

ITEM NO:	
<u>Location:</u>	1-3 The Mead Hitchin Hertfordshire SG5 1XZ
<u>Applicant:</u>	Mr Jignesh Patel
<u>Proposal:</u>	Part Change of Use from Retail (Use Class A1) to Hot Food Takeaway (Use Class A5), alterations to shopfront and installation of an external fume extraction flue
<u>Ref. No:</u>	20/00547/FP
<u>Officer:</u>	Jo Cousins

Date of expiry of statutory period:

30 April 2020 (extension of time until 31 October 2020)

Reason for Referral to Committee

Councillors Albert 'called-in' the application in the wider public interest.

1.0 Policies

1.1 North Hertfordshire District Local Plan No.2 with Alterations

Policy 8 – Development in Towns
Policy 55 – Car Parking Standards
Policy 57 – Living Conditions

1.2 National Planning Policy Framework.

Section 8 – Promoting healthy and safe communities
Section 12 - Requiring good design

1.3 Emerging Local Plan 2011-2031 (Approved by Full Council 11th April 2017).

Strategic Policies

SP1: Sustainable Development in North Herts
SP2: Settlement Hierarchy
SP3: Employment
SP9: Design and sustainability
SP10: Healthy Communities.

Development Management Policies

ETC7: Scattered local shops and services in towns and villages

D1: Sustainable Design;

D3: Protecting living conditions;

T2: Parking

1.4 **Supplementary Planning Document**

Vehicle Parking at New Development September 2011

2.0 **Site History**

2.1 Planning permission was refused by the Planning Control Committee, contrary to officer recommendation in May 2018 – case 18/00278/FP refers. The decision was appealed and in March 2019 the appointed Inspector dismissed the appeal.

2.2 An application under reference 18/01879/FP was withdrawn in September 2018 on the grounds that it was identical to the previous application and would therefore face the same recommendation for refusal as the case at paragraph 2.1 above.

2.3 The applicants agent subsequently lodged an appeal against the May 2018 refusal and in March 2019 the appointed Inspector dismissed the appeal.

3.0 **Representations**

3.1 **Local residents/public notice**

Objections received from residents in The Mead, Lammas Mead, Shepherds Mead and Old Hale Way. Common objections included the following:

- Traffic congestion/ parking issues related to customer and goods/service vehicles
- Litter/ vermin
- Odour and noise as a result of the extraction system
- Anti-social behaviour
- Negative effect on property values
- Too many fish and chip shops in the locality – similar facilities/mobile vans in the area
- Noise and disturbance due to opening hours
- Unsuitable location near to schools
- Diet/wider health concerns
- Fire safety concerns
- Flue would be harmful in design terms
- Impact on health of children due to proximity to Schools

3.2 **Highways**

No objection. Request that two informatives be placed on any grant of planning permission.

3.3 **Environmental Health**

Require additional information (as per previous recommendations) to ensure that noise and odour are satisfactorily considered. These measures are covered by the imposition of conditions as set out in the recommendation below.

3.4 **Waste**

No comments received.

4.0 **Planning Considerations**

4.1 **Site and Surroundings**

4.1.1 1-3 The Mead is the ground floor section of a detached building which is currently fully occupied by 'SPAR' and operates as an A1 retail unit. Residential units are situated above. The building is located in close proximity of residential properties in The Mead, Lammas Mead, Old Hale Way and Shepherds Mead.

4.2 **Proposal**

4.2.1 Part change of use from Class A1 (Retail) to create separate Class A5 use (Hot Food Takeaway). Alterations to shopfront and erection of external fume extraction flue.

4.2.2 The flume extraction system has been amended from that considered under the previously refused submission which showed a metal flue to the side wall with a section that ran along the roof edge to finish above the host buildings ridge height. The application now proposes a vertical system that would be clad in a brick effect for the entire section that runs up the side elevation. This would project 650mm from the flank wall by 880mm in width. The structure would start at a height 2.5m above side yard and access area. The section that protrudes above the roof slope would be painted black. This would give the appearance of a more traditional chimney stack to the side elevation, 5.7 metres high with the discharge cowl at 1.5 metres high. The overall finished height would be approximately level with the ridge of the parent building so that from the front and rear views it would read alongside the existing structure. (Note all dimensions quoted are approximate.)

4.3 **Key Issues**

4.3.1 The key issues for consideration are as follows:

- Whether the part change of use would be acceptable in principle.
- The effect on the character and appearance of the area.
- The effect on the living conditions of neighbouring properties.
- The effect on the safe operation of the highway and car parking provision in the area.

4.3.2 Principle of the part change of use

The application building is located within the ground floor section of a two storey building currently in mixed use with a retail use operating from the ground floor and residential flats above. The retail unit is somewhat isolated with no other such units located within close proximity to the site. Indeed the area is best characterised as a residential area although it is noted that an employment zone lies to the east of the site in Bury Mead Road with pedestrian links only.

4.3.3 Recent legislation changes have been made since the Appeal Decision, with the introduction of the Town and County Planning (Use Classes)(Amendment) (England) Regulations 2020. The new Class E brings together Classes A1, A2, A3, B1(a), certain D1 and D2 (such as gyms, nurseries and health centres) and other uses suitable for a town centre. This gives effect that uses within new Class E are not development giving flexibility for changes without the need for planning permission as this is now not development. Class A5 (Food & Drink) remains as a Sui Generis use class and therefore in the light of the new legislation it is pertinent to continue with this application as the change of use is still required in this instance.

4.3.4 Due to its location, there are no Saved Local Plan Policies which are applicable to the change of use of the building. As such, there is no objection to the principle of the part change of use as the Saved Local Plan is silent on this matter.

4.3.5 The emerging Local Plan (ELP) has advanced since the Appeal Decision was issued in March 2019, having gone through a public examination process, Modifications published (November 2018), and public consultation which ended in April 2019. Further hearing sessions in March 2020 were postponed and at the time of writing this report some of the re-arranged sessions are under question. It is impossible given present circumstances to give any indication as to when adoption can be anticipated. This may affect the weight given to the Emerging Plan in relevant decisions. Notwithstanding this point, none of the Inspector's various queries affect the key land-use policies of the emerging plan that are most relevant to this proposal. I propose to examine the extent to which the proposal is compliant with the Emerging Plan.

4.3.6 Emerging Policy ETC7 sets out the Council's proposed policy with regards to *scattered local shops and services in towns and villages*. Emerging Policy ETC7 states that proposals for small-scale shops and services will be granted within existing settlements to serve the local community as an exception to the sequential approach set out in Policy ETC3(a). Moreover, ETC7 suggests that proposals for changes of use would only be acceptable if a) there is a replacement use within walking distance, and b) the proposed replacement use would complement the function and character of the area.

4.3.7 The proposal would only involve a part change of use and the existing retail use would remain therefore negating the requirement to establish the proximity of a replacement use. Moreover, in general terms, I consider that a take-away use would complement the function and character of the area. I therefore find that the proposal would be compliant with Emerging Policy ETC7 although, to re-iterate, only limited weight can be attributed to this Policy at this stage.

4.3.8 Design

The objectives of the NPPF include those seeking to secure high quality design and a good standard of amenity (Chapter 12 – Achieving well-designed places). In this regard, 57 of the Local Plan and Policy SP9 and D1 of the Emerging Local Plan (ELP) are considered consistent with the NPPF.

4.3.9 The proposed alterations to the shopfront would clearly have some visual impact but I do not consider that any visual harm would be occasioned by the development.

The installation of the flue to the flank wall of the building was the contentious issue resulting in the previous refusal and dismissal on appeal. The appeal Inspector commented that:

Whilst the existing appearance of the building is unexceptional architecturally, the size and shape of the flue, and the material of which it would be constructed, do not relate to the existing form of the building to which it will be affixed. The flue follows a contrived course up the side of the building, avoiding windows and would be constructed of metal, which would be incongruous and out of character with the surrounding brick-built buildings. It would occupy a very visible position and its more industrial form would be out-of-keeping with the residential nature of the immediate area.

The Inspector went on to comment that:

4.3.10 ...***there may be other ways of providing an extraction flue which would enable these benefits to be achieved in a manner that would be less harmful to the environment.***

4.3.11 The current scheme provides a more conventional flue which would be clad to have the appearance of a brick chimney stack. The existing building is not particularly attractive nor is the area on the whole particularly visually sensitive. However, I consider that the current proposal makes a marked visual improvement in its configuration on the building, which reduces its overall scale and has a more conventional appearance of a chimney stack. Furthermore its visual appearance would blend with the brick work to the flank wall responding more positively to the sites local context.. As such I do not consider that the installation of the flue would cause such harm to the character or appearance of the area that it would merit refusal.

4.3.12 Impact on neighbouring properties

A core planning principle set out in the NPPF is to always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. This principle is reflected in the provisions of Policy 57 of the Local Plan and Policy D3 of the ELP. A key issue in the consideration of this application is the impact that the proposed use, and the technical matters relating to odour and noise, would have on the living conditions of residential properties that are located near to the site.

4.3.13 I have noted the proximity of the proposed extraction system to the first floor flats, numbers 5 and 7 The Meads and in particular the proximity to the two windows in the flank elevation adjacent to the proposed flue and the stairway access to the rear. The flue would project 640mm from the existing wall and I do not consider that the scale and form of this would be so unacceptable to justify refusal on the grounds of impacts upon these flats. I feel that this is a consistent approach as the issue of detriment to immediate neighbours was not raised by the appointed Inspector in determining the appeal.

4.3.14 I have previously sought advice from the Senior Environmental Health Officer regarding the issues set out in para. 4.3.12 and those specific matters of concerns are able to be resolved by including conditions that require details of the following to be submitted prior to commencement:

--Noise survey;
--Details of extraction system.

The following conditions are also proposed:

--Goods delivery times restricted to between 08.00hrs and 20.00hrs Monday to Friday, 09.00hrs and 18.00hrs Saturdays and no deliveries on Sundays and Bank Holidays.

--Hours of operation restricted to between 10.00hrs and 22.00hrs Monday to Sunday.

4.3.15 Requiring the noise survey and the details of the extraction system prior to the commencement means that an unsatisfactory system that leads to odour and/or noise concerns is not able to be installed and used. In short, only a system that does not cause a nuisance would be approved and be installed for use at the premises. It is considered that the recommended conditions would ensure that the proposed use would not cause any material harm to the living conditions of any of the neighbouring properties.

4.3.16 It is considered that the recommended conditions would ensure that the proposed use would not cause any material harm to the living conditions of any of the neighbouring properties.

4.3.17 Anti-social behaviour

There is some concern regarding the proposed operating hours of the unit and the potential for anti-social behaviour as a result. However, whilst clearly the proposed use would draw people to the unit for the duration of the operating hours of the premises, there is no conclusive evidence that such a problem exists with regards to the existing retail unit or that the proposed use would result in such an outcome. I therefore attach limited weight to this particular issue.

4.3.18 Litter and waste

Littering is another related anti-social concern and I quite understand that in many regards it would be unacceptable for waste to be disposed of indiscriminately. One bin is located outside 1-3 The Mead and this would go some way to alleviating any potential concern in this regard. In terms of the proposed storage and disposal of waste I have been advised by the applicant that waste will be stored in the alleys to the side and rear of the building. Notwithstanding these comments, I would like more certainty prior to the commencement of the use and therefore recommend a condition requiring further details of the measures required to deal with litter and waste.

4.3.19 Impact on the highway

Hertfordshire County Council Highways have assessed the proposal and do not believe that the proposal would result in an undue impact on the safe operation of the highway. I am minded to agree with this view as I do not consider that any increased traffic would have a significant impact on the local road network whilst parked cars are able to use the parking bay located nearby. I note concerns raised by residents that the proposal would likely increase the volume of traffic. I accept that there will likely be a busier period between say 6 and 9 but for many hours of the day the intensity of the use is likely to be quite low. Moreover, given the location of the site within a residential area, it is likely that many customers would travel to the unit by foot or bicycle thereby likely reducing the number of parked cars related to this use in the area at any one time.

4.3.20 Whilst I can accept that the unit is likely give rise to extra vehicles in the area, I agree with Highways colleague that the use would not have a significant impact on the safe operation of the local road network.

4.3.21 Other matters

A number of the comments received in response to this application raise concerns which are not material planning considerations. These include:

- Fire safety concerns (this is a matter for Building Regulations);
- Impact on property values;
- Diet/health concerns;
- Proliferation of other similar units near to the site or within Hitchin;

--Unsuitable location near to a school.

4.4 Conclusion

4.4.1 The principle of the part change of use would be acceptable when judged against the aims of the Local Plan and the National Planning Policy Framework. Moreover, the Environmental Health team are satisfied that, subject to recommended conditions 3-6 (see below) being imposed on any consent, the proposed development would not cause harm to the living conditions of properties in close proximity to the site. Lastly, Hertfordshire County Council have not raised an objection and therefore I am satisfied that the proposed development would not cause harm to the safe operation of the highway.

4.4.2 Paragraph 11 d) of the National Planning Policy Framework states that '**where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless**' sections i. or ii. are complied with. Section i. of 11 d) is not relevant as this application is not a protect area and does not involve assets of particular importance as specified in footnote 6. In this instance Paragraph 11 d) ii. is relevant as it states that '**any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole**'. In my view, any adverse impacts considered either individually or cumulatively, would not significantly and demonstrably outweigh the benefits and therefore I recommend approval.

4.5 Alternative options

4.5.1 None applicable.

4.6 Pre-Commencement Conditions

4.6.1 The applicant is in agreement with the pre-commencement conditions to be imposed.

4.7 Climate change mitigation

4.7.1 The proposed development is not considered of a scale or nature whereby any practical climate change measures can be secured via the grant of planning permission.

5.0 Legal Implications

5.1 In making decisions on applications submitted under the Town and Country Planning legislation, the Council is required to have regard to the provisions of the development

plan and to any other material considerations. The decision must be in accordance with the plan unless the material considerations indicate otherwise. Where the decision is to refuse or restrictive conditions are attached, the applicant has a right of appeal against the decision.

6.0 **Recommendation**

6.1 That planning permission be **GRANTED** subject to the following conditions:-

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out wholly in accordance with the details specified in the application and supporting approved documents and plans listed above.

Reason: To ensure the development is carried out in accordance with details which form the basis of this grant of permission.

3. Prior to the commencement of the development the developer shall carry out a noise survey following the guidelines set out by BS4142: 2014. This survey shall take into account all proposed plant as part of the development and shall include noise control measures which should be submitted for written approval by the Local Planning Authority (LPA). No plant shall be installed and operated at the site until the noise survey has been approved by the LPA. Noise mitigation measures shall be such as to achieve 5dB below existing background noise levels.

Reason: To protect the residential amenities of existing residents.

4. Prior to the commencement of the use and the installation of the kitchen extract ventilation system hereby permitted, details of the proposed system to be used as part of the development shall be submitted to the Local Planning Authority for approval. The extract ventilation system shall incorporate a three stage carbon filtration or similar system. Following approval and installation, the system shall thereafter be permanently maintained as per the approved specification.

Reason: To protect the residential amenities of existing residents.

5. Goods vehicle deliveries and refuse vehicles shall only be permitted between 08.00hrs and 20.00hrs Monday to Friday, 09.00hrs and 18.00hrs Saturdays and no deliveries on Sundays and Bank Holidays.

Reason: To protect the residential amenities of existing residents.

6. Hours of use of the A5 unit shall be between 10.00hrs and 22.00hrs Monday to Sunday.

Reason: To protect the residential amenities of existing residents.

7. Prior to the commencement of the use hereby permitted, details of measures to deal with litter and waste arising from the proposed use shall be submitted to and approved in writing by the Local Planning Authority. The details as approved shall be implemented prior to the first use, and thereafter retained.

Reason: To ensure that the proposed development would not harm the wider amenity of the area.

8. The proposed brick cladding shall have a finish to match the brick of the host building and shall thereafter be maintained as such.

Reason: To protect the visual amenity of the street scene.

Proactive Statement:

Planning permission has been granted for this proposal. Discussion with the applicant to seek an acceptable solution was not necessary in this instance. The Council has therefore acted proactively in line with the requirements of the Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Informative/s:

1. Construction hours
During the change of use phase no construction activities should take place outside the following hours: Monday to Friday 08:00-18:00hrs; Saturdays 08:00-13:00hrs and Sundays and Bank Holidays: no work at any time.

2. AN1) Obstruction of public highway land: It is an offence under section 137 of the Highways Act 1980 for any person, without lawful authority or excuse, in any way to wilfully obstruct the free passage along a highway or public right of way. If this development is likely to result in the public highway or public right of way network becoming routinely blocked (fully or partly) the applicant must contact the Highway Authority to obtain their permission and requirements before construction works commence. Further information is available via the website <https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/business-and-developer-information/business-licences/business-licences.aspx> or by telephoning 0300 1234047.

AN2) Storage of materials: The applicant is advised that the storage of materials associated with the construction of this development should be provided within the site on land which is not public highway, and the use of such areas must not interfere

with the public highway. If this is not possible, authorisation should be sought from the Highway Authority before construction works commence. Further information is available via the website <https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/highways-roads-and-pavements.aspx> or by telephoning 0300 1234047