

Case Officer: Amy Hayes
Telephone: 01246 345784
Committee Date: 17th February 2020

File No: CHE/19/00670/FUL
Plot No: 2/1049

ITEM 3

PROPOSED CHANGE OF USE OF 197, FROM PART OF THE RETAIL UNIT AT 195, TO A TAKEAWAY, AND ASSOCIATED ALTERATIONS TO THE SHOP FRONT, INSTALLATION OF GLAZING TO FORMER DOORWAY TO SIDE AN INSTALLATION OF AN EXTRACT FLUE (SHOP AT 195 OLD HALL ROAD IS TO BE RETAINED) AT 195 – 197 OLD HALL ROAD, CHESTERFIELD, S40 1HG FOR MR KAPILRAJ GANESHALINGAM AND MR KARISAN KANASALINGAM

Local Plan: Unallocated
Ward: Holmebrook

1.0 CONSULTATIONS

Ward Members	Comments received from Cllr K Falconer- see report
Strategic Planning Team	Comments received- see report
Environmental Services	Comments received- see report
Design Services	Comments received- see report
Yorkshire Water Services	No comments received
DCC Highways	Comments received- see report
Neighbours and site notice	Comments received- 6 letters plus 1 petition (43 signatures)

2.0 THE SITE

- 2.1 The application site relates to part of an existing A1 retail premises within a predominantly residential area. The adopted Local Plan does not identify any land allocation or designation. The application has been received on behalf of the lease holders of the application site. It was noted during the officers' site visit that the application site had a business sign on the building identifying the business as to be known at "Open Most Hours". This sign was located on the north facing elevation. On the west facing elevation

there is a sign, predominantly above no. 195 Old Hall Road, identifying the retail convenience store as a “Go Local Extra”.

- 2.2 The part of the existing retail premises at no. 195 – 197 Old Hall Road that is proposed to be changed to a hot food take away was once formerly known as no. 197 Old Hall Road. The previous planning application for this site (CHE/15/00664/FUL) indicated no. 197 Old Hall Road had its own postal address but was used for ancillary storage purposes only. It was evident during the case officer’s site visit that this part of the retail premises is still utilised as storage area. This is also highlighted in the supporting letter submitted by the agent (pg. 2).
- 2.3 The application site is positioned on a staggered crossroads, comprising Old Hall Road, Barker Lane and Churston Road. The public highway on all sides of the junction is subject to double yellow line parking restrictions and Barker Lane is one-way only towards Old Hall Road. The premises has no associated on-site parking.



Above: The application site and surrounding area



2.4 On the opposite side of the road junction to the premises (and therefore to the north west of the application site) is a Grade II Listed Building, 170 Yew Tree House, Old Hall Road. A beauty salon is located directly across the opposite

side of Barker Lane. This is immediately to the north of the application site. To the north east of the application site, the premises shares a boundary with numbers 105, 107, 109, and 111 Barker Lane. To the east of the application site is no. 28 Barker Lane whilst to the south the premises is adjoined to no. 193 Old Hall Road. To the south west of the application site and on the opposite side of the public highway, the premises shares a boundary with no. 152 Old Hall Road. Number 152 Old Hall Road is a semi-detached property which is adjoined to no. 55 Churston Road. This property is located west of the application site.



- 2.5 Above the application site, at first floor level, there is a flat. This flat, according to information held by this LPA is no. 1 flat above the application site. It is understood that the applicant lives in this flat however no further information has been provided in relation to the flat above the application site.

3.0 RELEVANT SITE HISTORY

- 3.1 CHE/15/00664/FUL - Change of use of 197, from part of the retail unit at 195, to a takeaway, and associated alterations to the shop front, installation of glazing to former doorway to side and installation of an extract flue (shop at 195 Old Hall Road is to be retained) - revised information received 27/01/2016. Conditional permission granted 23/02/2016

Officer comments:

This application was recommended by the officer as a refusal. The officer's report was presented to planning committee with the following reason for refusal:

"In the opinion of the Local Planning Authority the proposal would increase demand for on street parking where there is already considerable competition leading to vehicles performing awkward manoeuvres within a classified highway in the vicinity of the staggered crossroads to the detriment to highway safety. Development of the nature proposed would also increase the likelihood of indiscriminate vehicle parking on sections of the carriageway that are currently subject to double yellow line parking restrictions further prejudicial to the safe operation of the highway. The proposal therefore fails to accord with the requirement of Policy CS18 (g) of the Local Plan: Core Strategy, which expects developments to provide adequate and safe vehicle access and parking."

- 3.2 The application was presented to planning committee on 22nd February 2016. During this meeting, the agent and applicant (not the same applicant as this application), indicated that the proposal would contribute to the vibrancy and vitality of the area which would provide a local facility for which there is currently none in the

area. The applicant indicated the service would provide a hot food delivery service for the local population so that carers would not have to buy frozen foods.

3.3 Despite the officer recommendation which was presented to the planning committee, the committee voted to overrule this and the application was recommended to be conditionally approved. The committee minutes indicate members requested the *“applicant should display a notice in the shop requesting customers to park with consideration for others when visiting the shop.”*

3.4 As detailed in the application being considered, the conditionally approved application was not implemented within the three year period.

4.0 THE PROPOSAL

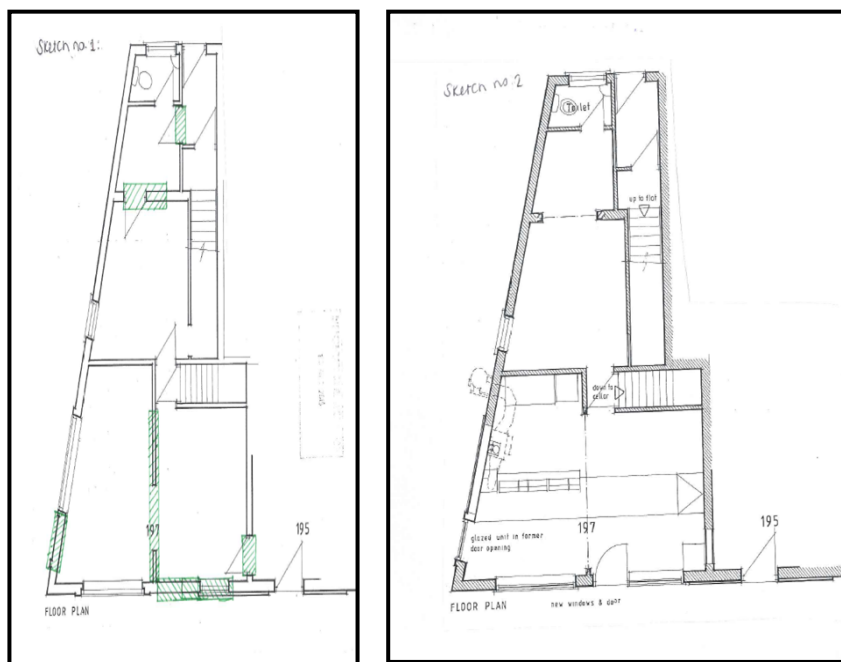
4.1 The application proposes the change of use of 197, from part of the retail unit at 195, to a takeaway, and associated alterations to the shop front, installation of glazing to former doorway to side and installation of an extract flue. The shop at 195 Old Hall Road is to be retained.

4.2 The proposed takeaway requires internal works to facilitate such proposed use. Currently, the part of the retail unit proposed to be changed to a hot food takeaway is accessed through the main retail shop front, with a door immediately to the left (to the north). The supporting letter defines this area as *“under-used retail space”*, and this space is shown in its current form in the drawing labelled as “Plan and elevations as existing” on the drawing no. V/0HRC/1.

4.3 The space, identified in the application form to be 57 square metres, comprises no. 2 rooms located to the south of the application site and therefore to the frontage of the site; a room behind these two aforementioned rooms with a storage area under the stairs. Finally, to the rear of the application site and therefore to

the north, there is the smallest room at this site which provides access to a W/C and a corridor to the rear door as well as the stair case to the flat above.

- 4.4 The alterations to the above mentioned space include internal reconfiguring to separate the existing under used retail space from the main retail space at no. 195 Old Hall Road. This is achieved by blocking the door immediately to the left of the entrance to the shop. In addition, further works at the rear would result in the flat having its own access, through the blocking up of the door that is currently accessed from the rear room.
- 4.5 The above detailed changes are highlighted below in the drawings provided with the application. The drawings are not to scale and are for illustrative purposes only.



4.6 The left hand drawing shows the existing

ground floor arrangement of the property with the right hand drawing showing the proposed arrangement. In addition to the above noted internal changes, the application proposes to make alterations to the external elevations of the property. Most notably, the proposed alterations include the addition of a door on the south facing elevation, as well a new window in this elevation.

- 4.7 The application also proposes to reduce the size of the advertisement display board currently located immediately to the west of the existing entrance to the shop. This alteration would result in the addition of no. 1 new window immediately east of the proposed door access to the proposed takeaway unit.
- 4.8 The proposed internal and external changes will result in a standalone commercial unit that does not have any link to the existing retail unit next door (no. 195 Old Hall Road), or the existing flat above. The proposal therefore identifies business hours for this proposed separate and different use of the premises.
- 4.9 The takeaway proposed is indicated to have business hours of 09:00 – 23:00 Monday to Saturday. The proposal does not detail business hours for Sundays and Bank Holidays.
- 4.10 Further information is also provided in the supporting letter that was submitted with the planning application. This also details further actions the applicant proposes to commit to, should planning permission be granted. These include;
- “patrol” the frontage of the application site to pick up takeaway wrappers;
 - Requesting groups of people who congregate outside the shop to move on;
 - Offering a delivery service for takeaways to reduce demand for vehicle parking outside. The applicant has also offered to deliver items from the existing shop next door, such as confectionary and drinks;
 - Reminding customers to park considerately and not on double yellow lines
 - A willingness to paint the flue system a colour as preferred by the LPA, controlled by a condition on any permission granted.
- 4.11 The application also proposes the addition of an external flue. The flue will be located externally and have a minimum height of 2.2 metres. The flue will have a maximum height of 7.5 metres.

4.12 The proposed flue will be located on the north east facing elevation of the property, and to the west of the existing windows in the north facing elevation. The flue is proposed to be finished in galvanised steel.

5.0 CONSIDERATIONS

5.1 Planning Policy

5.1.1 The site is situated within the built settlement of Holmebrook ward, in an area that is predominantly residential in nature. Having regard to the nature of the application, it is considered the following policies apply;

- CS1 Spatial Strategy
- CS2 Principles for Location of Development
- CS3 Presumption in favour of sustainable development
- CS4 Infrastructure delivery
- CS6 Sustainable Design and Construction
- CS8 Environmental Quality
- CS13 Economic Growth
- CS15 Vitality and Viability of Centres
- CS16 Retail
- CS18 Design
- CS19 Historic Environment
- CS20 Influencing the demand for travel

5.1.2 Other relevant documents include:

- National Planning Policy Documents
 - Chapter 7 Ensuring the Vitality of town centres
- Guidance: Town Centres and retail, published 03/03/2014, Updated 22/02/2019 - *paragraph: 012 Reference ID: 2b-012-20190722*
- Retail and Centres Study – Chesterfield, Bolsover and NE Derbyshire, April 2018

- The Emerging Local Plan:
 - The emerging Local Plan (2018 – 2035) is also relevant- this is currently being examined and was the subject of hearing sessions in October/November 2019. The Inspector’s initial response has indicated a number of modifications that are currently being prepared for consultation. Weight should be given to the emerging policies in accordance with the criteria of para 48 of the NPPF. Where this is relevant to the determination of this application, it is highlighted below.

5.2 KEY ISSUES

- Principle of development
- Design and appearance of the proposal
- Impact on neighbouring residential amenity
- Highways safety and parking provision

5.3 PRINCIPLE OF DEVELOPMENT

5.3.1 Planning approval is sought for a hot food takeaway to run alongside an existing small convenience store which is located outside of a defined town, district and local service centre. The existing use of the floor space in respect of this planning application is storage associated to the existing retail store. The defined centres are identified on the proposals maps under CS15 (Vitality and Viability of Centres) of the Chesterfield Borough Council Local Plan: Core Strategy 2011 – 2031.

5.3.2 In such locations that are outside of the defined area, as a means of ensuring the vitality and viability of centres, Policy CS16 (Retail) of the adopted Core Strategy states that *“Across the borough, a sequential approach will be used to assess sites for retail and other town centre uses, to focus development on town, district, local services centres and local centres to meet the requirements of national planning policy.”* The policy continues *“Individual small*

shops (up to 200m²) designed to serve the day to day needs will normally be permitted outside centres.”

5.3.3 The National Planning Policy Framework states (paragraph 86) *“Local Planning Authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up to date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.”* Policy CS16 of the Local Plan therefore adopts this approach and is consistent with the NPPF.

5.3.4 Comments received from the Strategic Planning Team indicate that this LPAs 2018 Retail Study uses the term “day to day needs” as defined by the *“Experian categorisation of convenience retail as “low cost, everyday food, beverages and perishable items that consumers are unlikely to be willing to travel far to buy”*. This definition is based on the National Retail Forum definition as *“Expenditure on goods in COICOP (Classification of Household Consumption published by the ONS) categories: Food and non-alcoholic beverages, Tobacco, Alcoholic beverages (off-trade), Newspapers and periodicals, Non-durable household goods. These categories do not include hot pre-made food.”*

5.3.5 It is therefore considered that a hot food take away is not considered to be a day to day need based on the definitions outlined above. This results in proposed hot food take away not falling into the exemption identified in policy CS16.

5.3.6 Furthermore, the requirements of Policy CS2 (Principles for Location of Development) of the Core Strategy, it is not considered that the principle for location of development can be justified.

5.3.7 Policy CS2 states *“In assessing the suitability of sites for specific uses the council will also take into consideration whether the proposed use:*

- i. needs to be in a specific location in order to serve a defined local catchment or need, to assess specific*

resources or facilities (including transport connections) or to make functional links to existing uses;

ii. is required to regenerate sites and locations that could not otherwise be addressed or to support existing community facilities that otherwise would be at risk of closure.”

5.3.8 In assessing the application against criteria i. above, it is considered that the proposal does not serve a defined need or make links to existing uses. As identified in section 5.3.4 above indicates, a hot food takeaway is not considered to be a day to day need and therefore cannot be considered to be a need in an area that is not defined as a local centre. Furthermore, as noted by the Strategic Planning Team comments (in Section 5.3.14 below), the location of the proposed hot food takeaway, in close proximity to Chatsworth Road, where there are existing hot food takeaways, it is considered the proposal will not serve a need to the area of the application.

5.3.9 Furthermore, the proposed hot food takeaway does not have functional links to an existing use. Whilst it is acknowledged the proposed change of use would regenerate part of the convenience store which is identified to be under used, if granted, the proposed hot food takeaway would have no other link (other than being the leaseholder) to the existing use. The plans submitted with the application (drawing no. V/0HRC/1) detail the proposed alterations required to facilitate the hot food takeaway. As a result, the proposal would no longer be linked to the existing business at the application site.

5.3.10 It is considered that the hours of business of the existing retail unit (known as Open Most Hours, located at no. 195 – 197 Old Hall Road) do not necessitate the proposed hot food takeaway to be located next door, given the hours of business at each:

<u>Name of business and hours of business/ proposed hours</u>
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Go Local/ Open Most Hours, 195 – 197 Old Hall Road (current)	Hot Food Takeaway, 195 Old Hall Road (proposed)
Monday to Friday 07:00 – 21:00	Mondays to Saturdays 09:00 – 23:00
Saturday, Sunday & Bank Hols 09:00 – 21:00	Sundays and Public Holidays unknown

5.3.11 The current (in the case of the existing convenience store) hours of business and the proposed hours of business do not indicate a need for the proposed hot food takeaway to be linked to the existing business. Business hours do not allow for one member of staff to solely operate both businesses, nor does the design of the proposal allow for a member of staff to move between the two businesses easily. Therefore, there is nothing to secure the future of the convenience retail shop following the approval of a hot food takeaway, should this LPA be minded to approve this planning application.

5.3.12 As outlined in the “Town Centres and retail” guidance, (*paragraph: 012 Reference ID: 2b-012-20190722*), “*robust justification will need to be provided*” where certain town centre uses may require to be in specific locations, “*land ownership does not provide such a justification*”. Therefore, the reason presented to this LPA in respect of the two applicants having the lease of the property does not constitute a valid justification for the location of this proposed hot food take away.

5.3.13 Overall, having regard to the policy context set out above, it is considered that the principle of development is not acceptable. As is revealed in comments from the Strategic Planning Team (see Section 5.3.14 below), the application has failed to satisfy the sequential assessment and therefore Paragraph 90 of the NPPF comes into effect. Paragraph 90 of the NPPF indicates the application should be refused.

5.3.14 In respect of the proposal detail within this application, the Strategic Planning Team were consulted. The comments received from Team are detailed below.

5.3.15 *The current development plan for Chesterfield Borough consists of the Local Plan Core Strategy (2013) and the saved policies of the Replacement Chesterfield Borough Local Plan (2006). However, there is also the emerging Local Plan (2018 to 2035) – this is currently being examined and was the subject of hearing sessions in October/November 2019. The Inspectors' initial response has indicated a number of modifications that are currently being prepared for consultation. Weight should be given to the emerging policies in accordance with the criteria of para 48 of the NPPF. Where this is relevant to the determination of this application it is highlighted below.*

5.3.16 **PRINCIPLE OF DEVELOPMENT**

The proposal would result in the creation of a new unit capable of operating independently as an A5 Hot Food Takeaway (the new unit having its own access separate from what will remain of the current A1 shop). The location is considered 'out of centre' for the application of planning policy (not in a defined centre or within 300m of the edge). The key policy considerations are therefore the application of the sequential assessment required by paragraph 90 of the National Planning Policy Framework and policy CS16 (Retail) of the adopted Core Strategy.

5.3.17 *Policy CS16 requires a sequential approach to retail and other town centre uses in accordance with national policy. It also creates an exemption from this requirement for "Individual small shops (up to 200m²) designed to serve local day to day needs". The application would be less than this threshold (57sqm), but I do not consider a hot food takeaway to meet the description of 'day to day' needs, which I would interpret as being comparable to 'convenience retail'.*

5.3.18 *The proposed A5 use would be a Main Town Centre use as described by the NPPF. The NPPF Glossary is deliberately broad in its definition of Main Town Centre uses, referring to broadly to 'retail development' but not hot food takeaways specifically. Helpfully the Planning Inspector determining an appeal on a nearby site at 2A Springfield Avenue clarified that "Whilst there is no explicit reference to hot food takeaways within the Framework, it does not suggest the examples given are definitive" and concluded that a sequential assessment for hot food takeaway use is required. The Inspector also concluded that the threshold in policy CS16 did not apply to the hot food takeaway use.*

5.3.19 *I am therefore satisfied that the exemption for day to day needs set out in CS16 does not apply in this case and that a sequential assessment is required.*

5.3.20 *Policy CS16 is due to be replaced in the emerging plan by a new policy LP10. The Inspectors examining the emerging plan have indicated a number of modifications to this policy so only limited weight can be given to it at this stage. Nonetheless I would note that both the submitted policy and proposed modifications would lead me to a different conclusion if applied.*

5.3.21 *The applicant has subsequently submitted information on four sites considered as alternative locations, all on Chatsworth Road. I am satisfied that limiting the search to Chatsworth Road is appropriate and that suitable sources have been used to identify properties for the assessment.*

5.3.22 *I note that three of the four properties have been rejected partly on the basis that they do are not currently hot food takeaways and would require a planning permission and a refit to make them suitable, the third is currently a Chip Shop, but would also require a refit. As the application property is currently a shop and would also require both planning permission and a refit, I have given no weight to this as a reason for rejecting these properties.*

5.3.23 *Based on the information submitted, I agree with the conclusions of the assessment of two of the four properties but do not consider*

that the remaining two can be concluded to be unsuitable for the proposed use when applying the guidance in the NPPG.

5.3.24 *On that basis I cannot conclude that the sequential assessment required by the NPPF has been met. As such paragraph 90 of the NPPF comes into effect, that “Where an application fails to satisfy the sequential test ...it should be refused”.*

5.3.25 *The NPPF does allow for other material considerations to be taken into account, and policy CS2 allows for variation from the spatial strategy in certain circumstances. The first of these does include where a development needs to be in a certain location to serve a defined local catchment or need – however given the prevalence of takeaway uses on Chatsworth Road limited weight should be given to this. The second addresses securing existing community uses but as there is no functional link or mechanism between the proposed takeaway and the shop that will remain (there is for example no mechanism that would prevent the retail unit closing at any point following a grant of permission for the hot food use) this would not apply.”*

5.3.26 The comments raised by the Strategic Planning Team are in line with the observations made by the Case Officer in considering the Principle of Development.

5.4 Design and appearance of the proposal

5.4.1 Core Strategy Policy CS18 states that “*all development should identify, respond to and integrate with the character of the site and surroundings and respect to the local distinctiveness of its context. Development will be expected to respect the character, form and setting of the site and surrounding by virtue of its function, appearance... scale and massing.*”

5.4.2 In addition to the proposed change of use, the application proposes the alteration to the existing shop front. These changes have been outlined above in Section 4.0 – The proposal. The proposed shop frontage will create no. 2 defined shop frontages; one for each business. This is considered to be acceptable and it is thought that this will positively contribute to the area.

5.4.3 The application also proposes an external flue system, which is to be located on the north east facing elevation of the application site. The previous case officer's report in respect of the previous planning application at this address (CHE/15/00664/FUL), details concerns in relation to the proposed flue system.

5.4.4 The previous report presented to Planning Committee read as follows:

"... during consideration of the planning application specific concerns were raised with the applicant with regard to the installation of the flue associated with the cooking extraction system on the side elevation of the building.

Owing to the prominent location of the flue on the Barker Lane frontage, it was considered that the galvanised steel structure at approximately 7.3 metres high by approximately 0.3 metres in diameter and terminating above the ridge height of the roof would represent an incongruous feature on the building... Moreover, owing to the juxtaposition of a Grade II Listed Building (170 Yew Tree House, Old Hall Road) on the opposite side of the road junction to the proposal, a direct view of the extraction system would be available, particularly during the autumn and winter months. It was therefore considered that the extraction system would have a detrimental visual impact on the setting of the Listed Building."

5.4.5 It is evident from the above extract from the previous report that the proposed flue extraction system is the same as what is being proposed in this application.

5.4.6 The case officer's report continued as detailed below:

"...it is considered that the proposed flue would need to be redesigned and relocated on the rear elevation owing to its prominence on the side elevation. in the event of an approval of planning permission, it is considered that the detail of such could be satisfactorily secured with by way of a pre-commencement planning condition."

- 5.4.7 It was concluded by the case officer that providing a redesigned extraction system was installed, the proposal would respond to and integrate with the character of the site and its surroundings and respect the local distinctiveness of its context.
- 5.4.8 The extraction flue system proposed in this application is presented in the same location, and with the same measurements and finish as the previous application. Therefore, on the basis of the observations above, it is considered appropriate to apply a pre-commencement planning condition to any approval of this consent. This would ensure the proposed extraction system has less prominence on the street scene and is located out of site from the Grade II Listed Building.
- 5.4.9 On the basis of a redesigned extraction system, it is considered that the proposal would respond to and integrate with the character of the site and its surroundings and respect the local distinctiveness of its context. Consequently, the proposal is considered to accord with the requirements of Policy CS18 (Design) and CS19 (Historic Environment).

5.5 Impact on Neighbouring Residential Amenity

- 5.5.1 Core Strategy Policy CS18 states that all development will be expected to *“have an acceptable impact on the amenity of users and neighbours”*. Similarly, CS2 indicates 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.”*
- 5.5.2 The application site is positioned on staggered crossroads and has no associated on-site parking. On the opposite side of the road junction to the premises (and therefore to the north west of the application site) is a Grade II Listed Building, 170 Yew Tree House, Old Hall Road. A beauty salon is located directly across the opposite side of Barker Lane. This is immediately to the north of the application site. To the north east of the application site, the premises shares a boundary with numbers 105, 107, 109, and 111 Barker Lane. To the east of the application site is no. 28 Barker

Lane whilst to the south the premises is adjoined to no. 193 Old Hall Road. To the south west of the application site and on the opposite side of the public highway, the premises shares a boundary with no. 152 Old Hall Road. Number 152 Old Hall Road is a semi-detached property which is adjoined to no. 55 Churston Road. This property is located west of the application site.

Impact on boundary sharing neighbours

5.5.3 Noise and Disturbance

In addition to the visual impact referred to above in Section 5.4, it is considered the proposed takeaway hours will result in an unacceptable impact on the neighbouring properties which are in a residential area.

5.5.4 The proposed take away is indicated to be open from 09:00 am until 23:00, Monday to Saturday. It is considered, as it was also considered by the previous case officer, that the comings and goings of pedestrians and particularly vehicles, late in to the evening could have a negative impact on the amenity of the neighbouring area.

5.5.5 Furthermore, the takeaway is proposed to be open two hours longer than the existing convenience store is open. This would extend any potential disturbance later into the evening, beyond that that is already experienced in the area. The existing convenience store does not have planning restrictions in relation to hours of operation and therefore could extend the hours of operation until later into the evening.

5.5.6 It should be noted despite the residential nature of the area, the premises the subject of this application adjoins an existing convenience store to the south. To the north, on the opposite side of Barker Lane, there is a beauty salon. Therefore, any impact of noise and disturbance typically associated with a take away on neighbouring amenity is considered to be minimised given the other businesses operating in the immediate vicinity. Notwithstanding this however, the proposed operating hours of the

take away are extended beyond the immediate surrounding business hours and therefore will create extended disturbance.

5.5.7 The supporting letter submitted by the agent with this application highlights that *“the reopening of the shop front windows as part of the takeaway development would give staff in the take away a better view of the forecourt to the shop and take away units than currently exists.”* This is recognised and considered to be a welcome design feature for surveillance purposes- this may prove to be beneficial given the late proposed opening hours of the planning application. The agent also indicates that the applicant will regularly patrol the frontage to ensure litter is collected up. Again, this is a welcome statement from the applicant. Beyond this however both issues raised cannot be controlled through the planning system.

5.5.8 It is accepted that the proposed takeaway would create additional disturbances to the residential area, typically through the increase of vehicles coming and going from the site. The increase in disturbances however is not considered to be more detrimentally harmful to the area than the existing, as well as potential, disturbances as a result of the convenience store.

5.5.8 Cooking odour

Due to the proposed change of use detailed within this application, it is important to consider any potential impacts from cooking odours. The “appliance schedule” submitted with the application details appliances relating to the preparation of and cooking of fish, chips and pizzas (i.e. Peeler, Pizza Oven, fish prep bench etc.).

5.5.9 The application also details the provision of a flue extraction system. Comments from the Environmental Health Officer have highlighted the need for specific types of extraction systems, according to the food being prepared. The consultation response from the EHO officer can be found below in Section 5.10.

5.5.10 It is considered that the details that are lacking for the EHO to fully comment could be provided through the use of an appropriately worded planning condition. This can be attached to

any approval of the planning application. In addition to the further information being provided, it is considered that the location of the proposed flue extraction system should be amended to be less visible from Old Hall Road, and in particular the Grade II Listed Building.

- 5.5.11 Subject to receiving further details of the proposed extraction system, it is not considered that the proposal would have any material adverse impacts on the neighbouring residential amenity through noise and disturbance, or odour. Accordingly, it is considered that the proposed change of use would not pose any serious adverse impacts on neighbouring amenity and would therefore accord with the provisions of CS8 and CS18 of the Chesterfield Borough Council: Local Plan 2011 – 2031.

5.6 Highway Safety

- 5.6.1 DCC Highways have been consulted in relation to this application and raised the following comments;

“It is noted that planning permission was given in February 2016 for a similar if not identical proposal.

In response to this previous application, the Highway Authority raised various issues and recommended that the proposal was refused on highway safety grounds. It is noted, however, that for whatever reason the Highways Authority’s response does not appear on your Authority’s web-site.

The Highway Authority sees no reason to change its previous stance and the comments on the earlier application are basically repeated below.

The premises has no associated on-site parking and it is situated on the junction of Old Hall Road with Barker Lane (one-way at this location). Old Hall Road is a classified road and is well used as a link with the town centre; it is also a bus route. The location is also in the vicinity of the staggered crossroads of Old Hall Road and Churston Road and there are Traffic Regulation Orders restricting parking in the vicinity of the junction.

Parking on street in the vicinity of the street is already at a premium due to the nature of the housing stock i.e. terraced properties with no on-site parking facilities.

In response to previous proposal for hot food takeaway this Authority considered that the proposals would be likely to increase demand for on-street parking where there is already considerable competition and would lead to vehicles performing awkward manoeuvres within a classified highway in the vicinity of the staggered crossroads to the detriment of highway safety. Development of the nature proposed would also increase the likelihood of vehicles waiting or being parked on sections of the carriage way that are currently subject to double yellow line parking restrictions, again a situation considered prejudicial to the safe operation of the highway. On this basis the proposals were considered open to highway objections.”

5.6.2 Officer comments:

The Local Planning Authority would have no control as to how customers travel to the proposed hot food takeaway. It is considered inevitable that customers will arrive via vehicle for reasons of convenience, contributing to the demand for on-street parking. It is noted the applicant intends to establish a delivery service however the LPA cannot control how many people utilise this service, or where delivery drivers park. Furthermore, the LPA would not have control over the management of such services.

5.6.3 The level of unrestricted parking in the immediate area is not considered to be significant as the entire staggered crossroads junction on which the site is located is double yellow lined. In addition, the restrictions continue a significant distance down Barker Lane which is a one way road and the availability of on-street parking on Old Hall Road is limited to one side of the road.

5.6.4 Notwithstanding the availability of on-street parking on Churston Road and along one side of Old Hall Road (albeit at a premium) by its very nature a hot food takeaway (use class A5) is likely to generate indiscriminate parking with a disregard to restrictions.

- 5.6.5 As suggested by the applicant, efforts can be made to remind visitors to the shop and takeaway to avoid parking on double yellow lines and the Police/parking enforcement can intervene where necessary. However, it is not considered that such actions will prevent an increase in indiscriminate parking as a result of the use of the premises in the manner proposed.
- 5.6.6 Taking into account the physical constraints presented by the sites location and the unambiguous comments received from the Highway Authority, it is considered that the use of the premises in the manner proposes would have a detrimental impact on the safe operation of the highway. Vehicles parked on the frontage of the premises, including on the pavement (which it is suggested will be more likely associated with a hot food outlet) will obstruct emerging visibility from the adjacent traffic junctions.
- 5.6.7 Furthermore, it is noted that the agent acting on behalf of the applicant details in the supporting letter the application site to be *“sustainable from a transportation perspective and therefore any perceived lack of off street parking should not be a barrier to the delivery of this business opportunity”*. The case officer understands the local bus provider, Stagecoach, provide a service that passes the application site however this service (no. 2 bus route) only runs once per hour with the last service running approximately 18:15 Monday – Saturday. There appears to be no Sunday service. It has also been noted by the Strategic Planning Team that Stagecoach have a policy not to allow hot food on buses. This is recognised to be variably enforced however some consideration must be afforded to this given the agent’s argument that the site is sustainable.
- 5.6.8 On the basis of the above, the proposal is considered to fail to accord with the requirements of Policy CS18 of the Local Plan: Core Strategy, in particular criteria (g) which expects developments to provide adequate and safe vehicle access and parking.

5.7 Environmental Services

5.7.1 The Environmental Services Team were consulted in respect of this application. The comments received from the Team are as follows:

5.7.2 *“I can see that the applicant has provided some information about the proposed extraction system, what I am unable to find from the information online is the sound output of the extraction system.*

The extraction system would need to be fitted with anti-vibration mounts and the odour control system would need to be suitable for the type of hot food takeaway. For example, fish and chips need a different odour control system compared to burgers/pizzas. The applicant will need to ensure that the most suitable extraction system is installed. This should be discussed with environmental health and approved prior to installation.”

5.7.3 Should the LPA be minded to approve this planning application, the requested information could be obtained from the applicant by the means of an appropriately worded planning condition.

5.8 Design Services

5.8.1 Finally, the Design Services Team were consulted in respect of this planning application. The response received is as follows:

5.8.2 *“The site is not shown to be at risk of flooding, according to the Environment Agency flood maps.*

Any amendments to existing drainage may require Building Control approval.”

5.8.3 This information will be attached as a note to any approved planning consent.

6.0 Representations

6.1 The application has been publicised by neighbour notification letters to boundary sharing neighbours, which were posted on 13th November 2019; deadline for responses being 4th December 2019.

A site notice was also displayed at the application site on 18th November 2019, deadline for responses being 9th December 2019.

- 6.2 As a result 6 individual representations have been received, a representation from a ward member, Cllr Keith Falconer, as well as one petition. The petition has 43 signatures on it, from 35 different addresses. Three of the signatures on the petition had also made individual representation.
- 6.3 Therefore a total number of 49 representations have been received from 38 different addresses. It should be noted that one representation was received by this LPA that did not identify an address. This representation has been included in the above quoted figures, as has the addition of the ward member's comments.
- 6.4 The representations received from the occupants of the below addresses comments have been summarised in the table below:

<u>Address</u>	<u>Representation summarised</u>
19 Churston Road	<ul style="list-style-type: none">• Noise• Policy• Residential amenity• Traffic and highways• Social health and wellbeing concern arising from another food outlet and the likely impact on obesity within the borough of Chesterfield• Appearance of the flue on the street scene and character of the area• Detriment to the amenity of the local residents• Parking, road safety and highways• Disturbance and anti-social behaviour• Access to the proposed takeaway- appears to be no disabled access to the proposed takeaway• Health in relation to over consumption of takeaway food• Noise and odour of extraction system• Litter

207 Old Hall Road	<ul style="list-style-type: none"> • Noise • And highways • Visual reasons • Narrow roads, no parking, residential area, impact on property value • Groups gathering outside • Anti-social behaviour • Litter • Odour • Proximity to other hot food takeaways and restaurants at Chatsworth Road
199 Old Hall Road	<ul style="list-style-type: none"> • Smells and odours • Extraction system noise and location from business at 199 Old Hall Road • Litter and anti-social behaviour • Indiscriminate parking • Amenity for flat above the business at 199 Old Hall Road
107 Barker Lane	<ul style="list-style-type: none"> • Parking issues • Anti-social behaviour • Noise
101 Barker Lane	<ul style="list-style-type: none"> • Highway issues and parking
Local Resident	<ul style="list-style-type: none"> • Traffic levels on Old Hall Road
Ward member- Cllr Keith Falconer	<ul style="list-style-type: none"> • Road safety

6.5 The petition received in respect of this application objected to the proposed hot food takeaway on the basis of the following:

- Residential area
- No children in the area
- Previously approved shop on Ashgate Road which has had an impact on this local convenience store

- Impact to surrounding hot food takeaways on Chatsworth Road and Cuttholme Road
- Parking on Old Hall Road and Barker Lane
- Litter
- Anti-social behaviour
- Odour
- Cars driving up a one way street wrong way
- Noise

6.6 It is considered that objections received in respect of this planning application have been addressed in this report. Each consideration can be found in the relevant section:

- Concerns raised in relation to the principle of the development, please see **Section 5.3- Principle of development**
- Concerns raised in relation to the design and appearance of the development, please refer to **Section 5.4- Design and appearance of the proposal**
- Concerns raised in respect of impact on neighbouring residential amenity, please refer to **Section 5.5- Impact on neighbouring residential amenity**
- Concerns in respect of highway, please refer to **Section 5.6- Highway Safety**
- Concerns in respect of noise, odour and extraction, please see **Section 5.7- Environmental Services**

7.0 Human Rights Act 1998

7.1 Under the Human Rights Act 1998, which came into force on 2nd October 2000, an authority must be in a position to show:

- Its action is in accordance with clearly established law
- 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

7.2 It is considered that the recommendation is objective and in accordance with clearly established law.

7.3 The applicant has the right to appeal a refusal of planning permission

8.0 Statement of positive and proactive working with the applicant

8.1 The following is a statement on how the Local Planning Authority (LPA) has adhered to the requirements of the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 in respect of decision making in line with paragraph 38 of the National Planning Policy Framework (NPPF).

8.2 The proposed development conflicts with the principles of the NPPF and the relevant Development Plan policies for the reasons given in the report above.

8.3 The conflict with Development Plan policies has led the LPA to conclude the development does not fully meet the definitions of "sustainable development" having regard to local character and amenity and a presumption on the LPA to seek to approve the application is not considered to apply.

9.0 Conclusion

9.1 It is considered that the principle of the proposed hot food takeaway at the application site is contrary to the provisions of Policy CS16 of the Chesterfield Borough Council Local Plan: Core Strategy 2011 – 2031, as a hot food takeaway is not considered to be a day to day need. In addition, the application has failed to satisfy the sequential assessment. When this is the case, the NPPF identifies an application should be refused. The proposal does not evidence functional links to an existing use at the application site, other than ownership, and therefore conflicts with CS2 of the Chesterfield Borough Council Local Plan: Core Strategy 2011 – 2031. It is also considered that the proposal

would harm the safe operation of the local highway as a result of the lack of available and suitable parking facilities. As a result, the proposal conflicts with the requirements of policies CS18 (g) of the Core Strategy.

10.0 Recommendation

10.1 It is therefore recommended that the application be **REFUSED** for the following reason:

- 1 The proposal has failed to satisfy the sequential assessment and therefore does not comply with the requirements of the NPPF. In the opinion of the Local Planning Authority, the proposed hot food takeaway is not considered to be a day to day need and therefore conflicts with the provisions of Policy CS16 of the Chesterfield Borough Council Local Plan: Core Strategy 2011 – 2031. The application does not make functional links to an existing use at the application site and therefore does not comply with CS2 of the Chesterfield Borough Council Local Plan: Core Strategy 2011 – 2031.
2. The development is contrary to the best interests of highway safety. The proposed development would increase the likelihood of indiscriminate vehicle parking on the public highway including the extent limited by double yellow line parking restrictions and also on the pavements. This is considered to be harmful to the safe operation of the highway at a road traffic junction and where visibility available will be compromised. The proposal therefore fails to accord with the requirements of Policy CS18 (g) of the Chesterfield Borough Council Local Plan: Core Strategy 2011 – 2031, which expects developments to provide adequate and safe vehicle access and parking. The development would conflict with the wider requirements of the NPPF.