

Report of: CHIEF PLANNING OFFICER Derek McKenzie

Report to: PLANNING COMMITTEE **Date of Meeting:** 11th December 2024

Subject: [DC/2024/01644](#)
[5 The Cloisters Halsall Lane Formby L37 3PX](#)

Proposal: Change of use from a cafe (Class E) to a hot food takeaway (Sui Generis) and alterations to the front and rear elevations

Applicant: Mr Stephen James Birchall **Agent:** Mr Jonathan Tinsley
Purely To Go Ltd J7 Architecture

Ward: Harington Ward **Type:** Full Application

Reason for Committee Determination: Called in by Councillor Harvey

Summary

The proposal seeks planning permission for the change of use from a cafe to a hot food takeaway and alterations to the front and rear elevations.

The main issues to consider are the principle of development, the impact on the living conditions of any nearby residential properties, the impact on the character and appearance of the area and the impact on highway safety.

It is concluded that the proposal would not result in any significant harm to the living conditions of neighbouring residential properties, would preserve the character and appearance of the area, and would not result in any significant harm to highway safety.

It is therefore considered that the proposal complies with local policies and is recommended for approval subject to conditions.

Recommendation: Approve with Conditions

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Application documents and plans are available at:

<https://pa.sefton.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=SJEBHTNWLCJ00>

The Site

The application relates to commercial premises within Formby district centre. The site is currently vacant and has previously been used as a cafe.

There are a number of commercial premises in the immediate vicinity of the application site, while to the north east of the site on the opposite side of Halsall Lane there are residential premises which sit outside of the district centre.

History

'Prior approval' was granted in October 2018 for the use of the premises as a cafe under application reference DC/2016/01321.

Consultations

Highways Manager

No objection

Environmental Manager

No objection subject to conditions

Neighbour Representations

Three letters of objection have been received, alongside a request from Councillor Harvey for the proposal to be determined at planning committee.

The issues raised in relation to the request for the application to be determined by planning committee include:

- Parking: takeaway customers may be inclined to park immediately outside the premises for collection, in breach of double yellow lines on both sides of the rear, no free parking nearby. This could also pose dangers to pedestrians crossing the road at this point.
- Nearby residents have also raised concerns about late-night noise (7 days a week until 10pm).
- Litter could also be a problem.

The issues raised in objection from neighbouring properties include:

- Position of takeaway with regard to parking. Halsall Lane and School Avenue always fully parked on. Double yellow lines on both sides of the road, despite this, often difficulty with cars parked, blocking pedestrians view and making crossing difficult.

- With takeaway, people are much more likely to do this as they are unlikely to pay a fee to park on the car park behind the building.
- Other takeaways in Formby have free parking space in front of them
- Concerned with regards to litter and noise at night and weekends
- More traffic/people will make situation worse
- Will encourage excessive people/youths loitering well beyond normal shop closing times

Policy Context

The application site lies within an area designated as Formby district centre in the Sefton Local Plan which was adopted by the Council in April 2017.

The Formby and Little Altcar Neighbourhood Plan was 'made' (i.e. adopted) on 21st November 2019 and carries full weight in decision making.

Assessment of the Proposal

1 Introduction

- 1.1 The proposal seeks planning permission for the change of use from a cafe (Class E) to a hot food takeaway ('Sui Generis' – i.e. a use of its own kind) and alterations to the front and rear elevations.
- 1.2 The application site is within a row of commercial premises within the Formby district centre.
- 1.3 The main issues to consider are the principle of development, the impact on the living conditions of any nearby residential properties, the impact on the character and appearance of the area and the impact on highway safety.

2 Principle

- 2.1 Given the site lies within Formby district centre, policy ED2 (Retail Leisure and Other Town Centre Uses) of the Local Plan is relevant.
- 2.2 This policy seeks to ensure that retail, leisure and other main town centre uses will be directed to the borough's existing centres and that planning permission will only be granted for development which is appropriate to the role and function of the centre.
- 2.3 The policy also states in part that within primary shopping areas, non-retail uses compatible with a town centre location will be permitted provided that the overall retail function of the centre would not be undermined; the use would make a positive contribution to the overall vitality and viability of the centre; and would not result in an unacceptable cluster of non-retail uses.
- 2.4 Policy EQ10 (Food and Drink) is also relevant and seeks to ensure that there would be no significant harm to local amenity, would not result in an unacceptable grouping of similar uses which could harm the character of the area, the vitality and viability of a centre or harm public health. The policy also seeks to ensure that ventilation and extraction systems do not significantly harm the external appearance of the building or street scene or in relation to the living conditions of neighbouring properties.
- 2.5 The previous use of the premises was a cafe, which falls outside the definition of a retail use. As such it is considered that the proposal would not undermine the overall retail function of the centre and would not result in an unacceptable cluster of non-retail units, given that this currently sits outside of the retail use class. The use would also not result in a grouping of similar uses.

- 2.6 The proposal would ensure that the premises would retain an active use and would not result in an empty unit, so this would make a positive contribution to the overall vitality and viability of the centre.
- 2.7 The proposal therefore complies with policy ED2 and parts of EQ10.
- 2.8 The impact on the living conditions of nearby residential properties and the character of the area are considered below.

3 Living Conditions

- 3.1 The proposed hours of operation for the premises are 12:00 - 22:00 Monday - Sundays including bank holidays. Given the location of the site within the district centre and the operating hours of neighbouring premises, including a restaurant facing the application site, it is considered that the operating hours would not result in any significant harm to the living conditions of neighbouring properties as a result of increased noise and disturbance.
- 3.2 Details of any extraction systems or plant and machinery required for the proposed use can be requested by condition to ensure that these are suitable. They would reduce the impact of noise and odour to nearby residential properties.
- 3.3 The upper floor of the premises are in commercial use and so there would be no harm to living conditions and no need for specific sound insulation.
- 3.4 The changes proposed to the elevations would not impact on the living conditions of neighbouring properties.
- 3.5 The proposal therefore complies with other criteria within policy EQ10.

4 Character

- 4.1 Policy ESD2 (High Quality Design) of the Formby and Little Altcar Neighbourhood Plan seeks to ensure that proposals make a positive contribution to the local character and demonstrate consideration of, amongst other things, scale, materials and access.
- 4.2 This is replicated in policy EQ2 (Design) of the Local Plan.
- 4.3 Policy WS5 (New Shop Fronts) of the Neighbourhood Plan also seeks to ensure shop fronts reflect the character of the area especially in respect of architecture of original buildings.
- 4.4 The proposal includes the installation of a new shop front which would have a central access to the premises. This would be constructed from similar materials to the existing shop front and also from materials which are typical of the local area.

- 4.5 The details of the ventilation and extraction systems will be covered by condition which can ensure these are sited on the building so as to not cause any significant harm to the character and appearance of the area.
- 4.6 The proposal therefore complies with the policies listed in paragraphs 4.1 – 4.3 above as well as policy EQ10.

5 Highway Safety

- 5.1 Policy EQ3 (Accessibility) of the Local Plan seeks to ensure that proposals do not result in any highway safety issues.
- 5.2 The proposal lies within the Formby district centre. Premises of this size would normally be required to provide 7 off-street parking spaces in line with the Council's guidance. However, this is not possible at the location.
- 5.3 The Cloisters however, does benefit from a large pay and display car park to the rear, which is accessed via a walkway through to/from Halsall Lane. Given that the site is located within the district centre it is considered that the premises are well served by public transport and cycle storage is available outside the premises.
- 5.4 Halsall Lane is also protected by double-yellow lines, which will prevent on street parking there. Concerns have been raised in relation to customers parking on the double yellow lines when visiting the premises. However, this is not a reason to refuse the application. Other legislations can manage potential unlawful parking in the area.
- 5.5 It is considered that the proposal would not result in any highway safety issues and so complies with policy EQ3.

6 Other Matters

- 6.1 Concerns have been raised regarding litter and youths gathering outside of the premises. The site lies within the Formby district centre where late night uses are acceptable. It is considered that the use of the premises would not generate a significant increase in customers which would result in any major increase in terms of noise to the local area.
- 6.2 The applicant has demonstrated that the premises will have external bin storage to the rear, in addition to bins located inside the premises for customers to dispose of any waste. There are also street bins located close to the premises.

7 Planning Balance and Conclusion

- 7.1 The proposal would not result in any significant harm to the living conditions of neighbouring residential properties and would preserve the character and appearance of the area.
- 7.2 The proposal would not result in any significant harm in terms of highway safety given the existing car parking to the rear and the existing double yellow lines to the front of the premises.
- 7.3 It is therefore considered that the proposal complies with both the Sefton Local Plan and the Formby and Little Altcar Neighbourhood Plan and is recommended for approval subject to conditions.

Equality Act Consideration

Section 149(1) of the Equality Act 2010 establishes a duty for the Council as a public authority to have due regard to three identified needs in exercising its functions. These needs are to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- Advance equality of opportunity between people who share a relevant protected characteristic (age, disability, race, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion and belief, sex and sexual orientation) and people who do not share it;
- Foster good relations between people who share a relevant protected characteristic and those who do not share it.

The decision to approve this scheme would comply with the requirements of the Equality Act 2010, that no one with a protected characteristic will be unduly disadvantaged by this development.

Recommendation - Approve with Conditions

Time Limit for Commencement

- 1) The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.

Reason: In order that the development is commenced in a timely manner, as set out in Section 91 of the Town and Country Planning Act 1990 (as amended).

Approved Plans

- 2) The development shall be carried out in accordance with the following approved plans and documents:

Location Plan

Existing and Proposed Plans and Elevations - J7_0189_(20)_A001 Revision P01

Reason: For the avoidance of doubt.

Before the Development is Occupied

- 3) Prior to the occupation of the hereby approved development a suitable scheme of odour, grease and smoke control for kitchen extraction system shall be submitted to and agreed in writing with the local planning authority. The approved scheme must be installed before the business becomes operational and retained as such thereafter.

Reason: To protect the living conditions of nearby residential properties from odour and smoke.

- 4) Prior to the occupation of the hereby approved development a suitable scheme of noise control for all plant and equipment shall be submitted to and agreed in writing with the local planning authority. The approved scheme must be installed before the plant becomes operational and retained as such thereafter.

Reason: To protect the living conditions of nearby residential properties from noise.

Ongoing Conditions

- 5) The premises shall not be open for business outside the hours of 12:00 - 22:00 Monday - Sunday including Bank Holidays

Reason: In the interest of amenity of neighbouring properties

Informatives

- 1) The selection and performance of odour control measures for kitchen extraction systems must be supported by an appropriate odour risk assessment. Guidance can be found in documents such as Defra (January 2005) Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems (withdrawn) or the reissues EMAQ (2018) updated Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems.
- 2) New plant should be assessed in accordance with the methods in current guidance BS4142:2014. The Environmental Health team recommends that the excess over background should not exceed the representative background (L90).