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File No: CHE/18/00272/COU  
Plot No: 2/587

#### **ITEM 4**

### **CHANGE OF USE FROM A1 RETAIL TO A5 HOT FOOD TAKEAWAY AT 122 HIGH STREET, NEW WHITTINGTON, CHESTERFIELD FOR MR ASO AHMED MOHAMMED**

#### **1.0 CONSULTATIONS**

Highways DCC	No objection.
Ward Members	No comments received.
Strategic Planning	Considered contrary to policy as over-concentration of food and drink uses and ventilation and extraction.
Derbyshire County Council Public Health Department	Objection on multiple grounds
Environmental Services	Objection on odour and noise
Derbyshire Constabulary	No objection.
Design Services	No objection.
Neighbours/Site Notice	9 letters of representation received (on behalf of 8 people). A petition against the proposal with 207 signatures was received and a separate online petition was also presented against the proposal with 236 signatures.

1.1 The proposal was publicised by neighbour letters.

## **2.0 SITE LOCATION AND DESCRIPTION**

- 2.1 The application site at 122 High Street is currently vacant, but was previously an office for an engineering company, although it is defined as an A1 use by the client. It is within a two storey building sited upon the southern side of High Street within New Whittington. On the 1<sup>st</sup> floor of the building there is a hair dressers, with an access staircase immediately adjacent to the unit the subject of the proposal. This road is a busy through road and the area is a local centre within the New Whittington area and which has a range of existing businesses including shops, pubs and fast food takeaways.
- 2.2 Apart from the hairdressers above the site has residential units surrounding it on all sides. There is an access passageway to the east of the unit. There is some on-street parking available to the front of the site, but this is for all residents and the customers of existing businesses within the vicinity.

## **3.0 SITE HISTORY**

- 3.1 No relevant applications.

## **4.0 THE PROPOSAL**

- 4.1 The applicant proposes a change of use of the ground floor unit to a hot food takeaway, which is defined as an A5 usage class. It is proposed to be open from 11.30am until 2pm and 4.40pm until 11pm Monday to Saturday and 4.30pm until 7pm on Sundays and Bank Holidays, and to fit external ventilation and extraction to the side of the building. No off-street parking is included as part of the proposal.

## **5.0 CONSIDERATONS**

### **The Development Plan**

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise'. The relevant Development Plan for the area comprises of the saved policies of the Replacement Chesterfield Local Plan adopted June 2006 (RCLP) and the adopted Chesterfield Local Plan Core Strategy.

## 5.2 **Chesterfield Local Plan: Core Strategy 2011 -2031 ('Core Strategy')**

- CS1 Spatial Strategy
- CS2 Principles for Location of Development
- CS3 Presumption in Favour of Sustainable Development
- CS4 Infrastructure Delivery
- CS8 Environmental Quality
- CS15 Vitality and Viability of Centres
- CS16 Retail
- CS18 Design
- CS20 Influencing the Demand for Travel

## 5.3 **National Planning Policies**

The Sections of the National Planning Policy Framework (NPPF) considered relevant to the decision are;

- 1. Building a Strong, Competitive Economy
- 2. Ensuring the Vitality of Town Centres
- 4. Promoting sustainable transport
- 7. Requiring good design
- 8. Promoting Healthy Communities

## 6.0 **Key Issues**

- 1 Principle Of Development**
- 2 Design and Amenity**
- 3 Highway Safety and Parking Provision**
- 4 Environmental Health**

### 6.1 **1. Principle of Development**

6.1.1 Within policy CS1 it states that *“the overall approach to growth will be to concentrate new development within walking and cycling distance of centres”*, within this context the proposal is within a local centre and so is very sustainably located and the use is therefore generally in line with this policy.

6.1.2 Within policy CS2 it states that *“all developments will be required to have an acceptable impact on the amenity of users or adjoining occupiers, taking into account things such as noise, odour, air quality, traffic, appearance, overlooking, shading or other environmental, social or economic impacts”*. Policy CS15 also states that *“the council will support*

*the role of the town, district, local service centres and local centres in providing shops and local services in safe, accessible and sustainable locations. New development should make a positive contribution to the centre's viability and vitality and be of an appropriate scale". It also states that "to ensure the vibrancy, inclusiveness and economic activity of the borough's centres, a range of other uses including health, leisure, entertainment, community facilities, sports, offices, art, food and drink, cultural and tourism facilities will be encouraged". Within this context the mix of uses will be controlled to ensure that proposals do not "overwhelm the retail function of the centre, street or frontage where it is located by having a detrimental impact on vitality and viability" and that it will "contribute to an active, well-used and safe environment in the evening with acceptable impacts on residential amenities".*

- 6.1.3 The site is within the boundary of the New Whittington Local Centre, as shown on the adopted proposals map and on face value the proposal appears to be an appropriate use in this area. The Council has however recently worked closely with Derbyshire County Council's Health and Communities team on evidence on the links between Hot Food Takeaways and health. Data shows that Chesterfield has a much higher than average problem with excess weight, related conditions and related premature mortality; by Year 6 (10-11 years old) Chesterfield has the highest rate of child excess weight in Derbyshire. It also has the highest count and rate per 100,000 population of fast food outlets (include but not limited to, burger bars, kebab and chip shops and sandwich shops) of all the Local Authorities across Derbyshire, and the 3rd highest rate in the East Midlands.
- 6.1.4 Whereas Policy CS15 supports town centre uses (including A5) in principle, the policy does note that "the mix of uses will be controlled in order that town centre uses other than A1 retail will: a) not overwhelm the retail function of the centre, street or frontage where it is located by having a detrimental impact on vitality and viability; b) contribute to an active, well-used and safe environment in the evening with acceptable impacts on residential amenities;" Whilst the existing use is non-A1, the planning policy team consider the proposed change of use would result in more than half of the units within the centre being in some form of food and drink use. They comment that New Whittington Community Primary School is within 400m (250m) of the proposed use and on the basis that the applicant has suggested hours of operation, which should be secured by condition, if permission is approved, to limit the exposure of primary aged children to the use.

6.1.5 On balance, the planning policy officer objects to the application on the grounds that the proposed use would be contrary to policy CS15 in terms of impact on the vitality and viability of the Local Centre and leading to an over-concentration of food and drink uses and would not meet the requirements of policies CS15, CS8 and CS18. The advice does however suggest that if the Council is minded to approve, then conditions should be applied to restrict the hours of operation and that the applicant should be advised to contact DCC for advice on the 'Heart of Derbyshire' programme.

6.1.6 After reviewing the comments from the planning policy officer and those of the Derbyshire County Council Public Health Team, it is clear that the proposal would not lead to an excessive number of units that would be of a food and drink use, and that the proposal would not overwhelm the retail function of the centre. A detailed analysis of the district centre confirms that there are 41 ground floor units and which are occupied as follows:

- 20 are dwellings (C3)
- 1 Public House (A4)
- 1 Restaurant (A3)
- 4 Hot food Takeaways (A5)
- 3 café/sandwich shops (A1/A3)
- 9 shops (A1)
- 1 Financial & Professional (A2)
- 2 business (B1)

It is the case that there are currently 9.7% of the properties in an A5 use and the proposal increase this to 12.2%. Drinking establishments within the defined centre is low at 2.4% and the same percentage applies to restaurants. The number of units within the centre in a food and drink use is 21.9% and not over half as suggested. It is considered that the split and range of uses within the centre is not unreasonable and does not overwhelm the purpose of the centre serving the local community. There are hot food takeaways and café/cold food outlets as expected however there is also a butchers, a greengrocer, convenience stores, chemists and hairdressers/barbers as part of the offer along with accountants and other business users. Based on the evidence available it is not considered that a refusal can be justified to argue against this proposal, which is defined as an appropriate use within the local centre in the Development Plan. The proposal is considered to be in general conformity with policy CS15 of the Core Strategy.

## 6.2 **2. Design and Amenity**

- 6.2.1 Policy CS18 states that *“all development should identify, respond to and integrate with the character of the site and surroundings and respect the local distinctiveness of its context. Development will be expected to enrich the quality of existing places, respect the character, form and setting of the site and surrounding area by virtue of its function. It should also provide adequate and safe vehicle access and parking and have an acceptable impact on the amenity of users and neighbours”*.
- 6.2.2 Within CS2 it also states that *“all developments will also be required to have an acceptable impact on the amenity of users or adjoining occupiers, taking into account things such as noise, odour, air quality, traffic, appearance, overlooking, shading or other environmental, social or economic impacts”*.
- 6.2.3 In terms of the site the proposal would be a change in use from a former hairdressers under class A1 retail use. Customers or staff whom attended the business were likely to have done so between the hours of 9am-5pm, with a relatively low impact upon the surrounding area in terms of noise, littering and other possible anti-social behaviour, especially during evenings and night. The proposed business is proposed to be open until 11pm Monday to Saturday, and this has the potential to lead to an increase in noise and anti-social behaviour in general. Such problems are exacerbated by customers having consumed alcohol however the use is accepted as appropriate within the district centre and a control on opening hours can assist in mitigating the impacts referred to. Appropriate fume extraction systems can protect against fumes and odours and litter bins can be provided to assist in reducing local littering. There are dwellings to either side of the proposed unit however such controls which can be introduced as part of the proposal can assist in safeguarding residential amenity.
- 6.2.4 In terms of the proposed flue to the side of the building, this is positioned above an alleyway which appears to be outside of the site (red line area) and is not therefore within the applicants control. The alleyway leads to the rear garden of the dwelling to the east of the site however the application site does appear to have a right of access to a shutter door in their rear off shot. The neighbour appears to have some control over this matter and could prevent the installation of the fume extraction equipment and which would prevent the opening of a takeaway use at the property. Notwithstanding this the fume extraction proposed would

be set back from the road between buildings and whereas the neighbouring building to the east is lower than the application building, so the flue would be seen if approaching the site from the east side, it should not have such a detrimental impact on visual amenity to be a problem. In terms of its impact upon amenity, in the terms of the noise of the fan and any extraction gas, this issue is referred to below under the Environmental Health paragraphs.

6.2.5 Given the nature of the proposal, there is likely to be possible increased vehicular activity at later hours when on-street parking is at a premium in the area. The application offers no off-street parking spaces for customers or staff so that any parking requirements will have to be accommodated on the local highways network. There have been numerous objections and signatures on a petition with reference to parking within the area and this is dealt with further within the highway section. As a local facility for the community such uses are also used by people who walk to the facility and do not necessarily come by vehicle. There are on street parking facilities to the frontage for uses within the local centre and it is not considered that such a reason for refusal could be substantiated on planning grounds. There is already another fish and chip shop at 4 South Street North so the local community will have a choice and the current proposal will not therefore necessarily result in any increase in vehicle trips to the local centre.

6.2.6 Whilst the proposal is considered to have an acceptable impact on the visual appearance of the area there are components of the use which are a cause for concern for the amenity of local residents. These issues are referred to in more detail below.

### 6.3 **3. Highway Safety and Parking Provision**

6.3.1 Some of the issues in relation to highway safety and parking provision have been dealt with in the previous sections in terms of the principal of the proposal and impacts upon residential amenity. The Highway Authority was asked to comment on this application and they have raised no objection to the application.

6.3.2 There are over 10 unmarked on-street parking spaces for existing businesses and residents within the local vicinity, as well as double yellow lines and other traffic restrictions on the northern side and parts of the southern side of High Street. The northern ends of South Street North and London Street are often congested with parking on pavements. This is a busy through road for people travelling from Old and New Whittington to the Barrow Hill, Hollingwood, Brimington,

Staveley and Inkersall area and many of the houses do not have adequate off-street parking so this puts pressure on surrounding highway networks that do not have restrictions on them. There are some parking areas for residents and businesses, but these do not appear to be adequate for the parking requirements of the area.

6.3.3 The inclusion of a business that could add to parking demand in the local area is likely to have a negative impact upon the highway safety in the local area and there have been many comments against the proposal on highway safety grounds. The site is however part of a local centre with a mixture of uses for local and passing trade, and although the proposal is considered to lead to potential additional impact upon the highway safety of the local area, this is not considered to be significant enough to lead to a refusal on these grounds. The Highway Authority agree with this view. As these issues have been considered the proposed impact upon the highway safety to the local vicinity is not considered to be significant enough to lead to a refusal. In this context it is considered to be acceptable in highways grounds to policies CS2, CS18 and CS20.

#### 6.4 **Environmental Health**

6.4.1 The Environmental Services Officer comments that: *The proposed extraction will not allow adequate dispersion of extracted fumes and odours. The termination of the ducting need(s) to be at least 1m above the ridge level. This is particularly important as the attached residential premises is higher than the premises with proposed change of use, and this will have an adverse effect on the discharge airflow from the extraction equipment.*

*I am also concerned regarding the noise from the extraction fan. The plan appears to show the fan mounted externally, but seems to suggest that the fan noise will be attenuated to 31dB(A). However, the fan is rated as having a sound power of 88dB (once the manufacturers data sheet is used) – much of this being low frequency, and the proposed noise attenuator is rated to provide (at best) 29dB attenuation – much of this being high frequency attenuation, low frequency attenuation is of the order of 10dB. This would mean that the sound level from the fan, as proposed will give rise to levels of at least 59dB, and may be as high as 78dB. The fan and associated attenuator is mounted in a small alleyway between the proposed hot food takeaway and an adjacent dwelling. This will mean that any noise produced will echo in this small area.*

*My experience is that fish and chip shops produce an oil rich fume which is difficult to control, and when situated in close proximity to homes (ie as*



*in this case, separated only by a party wall) causes odour from within the premises (ie not controlled by the extraction equipment)  
For the above problems (odour and noise), I suggest that the proposed change of use be refused.*

- 6.4.2 This issue has been referred to earlier in this report, but it is an issue considered in the context of policy CS8 in terms of air quality. This states that “(w)here appropriate, development proposals will include an assessment of impact on air quality and incorporate measures to avoid or mitigate increases in air pollution and minimise the exposure of people to poor air quality”. After reviewing this, the proposal is considered contrary to policy CS8, as it would lead to unacceptable levels of air pollution to local residents.
- 6.4.3 The Council’s EHO has raised significant concerns about the adequacy and suitability of extraction and ventilation of the proposed use. Policy CS15 requires that uses other than A1 have an acceptable impact on residential amenity. CS8 (Environmental Quality) requires that the “quality of the environment ...be recognised at all levels of the planning and development process” whilst CS18 (k) (Design), requires that development “have an acceptable impact on the amenity of users and Neighbours”.
- 6.4.4 It is considered that on the basis of the EHO concerns then this can be a substantiated reason for refusal.
- 6.4.5 Derbyshire County Council Public Health team has commented that:  
*England has one of the highest rates of unhealthy weight in the western world. The prevalence of obesity has more than doubled in the last 25 years, and if we go on as we are, the number of obese people is expected to double in the next 40 years. Obesity is a complex problem that requires actions from individuals and society across multiple sectors. Derbyshire County Council has produced guidance with Chesterfield Borough Council on determining Hot Food Takeaways. This forms part of a multi-agency approach to tackle obesity across Derbyshire. Derbyshire County Council Public Health Department would like to raise the following objections to the planning application. Further information relating to the objections can be found in the guidance for Chesterfield Borough Council on determining Hot Food Takeaways. DCC Public Health team object to the proposal for the following reasons:*

- (1) *The premise is within close proximity (within 200m) to New Whittington Primary School.*
- (2) *The proportion of year 6 children measured that were obese at the school was 19.1%. The Derbyshire average is 17.7%. Evidence suggests that the trend for increasing overweight and obesity will continue into adulthood. If permission is approved, hours of operation should be controlled to limit exposure of primary school children to the use.*
- (3) *Excess weight in adults in Chesterfield is 65.6%. The England average is 61.3%*
- (4) *Chesterfield has both the highest count (123) and rate (117.9 per 100,000 population) of fast food outlets of all Local Authorities across Derbyshire .*
- (5) *Within 400m of the premises there are already two restaurants, one hot food takeaway and one sandwich shop. This demonstrates an existing concentration of food and drink operators within the vicinity.*  
*For information I have also attached a copy of the map used to analyse proximity of schools, existing takeaways, restaurants and cafes, and fish and chip shops within a 400 meter buffer zone of the proposed location.*

6.4.6 What the objection from DCC Public Health team does demonstrate is that they have not visited the site and local area. The information referred to under (5) above is incorrect. Notwithstanding this the main concern appears to relate to the proximity to a primary school however the pupils will not be able to leave the school site at lunch time and the applicant does not intend opening until 16:40 hours well after primary school closing time. It is considered that a condition can be imposed in the event of approval of planning permission to deal with this issue and which limits opening hours to those set out in the application.

## 7.0 **REPRESENTATIONS**

7.1 9 letters of representation have been received (on behalf of 8 people) together with a petition against the proposal with 207 signatures and a separate online petition was also presented against the proposal with 236 signatures.

7.1.1 Owner/Manager of the business at no.106 High Street, New Whittington (The Golden Grill) – The objection is against the proposal as it will lead to an excessive amount of takeaways within the local area.

- 7.1.2 Letters from the proprietor of Hairazors Hairdressers at 122 High Street, New Whittington – In their 2 letters they object to the potential cooking smells that may permeate into their business premises. As well as this; parking and litter may also be a problem. The proposal would also lead to an excessive amount of takeaways within the local area.
- 7.1.3 Resident of 11-13 South Street North, New Whittington – the proposal would impact the hairdressers due to loss of custom and difficulty getting insurance, it would also lead to a serious impact upon congestion on High Street and parking issues. There are too many fast food takeaways in the local area and this will add to the obesity crisis in the country.
- 7.1.4 Letter on behalf of the owner of 118 High Street, New Whittington – The objections within this letter are on highway safety and car parking, impact upon the residential amenity of the residents of no.118, health problems related to waste disposal, harm to local street scene and the undermining of the vitality and diversity of the local centre of New Whittington
- 7.1.5 Letters by owner of building at 120 and 122 High Street, New Whittington – The owners of the building do not intend to let this happen and state that it is not allowed within the tenancy agreement.
- 7.1.6 Letter by resident of flat 2, 118 High Street, New Whittington – The resident of this flat objects on the grounds of smells and fumes that may come from the proposal, as well as noise from the proposed use including the kitchen and customers and lack of on-street parking. They also object to the potential littering issues outside the business as well as other anti-social behaviour.
- 7.1.7 Letter from the residents of a dwelling on Brearley Avenue, New Whittington – The objection is against the proposal as it will lead to an excessive amount of hot food takeaways within the local area, and it lead to anti-social behaviour, late night noise, litter, cooking smells within the context of limited parking within the area. Vermin could also be a problem.
- 7.1.8 Written petition signed by 207 people who are against an A5 Hot Food Takeaway. No grounds for objection are referred to.

7.1.9 Online petition signed by 236 people who are against an A5 Hot Food Takeaway. Some of the comments within this report state that they fear the impact on the hairdressers business, that there are too many takeaways within the local area and insufficient parking in the local area.

## 8.0 **HUMAN RIGHTS ACT 1998**

8.1 Under the Human Rights Act 1998, which came into force on 2<sup>nd</sup> October 2000, an authority must be in a position to show:-

- Its action is in accordance with clearly established law.
- The objective is sufficiently important to justify the action taken.
- The decisions taken are objective and not irrational or arbitrary.
- The methods used are no more than are necessary to accomplish the legitimate objective.
- The interference impairs as little as possible the right or freedom.

8.2 The action in considering the application is in accordance with clearly established Planning law and the Council's Delegation scheme.

8.3 The objective of arriving at a decision is sufficiently important to justify the action taken over the period of the life of the application.

8.4 The decision taken is objective, based on all planning considerations and is, therefore, not irrational or arbitrary.

8.5 The methods used are no more than are necessary and required to accomplish the legitimate objective of determining an application.

8.6 The interference caused by a refusal, approval or approval with conditions, based solely on planning merits, impairs as little as possible with the qualified rights or freedoms of the applicant, an objector or consideration of the wider Public Interest. The applicant has a right of appeal against any refusal

## 9.0 **Statement of Positive and Proactive Working With Applicants**

9.1 The Government (since the 1<sup>st</sup> December 2012) requires LPA's to include a statement on every decision letter stating how they have worked with the applicant in a positive and proactive way, in line with the requirements in paragraphs 186 and 187 of the NPPF.

9.2 Given that the proposed development would conflict with the NPPF and with 'up-to-date' Development Plan policies, it is not considered to be 'sustainable development' and there is a presumption on the LPA to seek to refuse the application. The LPA has contacted the applicant for more information on parking and opening hours and has determined the application as quickly as was practicable but was unable to overcome outstanding conflicts with planning policy and guidance.

## 10.0 **RECOMMENDATION**

10.1 That the application be **REFUSED** for the following reasons:

Policies CS2 and CS18 of the Core Strategy 2011-31 require that development will be expected to have an acceptable impact on the amenity of users and neighbours. Policy CS8 of the Core Strategy also requires consideration of air quality and levels of air pollution to local residents and the National Planning Policy Framework also supports the Development Plan policies. The proposed fume extraction equipment which is required to be able to operate the use applied for will generate potential adverse impacts, including unwanted odours and disturbance, on the nearest residential neighbours on High Street. The proposal is considered to be contrary to policy CS2, CS8 and CS18 of the Core Strategy 2011 – 31 and the National Planning Policy Framework.