

APPLICATION NO.	P21/V3298/FUL
SITE	65 St Johns Road, Abingdon OX14 2HA
PARISH	ABINGDON
PROPOSAL	Change of use of retail (E use class) into restaurant (E use class) and takeaway (Sui Generis) including installation of extraction flue system to side.
WARD MEMBER(S)	Helen Pighills Cheryl Briggs
APPLICANT OFFICER	Mr S Chinnam Abbie Barnes

RECOMMENDATION

Planning Permission subject to the following conditions:

Standard

- 1. Commencement of development within three years**
- 2. Development in accordance with approved plans**

Compliance

- 3. Materials in accordance with application**
- 4. Premise hours restriction**
- 5. Extraction flue in accordance with details submitted**

1.0 INTRODUCTION AND PROPOSAL

- 1.1** This application is referred to committee at the request of Local Ward Councillor Helen Pighills.
- 1.2** The site is located on St John's Road at the corner of Oxford Road. It is located within a predominantly suburban residential area and forms part of a small neighbourhood shopping centre. The application premises is a two-storey building with the ground floor currently used as retail, and the first floor as residential use. Adjacent to it, to the north, is a premises used for laundry services. Beyond that is a neighbourhood shop, then a restaurant/take-away, and then a Tesco Express. In front of the shop is a vehicular lay-by that also serves in part as a bus stop. Located to the rear of the unit is a car park which serves the Tesco Express, with the exit road running along the side of the application site. Adjacent to the exit road from the car park is a service road leading to privately owned garages, and then no.63 St John's Road, a dwelling. Opposite the site is a dwelling, no.5 Oxford Road. A Road Traffic Order (yellow lines) applies along both sides of St John's Road near to the junction with Oxford Road.

1.3 A site location map is provided below:



1.4 The application is seeking planning permission for the change of use of the existing retail unit (E use class) into a mixed use of restaurant (E use class) and take-away (Sui Generis). The proposal would provide an internal seating area for customers whilst also providing a new food take-away service. It is proposed that the new business will be selling pizza.

The application plans are **attached** at Appendix 1.

2.0 **SUMMARY OF CONSULTATIONS & REPRESENTATIONS**

2.1 Below is a summary of the responses received. A full copy of all the comments made can be viewed online at www.whitehorsedc.gov.uk

Abingdon Town Council	The Town Council has commented as follows: “The Town Council does not object to the application in principle but has concerns over the nature of the take-away. The Town Council is concerned that if the nature of the take-away changes, there may be an increase in odour and thus nuisance to neighbouring properties. The Town Council therefore requests that the planning team adds an informative if permission is granted which would require further approval should the nature of the take-away change in future”
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Councillor Helen Pighills	<p>Supports a neighbour's objections regarding the impact of customers' cars likely to be parked dangerously whilst visiting the premises due to local on-street parking. Also has the following concerns:</p> <ul style="list-style-type: none"> • The location of commercial waste to be collected needs to be clarified
Neighbour comments	<p>12 households object on the following grounds:</p> <ul style="list-style-type: none"> • Likely rogue parking due to existing local on-street parking congestion will create obstruction and danger • The danger could involve local schoolchildren who use St John's Road • Associated parking congestion will make exiting St John's Road onto Oxford Road, and entering from it, dangerous • Lack of commercial waste storage • Anti-social behaviour and littering, which is already experienced, will be increased to the detriment of neighbours • Noise and light pollution • Proposed hours of use
Highway Liaison Officer (Oxfordshire County Council)	<p>Due to the lawful use of the site for retail, and now for potential other Class E uses, some of which have potentially high traffic generation, and the existence of double yellow lines at the Oxford Road/St John's Road junction, which are now enforced by the local highway authority, there are no objections.</p>
Drainage Engineer	<p>No objections</p>
Food safety	<p>No objections</p>
Environmental Protection	<p>No objections subject to noise and odour mitigation schemes being maintained.</p>
Waste Management	<p>No objection as the site will be serviced by a commercial waste contractor.</p>

3.0 RELEVANT PLANNING HISTORY

3.1 Planning applications

[P87/V1323](#)- Demolish existing toilets and storeroom. Erection of new store incorporating external access to flat over. Approved 9 December 1987

[P83/V1757/COU](#)- Change of Use from children's clothes shop to sale of hot food. Withdrawn 31 January 1983

3.2 **Pre-application History**

None

4.0 **ENVIRONMENTAL IMPACT ASSESSMENT**

4.1 This proposal does not fall within one of the identified classes of development in Schedule 2 of the EIA regulations and is not in a sensitive area. A screening opinion under the Regulations is therefore not required.

5.0 **MAIN ISSUES**

5.1 **Principle**

National and local planning policies seek to support local shops and other services that support local communities. In September 2020, the Government introduced a significant change to the Town & Country Planning Use Classes Order by amalgamating a number of previous use classes into one, known as Class E. Class E includes shops, financial and professional services, restaurants and cafes, indoor sport, medical services, nurseries, offices, and light industrial and research uses. The change means that a premises can change from one use to another use on the list without the need for planning permission.

5.2 The reason for this change was to give much greater flexibility for the use of traditional retail premises, to allow them to continue to be used rather than risk falling empty and vacant for long periods, in the face of the recent rapid expansion of internet retailing. Being a shop, the application site falls into Class E. This major change to the Use Classes Order has significantly broadened the types of uses that a shop premises can now be used for. It overrides Local Plan policies that have previously often sought to restrict the type of uses that a shop can be changed into. It marks a significant shift in the planning approach expected by Government towards traditional shop premises.

5.3 The planning application is for a mixed use of sit-down eating (or restaurant) which is within Class E, and a take-away, which is a sui generis use that is outside of Class E. Against the background of a much more flexible approach to the use of traditional shop premises, officers consider the principle of the change is acceptable, subject to details. The details will now be considered.

5.4 **Design and Appearance**

Core Policy 37 of LPP1 (Reviewed) requires new development to be of a high-quality design that is visually attractive and the scale, height, massing and details are appropriate for the site and surrounding area. The main change involved with the proposal is a new external flue on the south side of the premises. The flue will be relatively narrow, only 250mm in diameter. It will exit the side wall of the building approximately 2.5m above ground level, and terminate 1m above the parapet wall on the roof. It will be treated in a similar colour to the red brick side wall to help minimise its visual effect. Other changes include painting of the shop front frame.

5.5 In view of the small size of the proposed flue, and that its intended colouring will be sympathetic to that of the side wall, officers consider the visual impact of the proposal is acceptable.

5.6 **Residential Amenity**

Policy DP23 of LPP2 seeks to ensure developments do not result in adverse impacts on the amenities of neighbours. The proposed extraction flue brings potential concerns regarding noise and odour. There is a separate flat on the first floor and neighbouring houses close by. The application is supported by a noise assessment, including mitigating measures, and a detailed specification for the flue to tackle odour. These have been the subject of careful assessment by the Environmental Protection Officer.

5.7 The proposal would incorporate acoustic insulation between the extraction flue system and the ceiling separating the unit with the above level. Anti-vibration mounts inside and outside will also aid in suppressing any noise transmission from the system to either the upper floor or to nearby separate dwellings. The flue will incorporate fine-carbon filters to remove odour. A cleaning schedule for the filters to ensure they maintain effectiveness has been submitted. Having reviewed the documentation, the Environmental Protection Officer has no objections subject to the mitigation regimes being maintained. This can be controlled by condition.

5.8 In relation to the opening hours of the premises, it is proposed to open between the hours of 8.00am and 11.00pm, 7 days a week. These opening hours are not considered to be unusual for local retail facilities, and the ending of customer visits at 11.00pm is considered to be a reasonable compromise between the viability of the business and the amenities of local residents.

5.9 Objectors have complained about an increase in anti-social behaviour arising from the proposal. Officers are not aware of any evidence that automatically links the introduction of a take-away with a material increase in anti-social behaviour. A link may be assumed, but officers consider that this is insufficient, when considered in the balancing exercise with all other material considerations, to justify the refusal of the planning application.

5.10 The Town Council has requested that a control be imposed to require a further planning permission if the type of take-away changes on the grounds that odour filtration may need to change. The fine-carbon filtration proposed for the flue is comprehensive in nature, and should be adequate for different types of take-away food. Therefore, officers consider the Town Council's request is unreasonable.

5.11 Overall officers are satisfied the development would not result in harm to the amenities of neighbouring properties. It would therefore comply with Policy DP23.

5.12 **Access and Parking**

Core Policies 35 and 37 LPP1 and policy DP16 of LPP2 deal with the traffic implications of applications. Paragraph 111 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

5.13 Most of the objections to the application are based on highway safety. The Highways Liaison Officer has carefully examined the proposal. He is a highly experienced officer who knows the area very well. He is very aware of the parking pressure in the locality, and the proximity of the school. He is also mindful of the tests in paragraph 111 of the NPPF mentioned above.

5.14 The Highways Officer has taken the following factors into account:

- The site has been used as a shop for many years, and therefore has a traffic impact on the locality that is associated with it. This impact, which can be reasonably expected to vary depending on the type of shop and how popular it is, has to be taken into account.
- The recent introduction of Class E means that the potential uses of the premises, and the traffic implications of the uses, has expanded considerably. The potential traffic impact of these alternative uses also has to be taken into account
- The Highways Liaison Officer is constrained to rely upon enforcement of the Road Traffic Order (yellow lines) at the junction, as experience at appeal indicates that appeal inspectors also rely upon their enforcement.

In light of these factors, the Highways Liaison Officer does not object to the proposal.

5.15 **Waste**

Policy DP28 of LPP2 deals with waste collection. Commercial properties have a choice of waste service provider which is not controlled by the council so the storage and collection arrangements can be very different for each establishment depending on the method they choose.

5.16 In this case the applicant has demonstrated that there is a small area located to the rear that would be shared with the flat above for waste storage. The area is relatively small, but as commercial units do not have to use 1100 litre bins, smaller bins could be accommodated in the area proposed.

5.17 The council's Waste Team have raised no objections to the proposals.

5.18 **Community Infrastructure Levy**

The proposal is not subject to CIL liability.

5.19 **Pre-commencement conditions**

There are no pre-commencement conditions.

6.0 **CONCLUSION**

- 6.1 Officers have considered the proposal in light of the much greater flexibility of potential uses for traditional shops brought in by the recent introduction of Use Class E. The proposal is considered to be acceptable in terms of its impact on visual amenity. Subject to condition, the impact of the proposed flue is acceptable. In general, no likely harm to neighbours' amenities can be identified. The factors relating to associated traffic have been carefully considered and it is concluded the proposal cannot be refused on highways grounds. As such, the proposal is considered to comply with relevant policies of the development plan and with the NPPF.

The following planning policies have been taken into account:

Vale of White Horse Local Plan 2031 Part 1 (LPP1) (Reviewed) Policies:

CP01 - Presumption in Favour of Sustainable Development
CP35 - Promoting Public Transport, Cycling and Walking
CP37 - Design and Local Distinctiveness

Vale of White Horse Local Plan 2031 Part 2 (LPP2) Policies:

DP16 - Access
DP23 - Impact of Development on Amenity
DP28 - Waste Collection and Recycling

Neighbourhood plan

A neighbourhood plan for Abingdon is at an early stage in the process and has little weight at this time.

Supplementary Planning Guidance/Documents

Vale of White Horse Design Guide 2015

National Planning Policy Framework and Planning Practice Guidance

Equality Act, 2010

The application has been assessed under Section 149 of the Equality Act. It is considered that no identified group will suffer discrimination as a result of the proposal.

Human Rights Act, 1998

The application has been assessed under the Human Rights Act, particularly Schedule 1, Part 1, Article 8 and Schedule 1, Part 2, Article 1. The objections of individuals have been weighed against the public interest and the recommendation made by officers is considered to be proportionate.

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