

Agenda Item	Committee Date	Application Number
A7	14 October 2019	19/00496/FUL

Application Site	Proposal
71 North Road Lancaster Lancashire LA1 1LU	Retrospective change of use of retail unit (A1) to takeaway (A5) and installation of a flue to the rear elevation

Name of Applicant	Name of Agent
Mrs Ranjit Kaur Uppal	Mr Chris Weetman

Decision Target Date	Reason For Delay
27 June 2019	Awaiting further information and the associated consultation response

Case Officer	Mrs Kim Ireland
Departure	No
Summary of Recommendation	Approval

(i) **Procedural Matters**

This form of development would normally be dealt with under the Scheme of Delegation. However, the Planning Manager has requested that the application be determined by the Planning Regulatory Committee.

**1.0 The Site and its Surroundings**

1.1 The property which forms the subject of this application relates to a three storey mid terrace property, which is located on North Road in Lancaster city centre. North Road is characterised with commercial properties to the ground floor and a mixture of commercial and residential accommodation to the first and second floors. The property is situated within Lancaster Conservation Area and dates from the early 19<sup>th</sup> century, is noted in the Conservation area as a positive building, and is therefore classified as a non-designated heritage asset. The building is constructed of natural stone, under a slate roof, with timber windows to the first and second floors and a timber shop front to the ground floor.

1.2 The building was being used as a newsagents to the ground floor, until April 2019 when the unit was materially changed into a hot food takeaway with a store room and WC to the first floor.

**2.0 The Proposal**

2.1 The application seeks retrospective consent for the change of use of a retail unit to a takeaway and installation of a flue to the rear elevation. The hot food takeaway would be accommodated on the ground floor (comprising 37 sq.m of floorspace) whilst the first floor would retain its use as a store room with a WC.

2.2 The retrospective flue has been installed through one of the windows to the ground floor of the rear elevation. It will be 3.8m high.

2.3 There are no external alterations to the existing traditional shopfront, though it has recently been painted a vivid red colour.

### 3.0 Site History

- 3.1 There is one relevant application to this proposal, which was also reported to the Planning Regulatory Committee:

Application Number	Proposal	Decision
18/00604/FUL	Retrospective change of use of retail unit (A1) to takeaway (A5) and installation of a flue to the rear elevation	Refused

### 4.0 Consultation Responses

- 4.1 The following responses have been received from statutory and non-statutory consultees:

Consultee	Response
County Highways	<b>No Objections</b>
Conservation Officer	No comments received during the statutory consultation period.
Lancashire Constabulary	No comments received during the statutory consultation period.
Environmental Health Officer	<b>No objection</b> – the use shall not commence until a scheme for the treating, diluting and dispersing of fumes and odours has been implemented.

### 5.0 Neighbour Representations

- 5.1 Three pieces of correspondence objecting to the application have been received. The reasons for opposition include the following:

- The use would create a noise and odour nuisance for the residential properties that are located to the first and second floors.
- There would be more than 20% of non A1 uses (shops) along the secondary retail frontage and is compounded by City Council licensed street traders.
- This area already experiences anti-social behaviour.
- The use will have an associated delivery service in an area that is already congested in the evening exacerbating the public nuisance and issues of safety already experienced.
- Litter problems are already experienced and the proposed use would add to the problem.
- If the application is granted the proposal would be contrary to local planning policies.

### 6.0 Principal National and Development Plan Policies

#### 6.1 National Planning Policy Framework (NPPF)

Paragraph **11** – Presumption in Favour of Sustainable Development

Paragraphs **124** and **127** – Requiring Good Design

Paragraphs **7**, **8** and **9** – Building a strong, competitive economy

Paragraph **85** – Ensuring the vitality of town centres

Paragraphs **185**, **187**, **192**, **193** and **196** – Conserving and enhancing the historic environment

#### 6.2 Local Planning Policy Overview – Current Position

On 15 May 2018, and in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended), Lancaster City Council submitted the following documents to the Secretary of State (Planning Inspectorate) for examination:

- (i) The Strategic Policies and Land Allocations DPD; and,
- (ii) (A Review of) The Development Management DPD

The Examination Hearing Sessions took place between the 9 April 2019 and the 1 May 2019. The Council has published the proposed Main Modifications to the Local Plan. An eight-week consultation into the modifications expires on 7 October 2019.

The **Strategic Policies and Land Allocations DPD** will replace the remaining policies of the Lancaster District Core Strategy (2008) and the residual 'saved' land allocation policies from the 2004 District Local Plan.

The **Review of the Development Management DPD** updates the policies that are contained within the current document, which was adopted in December 2014. As it is part of the development plan the current document is already material in terms of decision-making.

Given the current stage of both DPDs, it is considered that some weight can be attributed to the policies contained therein subject to the extent to which there are unresolved objections to the relevant policies and their consistency with the National Planning Policy Framework.

### 6.3 Development Management DPD

**DM1** – Town Centre Development

**DM2** – Retail Frontages

**DM5** – The Evening and Night-Time Economy

**DM31** – Development Affecting Conservation Areas

**DM33** – Development Affecting Non-Designated Heritage Assets and their Setting

**DM35** – Key Design Principles

### 6.4 Lancaster District Core Strategy Policies

**SC1** – Sustainable Development

**SC5** – Achieving Quality in Design

### 6.5 Emerging Local Plan

Emerging policy **DM17** – Retail Frontages

Emerging policy **DM20** – Hot Food Takeaways and Betting Shops

Emerging policy **DM56** – Health and Well-being

## 7.0 Comment and Analysis

### 7.1 The key considerations arising from the proposal are:

- Principal of the proposed use
- General design and impact upon the Conservation Area
- Waste; and
- Emissions

### 7.2 Principal of the proposed use

7.2.1 The application site is located towards the edge of the city centre designation and is surrounded by a mix of uses. Nos. 73 and 75, to the south, are A5 (hot food takeaway) uses and nos. 26/28 Church Street, is an A3 (café/restaurant) use.

7.2.2 For secondary retail frontages, DM2 requires proposals for non-A1 uses only to be permitted if the following criteria have been satisfied:

1. An adjoining building is in an A1 use;
2. The proportion of any continuous retail frontage length in non-A1 use would not exceed 20%;
3. The proposed use would provide a service to shoppers;
4. The proposed ground floor use would provide an active frontage; and
5. The proposal does not have a significant adverse affect on the character of the street or locality or the amenity of neighbouring residents/businesses.

- 7.2.3 The adjoining property of 69 North Road is a shop (A1 use class) and 73 North Road is a hot food takeaway (A5 use class). This meets the first test set out at DM2. The second test limits the proportion of non-A1 uses to no more than 20% of a continuous retail frontage. This test is not satisfied.
- 7.2.4 The third test states that the use would provide a service to shoppers. The hot food takeaway will be open between 08.00 and 24.00 Monday to Friday and Sundays and between 08.00 and 02.00 on Sundays. Therefore the hot food takeaway will be open during daytime trading and is considered to provide a service to shoppers.
- 7.2.5 The fourth test states that the ground floor use would provide an active frontage. There are no proposals to alter the existing timber shopfront and given the opening hours, the proposal is considered to provide an active frontage.
- 7.2.6 The fifth test considers if a proposal has a significant adverse effect on the character of the street or locality or the amenity of the neighbouring residents/businesses. The property is surrounded by commercial properties to the ground floor – a mix of A1 (shops), A3 (café/restaurant) use and A5 (hot food takeaway) uses. Therefore the proposed use is not thought to have an adverse character of the street or locality. There is a mixture of commercial and residential accommodation to the first and second floors. However, given the other commercial properties within the vicinity of the area, some of which are open similar hours to the proposed hot food takeaway, the proposal is considered to not have an adverse effect on the amenity of the neighbouring residents/businesses.
- 7.2.7 Therefore, whilst the proposal meets 4 out of 5 of the criteria, it does not meet all 5 as required by the adopted Local Plan policy. However, most recent appeal decisions have shown that the approach being advocated by the Planning Inspectorate is to support proposals that utilise high street units regardless of which A use class the operations fall under as they are deemed to enhance the vitality and viability of local, town and city centres.
- 7.2.8 This more relaxed approach is reflected within the Council's emerging policy DM17. It states that the adjoining building should be an A1 retail use or includes a use that generates an active street frontage during normal daytime trading and removes the 20% continuous frontage criteria.
- 7.2.9 That said, emerging policy DM20 seeks to discourage the clustering (2 or more) of A5 hot food takeaways to improve the health and wellbeing of communities in the District. This is also reflected in emerging policy DM56 that seeks to restrict proposals for new hot food takeaways that are within 400 metres of secondary schools and working with businesses and developers to promote healthier lifestyles through design and types of uses of developments.
- 7.2.10 However, given the current stage of the review of the emerging Development Management DPD only limited weight can be attributed to these policies - DM17, DM20 and DM56. Policy DM2 within the existing Development Management DPD is the Council's adopted position and therefore carries significant weight until the Planning Inspectorate issues a Binding Report on the emerging Development Management DPD and this is adopted by the Council. Consequently whilst the second test in DM2 is not satisfied, on balance the use of 71 North Road as a hot food takeaway is considered acceptable, given that the other four tests can be passed, and in particular it would not adversely affect the vitality and viability of the town centre or compromise the retail function of the city.

### 7.3 General Design and Impact upon the Conservation Area

- 7.3.1 In accordance with the Listed Building and Conservation Areas Act, when considering any application that affects a Listed building, a Conservation Area or their setting, the local planning authority must pay special attention to the desirability of preserving or enhancing the character or appearance of the heritage asset or its setting. This is reiterated by policy DM31.
- 7.3.2 The flue has been installed through one of the windows to the ground floor of the rear elevation and is visible from a vantage point on Rosemary Lane. The existing flue is shiny and silver in appearance. It is considered to mitigate the impact upon the Conservation Area the flue shall be painted in a slate grey matt finish and this shall be maintained at all times thereafter and this requirement will need to be conditioned.

7.3.3 The shopfront has recently been painted a vivid red colour, which is considered to be out of character with the Lancaster Conservation Area, especially when viewed from within North Road. It is considered to mitigate the impact upon the Conservation Area that the shopfront shall be painted in a heritage red colour and this requirement will need to be conditioned.

7.3.4 With these 2 amendments to the colour of the building and flue, the proposal is deemed to have a neutral impact on the Conservation Area. Both have been agreed with the applicant.

#### 7.4 Waste

7.4.1 There is no external bin storage available to the front or rear of the property. Therefore waste will be stored in the food preparation area to the first floor. Waste will be collected from the property on a daily basis.

#### 7.5 Emissions

7.5.1 Further information was sought regarding the installed flue. Discussions have taken place between the agent and the Environmental Health Officer to conclude that the installed flue does not include a system that adequately treats, dilutes and disperses of fumes and odours, but this can be addressed through a suitably worded condition. Consequently, the Environmental Health Officer has suggested a condition restricting the commencement of the proposed use until a scheme for the treating, diluting and dispersing of fumes and odours has been implemented.

### 8.0 Planning Obligations

8.1 Given the nature of the proposal there are no requirements for a legal obligation.

### 9.0 Conclusions

9.1 The proposal is located within the city centre's secondary retail frontage area, so the second part of Policy DM2 is relevant. Whilst the second test of this policy is not satisfied, on balance the use of 71 North Road as a hot food takeaway is considered acceptable, given that the other four tests within DM2 can be passed, and in particular it would not adversely affect the vitality and viability of the town centre or compromise the retail function of the city. The proposed flue is acceptable in design and heritage terms subject to its colour and finish being amended and retained, which can be secured by condition. Furthermore, a condition can secure a scheme for the treating, diluting and dispersing of fumes and odours to be implemented prior to the commencement of the hot food takeaway.

### Recommendation

That Planning Permission **BE GRANTED** subject to the following conditions:

1. Development to accord to approved plans
2. The use shall not commence until a scheme for the treating, diluting and dispersing of fumes and odours has been implemented
3. The existing flue shall be painted in a slate grey matt finish and this shall be maintained at all times thereafter.
4. The existing shopfront shall be painted in a heritage Victorian DH red colour.

### Article 35, Town and Country Planning (Development Management Procedure) (England) Order 2015

In accordance with the above legislation, the City Council can confirm that it has made the recommendation in a positive and proactive way to foster the delivery of sustainable development, working proactively with the applicant to secure development that improves the economic, social and environmental conditions of the area. The recommendation has been taken having had regard to the impact of development, and in particular to the relevant policies contained in the Development Plan, as presented in full in the officer report, and to all relevant material planning considerations, including the National Planning Policy Framework, National Planning Practice Guidance and relevant Supplementary Planning Documents/Guidance.

### Background Papers

None