

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H04-0762-22 **Applicant:** Central England Co-operative Ltd

Proposal: Change of use of Unit 2 to sui generis hot food takeaway

Location: Unit 2 Retail Development Land East Of Church Street And South Of Bicker Road

Terminal Date: 22nd September 2022

Planning Policies**South East Lincolnshire Local Plan - Adopted: March 2019**

01 Spatial Strategy
02 Development Management
03 Design of New Development
30 Pollution
36 Vehicle and Cycle Parking
APPENDIX 6 Parking Standards

National Guidance**National Planning Policy Framework 2021**

6 - Building a strong, competitive economy
12 - Achieving well-designed places

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	1	0	0	2
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SHDC INTERNAL	0	0	0	1
RESIDENTS	16	0	0	3

CASE OFFICER ASSESSMENT

PROPOSAL

This is full application at Unit 2 Retail Development, Land East of Church Street from retail to a sui generis hot food takeaway. The proposed business would sell fish and chips and related cuisine. No extensions are being sought to the existing retail unit and no internal seating is to be provided. A ventilation flue will be sited on the southern side elevation of the building. The proposed hours of opening are 11:30 to 21:00 Monday to Sunday.

SITE DESCRIPTION

The site is within defined settlement limits and would share a building with the Co-operative store. Beyond this building to the north is the A52. To the eastern rear of the building is a 2.5 metre high hedge with fields beyond. To the south of the building is the delivery area with residential buildings beyond. To the west is the car park with Church Street and residential buildings beyond. The site is in Environment Agency Flood Zone 1 and not subject to increased flood hazard or flood depth on the 2115 South Holland Strategic Flood Risk Mapping.

RELEVANT HISTORY

H04-0807-18

Outline - Proposed residential development - up to 8 dwellings (including access) - Approved - 05 November 2018.

H04-0208-20

Full - Erection of 2 retail units, car park, landscaping and associated works including demolition of existing buildings. Revised Planning Noise Assessment - Approved - 16 November 2020

H04-1086-20

Section 73 Modification - Erection of 2 retail units, car park, landscaping and associated works including demolition of existing buildings - approved under H04-0208-20. Modification of Conditions 3 & 4 relating to hours of delivery and despatch and opening hours - Approved - 21 January 2021. (The amended opening hours were conditioned as:

"The shops hereby permitted shall not be open to customers outside the following times:
- 0700 and 2200 hours Mondays to Sundays
- 0700 and 2200 hours on Bank Holidays")

CONSULTATION RESPONSES

South Holland District Council - Environmental Protection

"No objection but request the following conditions:
Noise from fixed plant and machinery shall not exceed the background noise level by more than 5 dB(A) when measured as a 15 minute L(A)eq at residential boundary not within the applicant's ownership. Full details of extraction system and odour arrestment to be submitted in writing and approved prior to commencement."

Councillor King

"This should not be another fish and chip shop we already have two established ones in our village. It's bad enough having the co-op there taking trade away from our shops."

"Further to my previous comment I feel that it is awful that a large company can be allowed to open in a village that already has two fish and chip shops, a large company would also be able cope with the escalating costs of supplies better than a stand alone shop. We have several other independent shops that rely on passing trade this point was part of my objection when the new co-op applied for permission. There have already been complaints regarding extra traffic and litter. If a hot food

takeaway has to be there why cant there be more diversity of the food on offer."

Councillor Walsh

"Whilst I have no objections to a "hot food takeaway" at these premises, I do wonder if Donington needs a further fish & chip shop as it already has 2 well established fish & chip shops which could be put at risk. It would have been nice to see some diversity of food choices."

Councillor Bingham

"The planning app lacks major details such as opening hours, delivery hours, fixed plant and extraction details. After so much effort was put in to protecting the residential amenity of neighbouring properties with the original application I find it hard to believe these matters can be left to be conditioned. The use in its nature would result in a high level of extra vehicle movements and also create nuisance such as smell, noise and litter. There is also the potential to attract asb. Also similar applications a hundred yards or so away from this site were refused partially due to the potential of affecting residential amenity, litter and more. I struggle to see how this application could be allowed to progress without full details being submitted covering the points. As the change from retail to takeaway in this case does not seem to be well thought out. At the very least the application should be heard at Chairman's Panel so as to get clarity."

"Further to my previous comments. The current car park even at off peak time is well used and usually busy. The adding of a takeaway to this site would result in a much higher number of vehicle movements and also people waiting which I do not believe the current car park is of adequate size as it is already well used. This will likely cause further parking and traffic issues on a junction that is less than ideal. If delivery was involved with the business this would also exacerbate the problem with cars waiting. If there are issues with parking and access caused then add delivery lorry's I can see a serious traffic issue and risk."

Public

17 Object and 1 Support - comments made summarised as follows:

No need for a third fish and chip shop - Need is not a matter of material planning weight.

The existing chip shops have local owners - The address of the owners is not a matter of material planning weight.

Rumbles is a chain fish and chip shop - Number of businesses owned is not a matter of material planning weight.

The chip shops employ local people - The address of employees is not a matter of material planning weight.

Impact on existing fish and chip shops - Financial performance of existing fish and chip shops is not a matter of material planning weight

We have enough fast food provision - It is not the role of the Planning Department to direct personal dietary choice.

The unit was not advertised locally - Marketing or lack of is not a matter of material planning weight.

Relationship between Rumbles and the Co-Op - Business relationships do not carry material planning weight.

We need a healthy food outlet - It is not the role of the Planning Department to direct personal dietary choice.

We need more retail units - It is not the role of the Planning Department to prevent development until the "right" business applies for permission.

Would like greater diversity of food choice - It is not the role of the Planning Department to increase food choice.

Will take away trade from the village centre

Litter

Highway safety

Odours

Looking forward to "great quality" kebabs and fish - Personal preference for certain kebab or fish products does not carry material planning weight.

PLANNING CONSIDERATIONS

Principle of development

The proposal is for a hot food takeaway within an approved retail unit which has remained vacant since construction. The principle of retail development in this location was thus established with the planning permission granted in 2020. The key issues are thus the impact of the proposed use on nearby residential properties through the operation of the use and positioning of the extraction system and potential noise and odour.

Commercial competition is not a material planning consideration and in planning terms any form of hot food may be sold from the premises and changes would not in themselves require planning permission.

Assessment against SELLP Policy 2 - Development Management

1. The size, scale and layout is appropriate for the proposed use. The business will be sited in an existing building and operate within the existing opening hours of the adjacent Co-Operative store. There is not considered to be a material impact on the character and appearance of the area as a result of the proposal.
2. The design and orientation of the building is not altered by this proposal.
3. The design and efficacy of the proposed ventilation flue will be assessed by the Environmental Protection department.
4. The existing access will not be altered and the existing car park can cater for potential demand without impacting on Church Street.
5. There is not considered to be a material impact on existing community services and infrastructure from this proposal.
6. Whilst concerns have been expressed with regard to anti-social behaviour, this largely falls out of the remit of the Planning Department. There is not considered to be a material noise, disturbance or visual intrusion impact from the proposed use. With regard to odour, the design and efficacy of the proposed ventilation flue on the southern elevation wall will be assessed by the SHDC Environmental Protection department.
7. The site is in Environment Agency Flood Zone 1 and not subject to increased flood hazard or flood depth on the 2115 South Holland Strategic Flood Risk Mapping. The proposal will not require new non-permeable construction and drainage will be assessed by existing mains sewerage on site.

This application is considered to accord with SELLP Policy 2.

Assessment against SELLP Policy 3 - Design of New Development

1. The size, scale and layout is appropriate for the proposed use. No trees will be removed to facilitate this proposal. The business will be sited in an existing building and operate within the existing opening hours of the adjacent Co-Operative store. There is not considered to be a material impact on a sense of place, or the character and appearance of the area as a result of the proposal.
4. The site is within walking distance of bus stops serving Donington.
5. There is adequate space on site for bin storage as well as cycle storage for staff and customers. The existing access will not be altered and the existing car park can cater for potential demand without impacting on Church Street.
11. Whilst concerns have been expressed with regard to anti-social behaviour, this largely falls out of the remit of the planning department. There is not considered to be a material noise, disturbance or visual intrusion impact from the proposed use. With regard to odour, the design and efficacy of the proposed ventilation flue on the southern elevation wall will be assessed by the SHDC Environmental Protection department.
12. The site is in Environment Agency Flood Zone 1 and not subject to increased flood hazard or flood depth on the 2115 South Holland Strategic Flood Risk Mapping. The proposal will not require new non-permeable construction and drainage will be assessed by existing mains sewerage on site.

Impact upon residential amenity

Opening Hours

The proposed hours of opening are Monday to Sunday 11:30 to 21:00. These are shorter opening hours than permitted by the existing planning permission for the 2 retail units, which allow opening between 07:00 and 22:00. These opening hours are comparable with existing premises within Donington (apart from Sunday opening) which are set out below.

The hours of opening for Flinders as shown on Google are:

Monday 17:00 to 21:00

Tuesday 17:00 to 21:00

Wednesday 17:00 to 21:00

Thursday 17:00 to 21:00

Friday 12:00 to 14:00, 16:00 to 20:30

Saturday 12:00 to 14:00, 16:00 to 20:30

Sunday Closed

The hours of opening for Jacks as shown on Google are:

Monday 16:00 to 21:00

Tuesday 11:30 to 13:45, 16:00 to 19:00

Wednesday 11:30 to 13:45, 16:00 to 19:00

Thursday 11:30 to 13:45, 16:00 to 19:00

Friday 11:30 to 13:45, 16:00 to 19:00

Saturday 11:30 to 13:45, 16:00 to 19:00

Sunday Closed

Under condition 5 of H04-0708-00, should Jacks wish to open on a Sunday, they can do so from 09:00 to 20:00. No conditions can be found for opening hours for Flinders.

The case officer has been informed that both Jacks and Flinders close on a Sunday for family reasons. There are no planning restrictions on Jacks opening on Sunday.

Potential Noise and Odour

A louvred flue outlet and refrigeration unit are proposed to the side elevation. Environmental Protection have no objections subject to conditions limiting noise and requiring full details of the extraction system. This is considered sufficient to limit the impact upon nearby residential properties

Planning Balance

It is considered that the proposed chip shop is appropriately sited and would not have a material impact on the character and amenity of the surrounding area, subject to conditions.

Conclusion

The application is considered to be in accord with the relevant policies of the South East Lincolnshire Local Plan and the National Planning Policy Framework.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the

special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

RECOMMENDATION

That the application be approved under delegated powers.

The application was referred to Chairman's Panel on 16 September 2022 where a delegated decision was accepted.