlier day time movements could be expected and it is thus considered likely that the trip pattern of customers generated would be more concentrated during evening hours, especially towards and during the weekend. Given the juxtaposition of residential property with the premises, and the prevailing hours of operation of premises in the immediate locality, it is considered that the introduction of the proposed use specifically for the hours sought would be detrimental to the amenity of neighbours. That is why a 21.30 hours closing time was recommended, because these considerations would render the proposal as contrary to saved UDPR policy GP5 and criteria i) and ii) of Core Strategy policy P3.

### Design

- 10.9 UDPR Policy GP5, Core Strategy Policy P10, and guidance contained within Section 7 of the NPPF together require high standards of design which respect their context and the locality. Policy P10 also requires consideration be given to neighbouring amenity, waste management, community safety and parking and accessibility considerations.
- 10.10 In this case the application proposes a replacement shopfront. Some objectors ask that any new shopfront follows the pattern of existing shopfronts on Elizabeth Court. The existing shopfront is of painted timber, with mock panels to the stall riser. The application proposes a powder coated aluminium shopfront and door. This is not dissimilar to the other premises, however, in order to ensure that it is appropriate to its context and compliant with the above policy considerations a condition would be necessary if planning permission were granted to require prior approval of the precise design and finish.

10.11 A flue is required to serve the cooking area and in order to address the odour concerns of neighbours and the above policy requirements. The proposal is to encase a cooking extraction flue system within a brick enclosure, running up the rear face of the building. The rear of the building is characterised by a mixture of one and two storey brick-built rear extensions to the original building. In this context the brick cladding is proposed to match the brickwork of the existing rear extensions, and of itself is not considered to be unduly harmful to visual amenity or local character. Subject to a condition to require prior approval brick detail, the proposal would not therefore harm local character or visual amenity, or conflict with the above policy considerations.

#### Highways and parking

10.12 The former use of the premises as a newsagents shop would have generated a level of traffic movements. Parking is available outside the premises and within the wider Elizabeth Court development, and on adjacent streets. The proposed hot-food takeaway use is not considered to be so dissimilar in terms of its traffic generation that it would be reasonable or sustainable to resist the proposal on highway safety grounds. No technical objections to the proposal on highway safety or parking grounds.

#### Representations

10.13 Of the representations made not already covered above, the potential for cats, dogs and wildlife to be attracted to the premises has been raised. A sufficiently robust commercial and customer waste management scheme should however be capable of addressing this and related policy concerns in this regard.

### **11.0 CONCLUSION**

11.1 It is considered that the proposed development would make good economic use of what is currently an underused vacant shop premises. The proposal would not have any unacceptable effects on existing retail uses, and subject to conditions the physical alterations would not be unduly harmful to visual amenity or local character. With regard to the former use and site circumstances sufficient parking is available to serve the proposed use and it would not be harmful to highway safety. It would not result in an over-concentration of such uses, or thereby lead to undue concerns over public health, or lead to the need to travel for day to day local shopping needs. The hours of use proposed would however introduce a level of later evening use and associated traffic movements are more likely to be concentrated during these later evening hours. The impact of this would be harmful to the amenity of neighbours and thereby renders the application contrary to the above policy requirements, which seek to protect residential amenity. Planning permission therefore ought to be refused, for the reason set out at the head of this report.

#### **Background Papers:**

Application file: 14/03167/FU

North and East Panel report of 27 November 2014

Certificate B completed – Mr A Pickles



REV.	DATE	REVISION	INT.



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 Mr Ardis Savarani

PROJECT  
 Proposed Italian Take A Way  
 High Street  
 Collingham  
 Wetherby

DRAWING  
 Parking Plan

SCALE: 1:200 At A1      DATE: June 14      DRAWN: J. C.

JOB No.	DWG. No.	REV.
	04	





# NORTH AND EAST PLANS PANEL

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SCALE : 1/1500

