# KIRKLEES METROPOLITAN COUNCIL
# INVESTMENT & REGENERATION SERVICE

## DEVELOPMENT MANAGEMENT

### Town and Country Planning Act 1990 (as amended) – SECTION 70

### DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS

| | |
|---|---|
| Reference No: | **2021/62/94032/W** |
| Site Address: | 2, Town Road, Kirkheaton, Huddersfield, HD5 0HW |
| Description: | Change of use from shop (Class E) to Italian takeaway (Sui Generis) and installation of external extract ventilation flue |
| Recommending Officer: | Stuart Howden |

**DECISION – Refused**

**I hereby authorise the refusal of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.**

Neil Bearcroft

***AUTHORISED OFFICER***

**Date:** 28/2/2022

# Officer Report

## Site Description

2 Town End Kirkheaton, Huddersfield, KD5 0HW

The site is situated on a corner plot, with Shop Lane to the south west side and Town Road to the north west side. The site comprises an end of terrace building which is two storeys in height and constructed from stone under a slate roof. The application relates to the ground floor and basement of the building and the site previously accommodated a retail unit with an associated storage area at basement level. The customer entrance to the building is at the corner between Shop Lane and Town Road, but the ground floor can also be accessed from the rear via external steps. The site is now vacant. There is no off-street parking serving the site.

The site is within the designated Kirkheaton Local Centre and within the vicinity of the site are a mixture of retail and commercial uses. There is a residential unit above the site (with access to the rear). Next door to the north west is a pubic house (Yeaton Cask) which also has living accommodation above ground floor level. To the rear of the site is an access way serving other properties, and beyond this are the rear elevations of other residential dwellings. To the south west of the site are a pharmacy, hair salon and residential units. To the north west of the site are residential properties.

The corner of Shop Lane and Town Road is adjacent to a four-arm junction with Bank Field Lane and New Road.

The site is not within a conservation area, and not within close proximity to any listed buildings.

## Description of Proposal

Planning permission is sought for a change of use from a shop (Class E) to an Italian takeaway (Sui Generis) and installation of external ventilation flue.

The front access for customers is proposed to remain, with a waiting area to the front of the building, and a kitchen to the rear, with a sales counter relatively centrally sited on the ground floor. A food store, WC and wash up area are proposed in the basement.

Externally, an extract flue is proposed on the south west side of the building. It is noted that this would be 350mm in diameter and this is shown to be discharging above the eaves. The Design and Access Statement notes that this would be constructed in stainless steel, whilst the proposed elevations notes a black finish.

It appears that that the larger windows and door have been replaced at ground floor level relatively recently, as well as new cills for the windows at

ground floor level and the blocking up of one smaller window on the south west side elevation (but these do not form part of this application).

The bin store for the use is proposed to the rear of the building adjacent to the external steps, and the Design and Access Statement notes that this would be suitable for 2 No. 240 litre bins. The submission notes that the takeaway is to be open between 17:00-23:00 daily and would employ 2 full time staff and 3 part-time staff. The supporting letter notes that it is intended that the business would run a home delivery service.

**History of negotiations/amendments received**

Officers have previously raised concerns with the applicant's agent regarding highways safety in relation to a withdrawn application for the same use at the site. The applicant has provided additional information, but this has not addressed the concerns of Officers. Further to this, Officers have other concerns with the proposal which require addressing. The application has therefore been recommended for refusal.

**Relevant Planning History**

90/00819 – Erection of illuminated projecting sign – Consent Granted on 14th March 1990.

2019/90889 – Change of use from A1 (shop) to A5 (hot food takeaway) – Withdrawn on 22nd May 2019. This application was withdrawn due to Officer concerns with the application, this being the impact upon the amenities of the residential apartment on the upper floors from an intensified use, noise and odours, as well as the impact upon highways safety.

2021/92321 – Change of use from shop (Class E) to Italian takeaway (Sui Generis) and installation of external extract ventilation flue – Invalid

**Representations**

Final publicity date Expires:
Neighbour letters expired on 15th December 2021.

4 representations have been received, with 3 objecting to the application and 1 supporting the application. The comments raised within these representations are summarised below, but can be viewed in full on the Council's Planning website:

*Object:*

- Flue would look out of place and would be an eyesore – not in-keeping with the area.
- Village already has several takeaways and need shops instead.
- Concerns of odour and noise.
- Concerns with litter.

- Highway safety concerns:
  - Site is on dangerous corner.
  - Roads are busy day and night, and further congestion will increase the likelihood of accidents.
  - Limited parking in the area and residents struggle to find parking on an evening.
- Works are ongoing.

*Support:*

- Shop has been empty for some time.
- Parking has never been an issue.
- No Italian takeaway at the moment in the village and may attract visitors to the village.

**Consultation Responses**

KC Public Heath: No objections raised.

KC Highways Development Management: Object on the grounds of highways safety.

KC Environmental Health: Noise and odour assessments are required prior to determination.

KC Crime Prevention: No objections.

The above is a summary of the consultation responses received. Full responses from consultees can be viewed on the Council's Planning Webpage.

**Policy**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

The site is unallocated on the Kirklees Local Plan Proposals Map, but is within the designated Kirkheaton Local Centre

**Kirklees Local Plan (LP):**

- **LP 1** – Achieving Sustainable Development
- **LP 2** – Place Shaping
- **LP 3** – Location of New Development
- **LP 7** – Efficient and Effective Use of Land and Buildings
- **LP 13** – Town Centres

- **LP 16** – Food and Drink Uses and the Evening Economy
- **LP 20** – Sustainable Travel
- **LP 21** – Highway Safety
- **LP 22** – Parking Provision
- **LP 24** – Design
- **LP 25** – Advertisements and Shop Fronts
- **LP 47** – Healthy, Active and Safe lifestyles
- **LP 51** – Protection and Improvement of Local Air Quality
- **LP 52** – Protection and Improvement of Environmental Quality

**National Policies and Guidance:**
National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 20th July 2021, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance. The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- **Chapter 2** – Achieving Sustainable Development
- **Chapter 4** – Decision-Making
- **Chapter 7** – Ensuring the Vitality of Town Centres
- **Chapter 8** – Promoting Healthy and Safe Communities
- **Chapter 9** – Promoting Sustainable Transport
- **Chapter 11** – Making Efficient Use of Land
- **Chapter 12** – Achieving Well-Designed Places
- **Chapter 14** – Meeting the Challenge of Climate Change, Coastal Change and Flooding
- **Chapter 15** – Conserving and Enhancing the Natural Environment

**Supplementary Planning Guidance Documents**
- Kirklees Waste Management Design Guide for New Developments (2020)
- Kirklees Highways Design Guide (2019)
- Draft Kirklees Hot Food Takeaway SPD (2021)

**Assessment**
The following matters are considered in the assessment below –
1) Principle of development
1) Impact on visual amenity
2) Impact on residential amenity
3) Impact on highway safety
4) Other matters
5) Planning balance
6) Representations
7) Conclusion

**1 – Principle of development:**

NPPF Paragraph 11 and LP1 outline a presumption in favour of sustainable development. Paragraph 8 of the NPPF identifies the dimensions of sustainable development as economic, social and environmental (which includes design considerations). It states that these facets are mutually dependent and should not be undertaken in isolation.

The dimensions of sustainable development will be considered throughout the proposal. Paragraph 11 concludes that the presumption in favour of sustainable development does not apply where specific policies in the NPPF indicate development should be restricted. This too will be explored.

The site is without notation on the KLP Policies Map. Policy LP2 states that:

> *"All development proposals should seek to build on the strengths, opportunities and help address challenges identified in the local plan, in order to protect and enhance the qualities which contribute to the character of these places, as set out in the four sub-area statement boxes below..."*

The site is within the Huddersfield sub-area. The listed qualities will be considered where relevant later in this assessment.

The application site sits on a prominent corner plot within the designated Kirkheaton Local Centre, and the lawful use of the site is Class E(a), although the retail use is now vacant.

Chapter 7 of the NPPF relates to the ensuring the vitality of town centres. Paragraph 86 of the NPPF outlies that planning decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.

Policy LP13 of the Kirklees Local Plan is consistent with Government guidance contained within the NPPF. Policy LP13 states that within Kirklees, main town centre uses shall be located within defined centres (principal centres, town centres, district centres, and local centres), as shown on the Policies and Town Centre Maps, and as detailed in the shopping centre hierarchy and then in accordance with the sequential test. Policy LP13 also states that proposals which have a significant adverse impact on the vitality and viability of a centre, or compromise the role and function of a centre will not be supported. Policy LP13 goes on to note that the role and function of Local Centres is to provide top-up shopping and local services particularly food and drink.

In addition, Policy LP13 states that centres shall provide a mix of uses to serve the local community, businesses and visitors to the district. The uses shall complement each another whilst retaining a strong retail core. Centres in Kirklees shall aim to provide a range of uses to support the daytime and evening economy.

Whilst the loss of the retail use would be unfortunate, in this case it is considered that the proposal would not compromise the role and function of this Local Centre, or its vitality and viability. This is because there are other retail uses within the Local Centre (to the north east), and because hot food takeaways (which is proposed here) are considered to constitute a main town centre use with reference to the glossary contained within the NPPF. The proposal is therefore considered to be in accordance with Policy LP13 of the Kirklees Local Plan

The proposed use would constitute a food and drink use therefore consideration must be given to Policy LP16 of the Kirklees Local Plan. This states that proposals for food and drink uses will be supported, provided they are located within a defined centre and subject to ensuring the concentration of food and drink and licensed entertainment uses are not located in a particular centre or part of a centre, where they would result in harm to the character, function, vitality and viability of the centre, either individually or cumulatively. Policy LP16 goes on to note that in order to assess the potential harm of food and drink proposals on a centre, the following criteria will be considered with a planning application:

a) the number, distribution and proximity of other food and drink uses, including those with unimplemented planning permission in a particular centre;
a) the impacts of noise, general disturbance, fumes, smells, litter and late night activity, including those impacts arising from the use of external areas;
b) the potential for anti-social behaviour to arise from the development, having regard to the effectiveness of available measures to manage potential harm through the use of planning conditions and / or obligations;
c) the availability of public transport, parking and servicing;
d) highway safety;
e) the provision of refuse storage and collection; and
f) the appearance of any associated extensions, flues and installations.

In relation to Policy LP16a, whilst there are other food and drink uses in this defined centre, Officers consider that the proposal would not result in the over concentration of food and drink uses in this Local Centre, and notably in this south western area of the Local Centre.

Points b-g of Policy LP16 will be discussed further below:

**2 – Impact on visual amenity (including impact upon historic environment):**

The NPPF offers guidance relating to design in Chapter 12 (achieving well designed places) whereby Paragraph 126 provides a principal consideration concerning design which states:

*"The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities."*

Kirklees Local Plan Policies LP1, LP2 and significantly LP24 all also seek to achieve good quality, visually attractive, sustainable design to correspond with the scale of development in the local area, thus retaining a sense of local identity. Policy LP24 states that proposals should promote good design by ensuring:

*"a. the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape…"*

Externally, the only alteration applied for is the installation of a flue on the south west side of the building. This would be 350mm in diameter and this is shown to be discharging above the eaves. The Design and Access Statement notes that this is to be constructed in stainless steel, but the proposed elevations note this is to be in black.

As outlined above, Policy LP16g states that in order to assess the potential harm of food and drink proposals on a centre, consideration will be given to the appearance of any associated extensions, flues and installations.

In this case, the flue would overhang the highway of Shop Lane and would run from ground floor level above the eaves of the building. By virtue of its scale and it overhanging a well-used highway, as well as it being adjacent busy road junctions (Shop Lane/Town Road and Bankfield Lane, as well as Bankfield Lane and New Road), it is considered it would be prominent and visually jarring feature from within the public domain. It is considered that its prominence would be increased if it were to be stainless steel, but conditioning the materials of the flue would not adequately address the concerns of Officers.

The applicant's agent has referred to a flue at Kirkheaton Spice, however this building is ~230 from the site, and this flue is does not overhang the highway, but is set back from it. The applicant's agent also noted that the applicant would be willing to looking into providing an internal flue, but Officers also have in significant concerns in relation to highways safety therefore have not invited revisions.

Thus, it is considered that such a flue, by virtue of its overly prominent siting, overall height and bulk, would appear as a visually jarring and incongruous addition within the streetscene, and that the proposal would cause detrimental harm to the visual amenities of the locality. An ungainly stainless steel finish would only add to the prominence of the flue, thereby causing greater harm to the visual amenities of the locality. The proposal is therefore considered to be contrary to Policies LP16(g) and LP24(a) of the Kirklees Local Plan and Chapter 12 of the NPPF.

**3 – Impact on residential amenity:**

Section B of Policy LP24 of the Kirklees Local Plan states that proposals should promote good design by ensuring: *"They provide a high standard of amenity for future and neighbouring occupiers; including maintaining appropriate distances between buildings".*

In addition to this, Paragraph 130 of the NPPF states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.

Paragraph 185 of the NPPF outlines that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on living conditions. In addition to this, Policy LP52 of the Kirklees Local Plan states that proposals which have the potential to increase pollution from noise, vibration, light, dust, odour and other forms of pollution must be accompanied by evidence to show the impacts have been evaluated and measures have been incorporated to prevent or reduce the pollution, so as to ensure it does not reduce the quality of life and well-being of people to an unacceptable level or have unacceptable impacts on the environment.

Policy LP16b states that in order to assess the potential harm of food and drink proposals on a centre, the impacts of noise, general disturbance, fumes, smells, litter and late night activity, including those impacts arising from the use of external areas will be considered.

Externally, the proposal involves the installation of a flue on the south west side elevation of the building, and no other works, therefore it is considered that the proposal would not cause detrimental harm to any neighbouring properties in terms of loss of light, loss of privacy or overlooking, or the creation of an overbearing effect.

The proposal seeks permission for a change of use from former shop to a hot food takeaway serving Italian food between the hours of 17:00 – 23:00 every day. However, there are a number of sensitive receptors within the vicinity of the site including the residential unit above the site, as well as residential properties to the front, rear and sides of the site. KC Environmental Health raise concerns regarding noise from the kitchen extractor fans during the food preparation, noise caused by customers/delivery drivers due to the late-night opening hours and from deliveries being made from and to the property all of which have the potential to impact on neighbouring residents including the residents at the flat above.

As a consequence, KC Environmental Health have noted that to be able to assess this application fully, a noise report and proof that the sound insulation in the floors/walls separating the takeaway from the flat above and adjoining property are adequately sound proofed should be provided prior to the determination of the application. KC Environmental Health note that because

the premise does not have its own parking facilities, the noise report should address the noise generated from delivery vehicles that will be using parking spaces on the road outside resident's properties.

Officers acknowledge the concerns of KC Environmental Health in relation to noise. That said, in relation to comings and goings the site is sited adjacent a classified road and within the Local Centre, next door to a public house (with similar opening hours to the proposed use), and the lawful use of the building is a shop, therefore it is considered that the neighbouring residential uses are likely to experience some background noise from activity in the area. However, Officers have concerns regarding the siting of the extraction flue adjacent to the two openable windows within the apartment above and within close proximity to the front windows within of the residential units within 42-48 Shop Lane to the west. Details of an appropriately designed kitchen extraction system have not been provided, and due to this Officers hold the view that it has not been suitably demonstrated that the proposed development could be undertaken without resulting in undue harm to the living conditions of the nearby occupants of the neighbouring residential properties of 2 Town Road and 42-48 Shop Lane by way of noise.

KC Environmental Health have also raised concerns in relation to the odours caused by the food preparation and cooking process, and how this will impact the amenity of the residents residing in the above first floor flat and neighbouring properties. KC Environmental Health go on to note that details regarding the proposed kitchen extract ventilation system should be provided. KC Environmental Health state that this must be properly risk assessed based on the type and amount of food to be cooked so that the correct level of ventilation is installed that can effectively disperse and control odours. KC Environmental Health note that the type of termination flue will need to be considered and its' position in relation to the ridge height of the building, the windows on the first floor and the proximity to other residential properties. KC Environmental Health conclude that because of this omitted information, details of the kitchen extract ventilation system should be provided before determination of the application.

Officers note the concerns of KC Environmental Health in relation to odour. Apart from a drawing of a flue, further details of a kitchen extract ventilation system have not been provided and there are opening windows in the above flat adjacent to this proposed flue, as well as front facing windows in the residential accommodation above the hairdressers across Shop Lane. In the absence of an appropriately designed extraction system, Officers are not convinced that the proposal could adequately address the effect of odour upon sensitive neighbouring occupiers, notably the apartment above the site and the residential property across Shop Lane (42-48 Shop Lane).

In the absence of an appropriately designed kitchen extraction system, it has not been demonstrated that the proposed development could be undertaken without resulting in undue harm to the living conditions of the nearby occupants of the neighbouring residential properties of 2 Town Road and 42-48 Shop Lane by way of noise and odour impacts. The proposal is therefore

contrary to Policies LP16(b), LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

In terms of litter, this is a concern the Council's Crime Prevention Officer has raised. Officers recognise that litter can be a problem with takeaways, and, in an effort to minimise the problem a condition requiring that bins be provided could be attached should permission be granted.

**4 – Impact on highway safety**:

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."* Policy LP21 of the Kirklees Local Plan echoes this. Policy LP22 of the Kirklees Local Plan relates to parking provision.

Policy LP16d states that in order to assess the potential harm of food and drink proposals on a centre, consideration should be given to the availability of public transport, parking and servicing, whilst Policy LP16e states that consideration should be given to highway safety for such developments.

Town Road to the north west of the site is a 30mph two-way single carriageway local distributor road with partial footways in the vicinity of the application site and street lighting present. There are No Waiting at Any Time TRO markings present with a bus stop marking to the east of the double yellow lines. Adjacent to the development site there is a sharp bend where the road becomes Shop Lane and has a four-arm junction with Bankfield Lane and New Road. Adjacent to the site on Shop Lane the pedestrian footway is substandard at less than 1m wide and then is either absent or narrow until the junction with New Street to the south west. There is a kerbed central island providing a pedestrian refuge across Town Lane to the northeast of the site, but as noted by KC Highways Development Management (HDM) the bend onto Shop Lane severely restricts pedestrian visibility of oncoming vehicles.

KC HDM state that the sharp bend on the through route between Town Road and Shop Lane leads to very limited forward visibility, especially on the south west/south bound movement around the bend. KC HDM note that measured using maps, this forward visibility is approximately 16 metres, considerably less than expected for a 30mph road, although KC HDM do expect actual speeds to be lower than 30mph at this location due to the sharpness of the bend. KC HDM go onto note that heading southbound, there is another bend to the right approximately 30 metres from the previous left-handed bend and this would be "blind" to any vehicles needing to cross the central markings to pass a parked vehicle. KC HDM state as this southerly bend is less sharp than the northernmost one, it would be reasonable to expect that road speeds of vehicles travelling northbound would be slightly higher. The section of highway between these two points has No Waiting At Any Time TRO markings along the full length for highway safety reasons.

There is no off-street parking available to the site and there are TRO parking restrictions outside the site. There are unrestricted parking areas a short distance from the site across Town Lane/Shop Lane, however most of these are outside residential properties and KC HDM and Officers are of the view that these may not be available during the expected peak hours for a hot food takeaway (these being after normal working hours when residents will be back or coming back from work, which is considered to be at a similar time the takeaway is planned to open (17:00-23:00)). Further to this, there is considered to be no safe pedestrian route between off-road parking and the proposal site nearby (apart from cars parked on the south side of Town Road).

The accompanying Parking Survey by D5 Planning contains a series of photographs that show the parking situation at various times around the vicinity of the proposal site. No analysis or figures have been provided within the document and parking beat surveys have not been carried out. The Planning Statement however concludes from this that 'on street parking spaces are available in close proximity to the site within a short walking distance to the premises'. However, KC HDM and Officers hold the view that the photographs appear to show that Town Road is fully parked up apart from on Bus Stop markings during all observed periods and very limited parking is available on the other roads. In addition, and as noted above, there is considered to be no safe pedestrian route between off-road parking and the proposal site near to the application site (apart from car being parked on the south side of Town Road).

The No Waiting Monday – Saturday 8am to 6pm TRO markings on Shop Lane would not clash with the proposed new opening hours of the premises and a limited amount of on street parking could be provided here but these would be subject to competing users. These spaces would also be over 50 metres from the site and would require crossing Shop Lane at what Officers and KC HDM consider to be an unsuitable location.

Of note, Policy HFT7 of the Draft Kirklees Hot Food Take Away SPD states that if there is a lack of suitable parking spaces nearby, customers and delivery drivers may choose to, or have no alternative but to park for short periods in inappropriate locations. This can lead to conflict with other road users and dangerous conditions for pedestrians. The Policy goes on to state that consideration will therefore be given to the presence of existing traffic controls such as double yellow lines, laybys used for bus stops, zebra crossings or other crossings or controls or the presence of junctions where inconsiderate parking would cause a danger to pedestrians or other road users or which would disperse short term parking resulting in loss of amenity for residents or other businesses. The Policy concludes that if parking arrangements in the vicinity of the premises cannot safely accommodate the increased need for short stay parking the proposal will not be acceptable if it cannot demonstrate that such arrangements could be put in place.

Whilst the SPD is in draft form it is considered to provide good advice to assessing applications for hot food takeaways so as to prevent adverse harm.

As alluded to above, it is considered that there is a lack of suitable parking nearby, which could lead to parking in inappropriate locations within the vicinity of the site, including TRO areas, bus stops and accesses to driveways. Of note, the site is adjacent to a busy four-arm junction and a sharp bend with poor forward visibility. It is considered that the proposal would therefore not accord with Policy HFT7 of this draft SPD.

Thus, KC HDM and Officers consider that the proposal would promote parking or waiting on or near the sharp bend outside the premises as well as unsafe pedestrian crossing, given that alternative off street parking is limited in supply and subject to competing uses, including residential parking. The application does not give Officers and KC HDM any reason to consider otherwise. As a consequence, KC HDM have objected to the proposal.

In the supporting documentation, the applicant's agent has noted there are similarities in the operations between a retail use (the lawful use of the site) and the proposed use. The agent also noted that there are similarities between the operations between the proposed use and other uses within Class E which the site could change into without the need for planning permission.

Whilst KC HDM and Officers acknowledge that there would be some similarities with the operation of Class E uses and a takeaway use, KC HDM and Officers consider that a hot food take away has materially different operational procedures so as to have different impacts on the surrounding highway network than a retail use, or any other Class E use for that matter (hence why a takeaway use is not within Class E). Of note, the proposal would be open after working hours when more vehicles are likely to be parked along the nearby highway network. In addition, as customers and delivery drivers would likely visit for a relatively short period of time to collect hot food, it is felt there is a greater likelihood for car users to park in inappropriate locations than some other E Class uses (for instance a restaurant).

Given the above, it is considered that the proposal would likely increase the risk of conflict between highway users (including pedestrians).

Thus, it is considered that the proposed change of use from retail to a takeaway use at the site, by reason of the lack of any off street parking, has the potential to increase the likelihood of inappropriate vehicular parking on the adjacent well-used highways, including parking close to the sharp bend where the classified roads of Shop Lane and Town Road converge. The lack of any off-street parking would also increase the likelihood of pedestrians crossing the road to access the site at unsafe points to access the site near the sharp bend where Shop Lane and Town Road meet, adjacent to a 4 arm junction. The above is considered to increase the likelihood of conflict between highway users. The proposal would therefore result in a detriment to the safety and convenience of highway users including pedestrians. The proposal is therefore contrary to Policies 16 (d&e), LP21 and LP22 of the Kirklees Local Plan and Chapter 9 of the National Planning Policy Framework.

**6 – Other matters**:

*Climate Change:*
On 12th November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target. However, it includes a series of policies, which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

Considering the nature of the proposal (in that the proposal is for a change of use from one commercial use to another in a Local Centre) it is considered that the proposed development would not have an impact on climate change that needs mitigation to address the climate change emergency.

*Public Health*
Policy LP47 of the Kirklees Local Plan states the council will create an environment which supports healthy, active and safe communities and reduces inequality. Policy LP47j goes on to state that healthy, active and safe lifestyles will be enabled by working with partners to manage the location of hot food take-aways particularly in areas of poor health

KC Public Health have assessed the application by considering local details such as deprivation, overweight adults, obese adults, 5 year olds with access weight, 11 year olds with excess weight, diabetes and Coronary Heart Disease. KC Public Health have produced a scoring category based on these indicators of deprivation, and the site is considered to be within a location with an average score for Kirklees, therefore it is considered that the proposal would unlikely result in adverse impacts on public health.

*Waste*:
Drawing No 1412/03 shows a bin storage location to the rear of the building and it is assumed that collection will take place from here. It should be noted that the location of the bins may obstruct the access to the stairs to the site, especially if larger refuse bins are required by the takeaway, but it is noted that the bin storage arrangement is likely to be relatively similar to existing. The proposal is therefore considered to be accordance with Policy LP43 and LP16f of the Kirklees Local Plan.

*Crime Prevention/Anti-Social Behaviour:*
KC Crime Prevention have raised no objections to the proposal in principle, but have provided recommendations should permission be granted. In addition, there is no robust evidence to demonstrate that the proposed use would result in an increase in anti-social behaviour. Given the above, the

proposal is therefore considered to be in accordance with Policy LP16c of the Local Plan.

*Drainage*
KC Environmental Health have noted that due to the nature of the proposed development, there is the potential for fats, oils, and grease to enter the drainage network due to food preparation and from dish-washing areas. Therefore, KC Environmental Health have stated that it is necessary for a condition to prevent pollution entering the drainage network. This could be conditioned should permission be granted.

**7 – Planning balance:**

Paragraph 12 of the NPPF states that where a planning application conflicts within an up to date development plan, permission should not be granted. Paragraph 12 goes onto note that Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed. This is consistent with Section 38(6) of the Planning and Compulsory Purchase Act 2004.

In this case, and as discussed above, Officers consider that the proposal conflicts with Policies LP16 (b, d, e and g), LP21, LP24, LP24 and LP52 of the Kirklees Local Plan.

In terms of material considerations, it is noted that the existing building is vacant and Officers acknowledge that the proposal would provide a commercial town centre use for this site in a designated Local Centre and this would help with the viability and vitality of this centre, weighing in favour of this application. However, details of marketing the site have not been submitted and Officers see no reason why the site is unable to accommodate other, less harmful, main town centre uses for this site so this somewhat reduces the weight of the benefit. In addition, this benefit is not considered to outweigh the harm by reason of the conflict with the development plan

**8 – Representations**:

4 representations have been received, with 3 objecting to the application and 1 supporting the application. A number of the comments raised are addressed in the above assessment, and any other comments will be addressed below:

Third Party Comment: Work is ongoing.
Officer Response: Officers acknowledge that it appears that some works to the building have been conducted, but these are not being applied for under this application and such works will not prejudice the assessment of this application.

**9 – Conclusion**:

The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development proposals do not accord with the development plan and/or the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits of the development when assessed against policies in the NPPF and other material consideration.

**Recommendation** **Refuse**

**Decision Authorisation - Delegated Powers**
**Application Number**: 2021/94032
**Officer Recommendation**: Refuse
**Reasons for Refusal**

1. The proposed flue, by virtue of its prominent siting overhanging a highway and adjacent well used roads, and its overall height and bulk, would appear as a visually jarring and incongruous addition within the streetscene. The proposal would therefore cause detrimental harm to the visual amenities of the locality, contrary to Policies LP16(g) and LP24(a) of the Kirklees Local Plan and Chapter 12 of the NPPF. An ungainly stainless steel finish would only add to the prominence of the flue, thereby causing greater harm to the visual amenities of the locality.

1. The proposed change of use from retail to a takeaway use at the site, by reason of the lack of any off street parking, has the potential to increase the likelihood of inappropriate vehicular parking on the adjacent well-used highways, including parking close to the sharp bend where the classified roads of Shop Lane and Town Road converge. The lack of any off-street parking would also increase the likelihood of pedestrians crossing the road to access the site at unsafe points to access the site near the sharp bend where Shop Lane and Town Road meet, adjacent to a 4 arm junction. This would collectively increase the likelihood of conflict between highway users. The proposal would therefore result in a detriment to the safety and convenience of highway users including pedestrians. The proposal is therefore contrary to Policies 16 (d & e) LP21 and LP22 of the Kirklees Local Plan and Chapter 9 of the National Planning Policy Framework.

2. In the absence of an appropriately designed kitchen extraction system, it has not been demonstrated that the proposed development could be undertaken without resulting in undue harm to the living conditions of the nearby occupants of the neighbouring residential properties of 2 Town Road and 42-48 Shop Lane by way of noise and odour impacts. The proposal is therefore contrary to Policies LP16 (b), LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

Plans and specifications schedule:-

| Plan Type | Reference | Version | Date Received |
|---|---|---|---|
| Application Form | - | - | 26th October 2021 |
| Location Plan | 1412/01 | - | 26th October 2021 |
| Existing Floor Plans and Elevations | 1412/02 | | 26th October 2021 |
| Proposed Floor Plans and Elevations | 1412/03 | - | 26th October 2021 |
| Design and Access Statement | - | - | 26th October 2021 |

| | | | |
|---|---|---|---|
| Planning Statement by D5 Town Planning Consultants dated May 2021 | 15821 | - | 26th October 2021 |
| Planning Statement Addendum by D5 Town Planning Consultants dated October 2021 | 15821 | - | 26th October 2021 |
| Parking Survey by D5 Town Planning Consultants dated May 2021 | 15821 | - | 26th October 2021 |

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application.

Officers previously raised concerns with the applicant's agent regarding highways safety in relation to a withdrawn application for the same use at the site. The applicant has provided additional information in support of the application, but this has not addressed the concerns of Officers. Further to this, Officers have other concerns with the proposal which require addressing. The application has therefore been refused.

**Report Dated:** 28.02.2022