CHAIRMAN'S PANEL Held On: 12th January 2024

DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H16-0952-23**	**Applicant:**	**Mr T Satgunanathan**
Proposal:	Change of use from Class E to Hot Food Takeaway (Sui Generis)		
Location:	1 Hawthorn Bank Spalding		
Terminal Date:	19th January 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development
04	Approach to Flood Risk
24	The Retail Hierarchy
30	Pollution
36	Vehicle and Cycle Parking

National Guidance

National Planning Policy Framework 2023

Section 2 - Achieving sustainable development
Section 4 - Decision-Making
Section 5 - Delivering a sufficient supply of homes
Section 9 - Promoting sustainable transport
Section 12 - Achieving well-designed places
Section 14 - Meeting the challenge of climate change, flooding and coastal change

Representations:

	Object	Support	No Obj.	Comments
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SHDC INTERNAL	0	0	0	1
RESIDENTS	5	0	0	0

Route for determination of application	Delegated	X	Committee	

CASE OFFICER ASSESSMENT

Reason for Referral to Chairman's Panel

- 5 local objections mainly based upon Highway Safety Impacts.

- The proposal does not fully comply with policy 24 of the SELLP. However material considerations exist in that a hot food takeaway has been approved on this site previously (under the existing local plan policies) and there are other local convenience stores within close proximity (which is suggestive that the loss of Class E floor space can be sustained).

Proposal

The application seeks permission for a change of use of the existing building to form a hot food takeaway.

The proposal would require a new shop front, with a counter area being provided internally. No information has been provided as regards the extraction system.

Site Description

The application site is part of an existing convenience store. The building subject to the application is attached to the main building of the convenience store. It is of single storey construction with a gable being presented to Hawthorn Bank. A drop kerb exists with a small apron for parking to the front of the building, on street parking restrictions are also in place along this part of Hawthorn Bank. At present a parcel locker system is in operation.

There are other local convenience stores located very close to the application site on Bourne Road. The area however is mainly residential.

History

H16-0198-19 - Change of use from A1 to A5 - approved under H16-1152-18. Modification of Condition 3 to allow changes to opening hours. Approved 20-05-19

H16-1152-18 - Change of Use from A1-A5 - approved under H16-0860-17. Modification of Condition 3 to allow changes to opening hours. Approved 11-01-19

H16-0860-17 - Change of use of existing A1 to A5 use. Approved 04-12-17.

Consultation Responses

Highways & SuDs

No objection: Consent has previously been granted for the change of use of the subject building for an A1 to A5 use, under reference H16-0860-17, with a couple of further Consents granted for change of hours of operation. There has been no significant or materially relevant change in the circumstances or the operation of the highway network in the vicinity of the Application Site in the intervening years and so the highway authority considers there to be insufficient cause to withhold the grant of Consent for this current Application on highway grounds

Environmental Protection

Full details of the proposed opening times and scheme for mechanical extraction systems should be

provided prior to commencement to protect amenity of neighbouring properties.

Representations

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, a number of objections have been received against this application. The material points are summarised below:

Highway Safety
Congestion
Illegal Parking
Noise and Disturbance from business

Planning Considerations

Determining Development Proposals (Legislative and Policy Framework)

Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

In this case, the adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019, forms the development plan for the District, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework (updated December 2023) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

Assessment

The proposal is to change the use of the building to form a hot food takeaway. The issues relevant to this assessment are:

- Principle of Development
- Amenity Impacts
- Highway Safety Impacts
- Character and Appearance

Principle of Development

Spatial Strategy

The application site is located within the settlement limits of Spalding and so policy 1.a is relevant to the assessment. It states that:

"Within the settlement boundaries of Boston and Spalding (as shown on the Inset Maps) development will be permitted that supports their roles as Sub-Regional Centres."

The application site is located within the settlement limits for Spalding and in so is considered locationally acceptable.

Outside the Retail Hierarchy

Policy 24 C is relevant to this assessment. It states that "Outside the retail hierarchy, individual local shops and small neighbourhood clusters of them within a settlement boundary, which meet the day-to-day needs of nearby residents, will be promoted. Wherever possible such new uses should be located in close proximity to each other, unless serving very local catchments e.g. corner shops".

This goes on to detail that:

"Outside the defined town centre boundaries, development proposals for the change of use or loss

of any premises or land currently or last used as a local shop (Class A1) will be permitted where it can be demonstrated that:
1. there is sufficient provision in the catchment area; and

2. the applicant has provided clear evidence that the property has been openly marketed without a successful conclusion for a period of not less than 12 months on terms that reflect the lawful use and condition of the premises."

The building currently functions as Class E (formally A1) for the sale of convenience goods. The floor plans show that this space is ancillary to the operation of the wider store and represents an internal area of 45 sqm.

The planning history associated with this application is material to the consideration of the proposal, a hot food takeaway has already been approved on this site under the existing local policy framework. Paragraph 12 of the NPPF states that "The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. 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."

The proposal would in part accord with policy 24 of the SELLP in that there appears to be sufficient provision for the sale of convenience goods in this area (two convenience stores located less than 100m away); however, no information in relation to the justification for the loss of retail space has been provided. Notwithstanding this, it is considered that given a takeaway has already been approved on this site under the existing local plan, and that a policy on Hot food/takeaway exclusion zones does not exist, the proposal is considered to be acceptable.

The proposal would therefore accord with policy 1 of the South East Lincolnshire Local Plan and part of policy 24. It is considered that material considerations in this instance indicate that full compliance with Policy 24 of the SELLP are not required and this is based upon the planning history of the site and the presence of multiple local convenience stores in the area. As such, on balance, the principle of development is considered to be acceptable.

Amenity Impacts

Policy 2 and 3 of South East Lincolnshire Local Plan (2019) sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions.

Policy 30 is concerned with pollution and places impacts in relation to noise, disturbance and air quality as important consideration when considering proposals for planning.

Paragraph 135 of the National Planning Policy Framework (December 2023) states that development should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

The proposal is located close to existing residential properties and there is a mix of commercial business in the area. The proposal would be close to the rear of properties fronting Bourne Road.

Whilst there would be some disruption from the coming and going of customers, this is likely to be at an acceptable level given that there are on street parking restrictions in place on Hawthorn Bank, though these restrictions (on this side of the road) do relax after 6pm. That said double yellow lines exist along the opposite side of the road meaning that vehicles using Hawthorn Bank after this time still have the ability to pass (highway legislation also present parking close to the nearby junctions). The impacts then caused through the noise and disturbance of potential customers, whilst material is not likely to be at a level to warrant refusal. On this point an existing parcel locker is being used, this is likely to have an impact in relation to customers coming and going. This locker would need to be relocated should this application be approved.

Furthermore, Environmental Protection have made comments requesting hours of operation;

however, these are contained within the application form. The hours resemble previously approved planning applications and are considered to be appropriate.

In terms of other polluting activities odour is a clear material consideration. Environmental Protection has requested ventilation and extraction details prior to determination. However, given a takeaway on this site has already been approved (though lapsed) under the existing local plan, the principle is likely to be acceptable. Odour mitigation is a technical issue, one that can be fairly mitigated through the attachment of planning conditions. Therefore, a condition will be attached ensuring that prior to its first use details of the ventilation and extraction of odours will be submitted to and agreed in writing with the Local Planning Authority.

On this basis, the proposal would accord with policies 2 and 30 of the South East Lincolnshire Local Plan as well as paragraph 135 of the National Planning Policy Framework.

Highway Safety Impacts

Policy 2 details that proposals requiring planning permission for development will be permitted provided that sustainable development considerations are met, specifically in relation to access and vehicle generation. Policy 3 details that development proposals will demonstrate how accessibility by a choice of travel modes including the provision of public transport, public rights of way and cycle ways will be secured, where they are relevant to the proposal.

Policy 36 is concerned with Vehicle and Cycle Parking it states that "All new development, including change of use, should provide vehicle and cycle parking, in accordance with the minimum Parking Standards adopted by the Local Planning Authorities (in Appendix 6).

Section 9 of the National Planning Policy Framework (December 2023) specifically relates to 'Promoting sustainable transport'. Paragraph 115 of the National Planning Policy Framework (December 2023) advises 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".

The Highway Authority have been consulted and have no objections to the proposal highlighting that the site benefits from previous permission for a hot food takeaway. Therefore following specialist advice on highway safety the Local Planning Authority have no reason to substantiate a refusal on highway safety grounds, despite local concerns. On street parking restrictions in the area exist and the application site is located close to two junctions which would prevent (under Highway legislation) the legal ability to park in certain locations close to the proposal site. This of course is enforced by Highways themselves.

On this basis, it is considered that the proposal would accord with policies 2 & 3 of the SELLP as well as section 9 of the National Planning Policy Framework.

Character & Appearance

Section 12 of the National Planning Policy Framework (December 2023) specifically relates to 'Achieving well-designed and beautiful places' and details that "The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve" and as such, it is generally accepted that good design plays a key role towards sustainable development.

Paragraph 135, contained within Section 12 of the National Planning Policy Framework (December 2023), states that new development should function well and add to the overall quality of the area (including beyond the short term) and should be visually attractive as a result of good architecture and appropriate landscaping. This goes on to establish that it is important that new development should be of the highest quality to enhance and reinforce good design characteristics, and that decisions must have regard towards the impact that the proposed development would have on local character and history, including the surrounding built environment and landscape setting such as topography, street patterns, building lines, boundary treatment and through scale and massing.

Policy 2 of the SELLP states that design which is inappropriate to the local area, or which fails to maximise opportunities for improving the character and quality of an area, will not be acceptable. Policy 2, point 1, states that proposal should meet with sustainable development considerations specifically in relation to 'size, scale, layout, density and impact on the amenity, trees, character and

appearance of the area and the relationship to existing development and land uses'.

Policy 3 sets out the 'Design of new development' in part it states that "Design which is inappropriate to the local area, or which fails to maximise opportunities for improving the character and quality of an area, will not be acceptable".

The only external changes relate to the creation of a shop front. The shop front would be heavily fenestrated with the aperture for the side door being retained. The framing is proposed to be aluminium for both the door and window. An electric shutter is also proposed.

Given the existing appearance of the building this is considered to represent visual betterment. Potentially however, during closed hours, the shutter could present a 'harsh' interface if not chosen correctly. It is anticipated that a shutter would not be solid, but still be able to provide the necessary access control. Therefore, a condition will be applied to any permission that details of the shutter will be submitted to and agreed in writing with the Local Planning Authority prior to its operation.

On this basis, it is considered that the proposal would accord with policies 2 and 3 of the South East Lincolnshire Local Plan and Section 12 of the National Planning Policy Framework.

Planning Balance
As detailed above, Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

The proposal represents appropriate development within the defined settlement boundary. The development hereby proposed does not materially harm the character or appearance of the locality, or amenity of nearby residents, and provides adequate parking. Whilst part 2 of policy 24 is not met, there are material considerations that suggest a departure from this policy should be supported. This includes that the floor space lost is not used as retail floor space but ancillary storage and that a take away has already been approved under the existing local policy framework (though permission has now lapsed).

Conclusion

It is considered that the proposal, especially given the planning history of the site, is considered to be acceptable. The proposal would accord with policy 1 of the SELLP and in part with policy 24, although no marketing has been demonstrated to show that the need for the class E floor space is no longer required. Notwithstanding this there are a multitude of convenience stores in the locality and an application for a hot food takeaway on this site has been approved under the existing local plan.

Therefore, material considerations exist that would suggest the non-compliance with part of policy 24 of the SELLP is acceptable in this instance.

Condition in relation to extraction and ventilation will be applied as will a condition agreeing the details of the shop front shutter. Compliance conditions in relation to the proposed hours of operation and proposed materials will be attached.

As such, on balance, the proposal is considered to be acceptable.

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.