

## Item No. 14

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| <b>APPLICATION NUMBER</b>                                     | <b>CB/13/03341/FULL</b>  |
| <b>LOCATION</b>   | <b>145 Tithe Farm Road, Houghton Regis, Dunstable, LU5 5JD</b>   |
| <b>PROPOSAL</b>   | <b>Construction of new shop for hot food take away (A5)</b>  |
| <b>PARISH</b>   | <b>Houghton Regis</b>  |
| <b>WARD</b>   | <b>Tithe Farm</b>  |
| <b>WARD COUNCILLORS</b>                                       | <b>Cllr Williams</b>   |
| <b>CASE OFFICER</b>   | <b>Debbie Willcox</b>  |
| <b>DATE REGISTERED</b>  | <b>20 September 2013</b>   |
| <b>EXPIRY DATE</b>  | <b>15 November 2013</b>  |
| <b>APPLICANT</b>  | <b>Mr Singh</b>  |
| <b>AGENT</b>  | <b>Paul Lambert Associates Ltd</b>   |
| <b>REASON FOR COMMITTEE TO DETERMINE RECOMMENDED DECISION</b> | <b>Called in by Cllr Williams as a result of concerns regarding the impact the proposal would have on residential amenity.</b> |
| <b>DECISION</b>   | <b>Full Application - Refusal</b>  |

### **Summary of Recommendation:**

The application is recommended for refusal for the following reason:

"The application contains insufficient information to show that the proposed hot food takeaway would not have an adverse impact on residential amenity by reason of mechanical noise and odour and is therefore contrary to Policy BE8 of the South Bedfordshire Local Plan Review and Policies 43 and 44 of the emerging Development Strategy for Central Bedfordshire."

### **Site Location:**

The application site comprises a piece of land situated to the south east of an existing convenience store on the corner of Tithe Farm Road and Leaf Road in Houghton Regis. The surrounding area is predominantly residential in nature.

### **The Application:**

In 2012 planning permission was granted under reference no. CB/12/02685/FULL for a single storey side extension to the existing shop, adjacent to Tithe Farm Road with a footprint of 54 sqm footprint. As yet, the extension has not been constructed.

This application seeks planning permission for the same extension, but to utilise it as a separate business, a hot food takeaway, instead of an expansion of the existing convenience store.

The application proposes that two full-time employees would operate the business. There is no information given as to the nature of the food that would be served or the opening hours of the premises.

## RELEVANT POLICIES:

### National Planning Policy Framework (2012)

#### South Bedfordshire Local Plan Review Policies

BE8 Design Considerations

T10 Parking - New Development

*(Having regard to the National Planning Policy Framework, the age of the plan and the general consistency with the NPPF, policy BE8 is still given significant weight. Policy T10 is afforded less weight).*

#### Development Strategy for Central Bedfordshire

Policy 21: Provision for Social and Community Infrastructure

Policy 27: Car Parking

Policy 43: High Quality Development

Policy 44: Protection from Environmental Pollution

*(Having regard to the National Planning Policy Framework, significant weight is given to the policies contained within the emerging Development Strategy for Central Bedfordshire, which is consistent with the NPPF. The draft Development Strategy is due to be submitted to the Secretary of State in 2013.)*

#### Supplementary Planning Guidance

Central Bedfordshire Design Guide: A Guide for Development:

Local Transport Plan: Appendix F - Parking Standards

#### Planning History

|                     |   |                  |                            |
|---------------------|---|------------------|----------------------------|
| <b>Application:</b> | Planning  | <b>Number:</b>   | CB/12/04211/FULL           |
| <b>Validated:</b>   | 28/11/2012  | <b>Type:</b>     | Full Application           |
| <b>Status:</b>      | Withdrawn   | <b>Date:</b>     | 21/01/2013                 |
| <b>Summary:</b>     |   | <b>Decision:</b> | Application Withdrawn      |
| <b>Description:</b> | Construction of new shop for hot food takeaway (A5) |                  |                            |
| <b>Application:</b> | Planning  | <b>Number:</b>   | CB/12/02685/FULL           |
| <b>Validated:</b>   | 15/08/2012  | <b>Type:</b>     | Full Application           |
| <b>Status:</b>      | Decided   | <b>Date:</b>     | 09/10/2012                 |
| <b>Summary:</b>     |   | <b>Decision:</b> | Full Application - Granted |
| <b>Description:</b> | Construction of extension to shop                   |                  |                            |
| <b>Application:</b> | Planning  | <b>Number:</b>   | CB/12/01769/FULL           |
| <b>Validated:</b>   | 17/05/2012  | <b>Type:</b>     | Full Application           |
| <b>Status:</b>      | Withdrawn   | <b>Date:</b>     | 19/06/2012                 |
| <b>Summary:</b>     |   | <b>Decision:</b> | Application Withdrawn      |
| <b>Description:</b> | Construction of new shop for hot food takeaway (A5) |                  |                            |

#### Representations:

##### (Parish & Neighbours)

Houghton Regis Town Council Object to the scheme as there is no information in regards to the proposed type of food or opening times and this could impact the acceptability of the proposal in a residential area. Concerns in regards to parking, litter, and unacceptable noise levels late at night.

Neighbours 1 petition received in favour of the scheme - 207 signatures of which 68 live on Tithe Farm Road or Leaf Road.

1 petition received objecting to the scheme - 55 signatures, all of which live on Tithe Farm Road or Leaf Road, within 150m of the site.

6 objections received on the following grounds:

- Will exacerbate existing litter problems and attract vermin
- Will exacerbate existing anti-social behaviour problems
- Odour
- Noise
- Parking and traffic problems
- Close proximity to a school - will increase childhood obesity
- Existing fast food outlets are in close proximity
- Loss of privacy

### **Consultations/Publicity responses**

#### **CBC Highways**

There appears to be a previous planning application granted permission for an extension to the existing retail unit, which was not given to the Highways DC section for comments. This current application is based on the same footprint, therefore I can really only offer comments to the change of use of the building to a hot food takeaway.

I would not wish to raise any highway objection to the change of use of the establishment, as there appears to be off-street parking available in the form of the car park opposite the development and some on-street parking available along Tithe Farm Road.

I would, however, wish to raise a concern which should have been identified on the previous application.

The applicant is intending to lower the ground level behind the public highway and is proposing to construct a retaining wall, which will in effect be supporting the public highway.

I will need written confirmation from the applicant that the retaining structure has been designed to take in to account the loading of the retained public highway and the imposed loading of a vehicle parking on the highway (I know the adjacent land is a footway but this would be worst case). The applicant will also need to confirm that the construction works adjacent to the highway will be undertaken in accordance with the Specification for Highway Works (see Manual of Contract Documents for Highway Works).

I would recommend the following condition is imposed.

Before development commences, details confirming that the structure, retaining the public highway, has been designed to withstand all loadings including the retained public highway and imposed loads due to users of the highway, shall be submitted to and approved by the Local Planning Authority. The construction works shall be implemented in accordance with the approved details.

#### Reason

To ensure that the proposed works are constructed to an adequate standard and in the interest of users of the highway.

I would suggest the following informatives are imposed.

- i. The applicant is advised that the requirements of the New Roads and Street Works Act 1991 will apply to any works undertaken within the limits of the existing public highway. Further details can be obtained from the Traffic Management Group Highways and Transport Division, Central Bedfordshire Council, Technology House, 239 Ampthill Road, Bedford MK42 9BD.
- ii. The applicant is advised that photographs of the existing highway that is to be used for access and delivery of materials will be required by the Local Highway Authority. Any subsequent damage to the public highway resulting from the works as shown by the photographs, including damage caused by delivery vehicles to the works, will be made good to the satisfaction of the Local Highway Authority and at the expense of the applicant. Attention is drawn to Section 59 of the Highways Act 1980 in this respect.

Community Safety  
Officer

Preliminary objection received from the police to a late night refreshment facility in this location based on anti-social behaviour in the area. More information will be available on the Late Sheet.

Public Protection

I write with respect to the above application and regrettably advise that in its current format I have to object to the application.

The proposed use is located in a sensitive location close to residential dwellings and it is therefore of paramount importance prior to determining the application that we are confident that there will be no detriment to the local residents from either noise or odour, predominantly from the use of the kitchen extract system. In order to do this the application should be accompanied by detailed technical assessments, firstly of the odour abatement

technology to be employed and thereafter a noise assessment to determine that the chosen system is also suitable acoustically. This is very dependant on the final use type (Indian, Chinese, etc) and if this is not known as appears in this instance then we would expect them to design for the worst case scenario. I do appreciate that this application is supported by a noise assessment, but simply stress that this does not appear to be based on any specified equipment and whilst using the correct assessment Methodology in BS4142 applies the wrong compliance criteria adopted by this authority.

Should the applicant wish to withdraw this application or resubmit then I advise that they contact me for informal advice. At this stage though I remain concerned that the proposal will be to the detriment of local residents and insufficient information has been presented to demonstrate otherwise. Neither is the application suitable for the imposition of conditions to control such.

Public Health

**The response from Public health is to recommend that planning permission is refused.**

The decision is supported by the following report:-

**Overview:-**

Ward data for Tithe Farm and Parkside, supplied by Central Bedfordshire, shows that these 2 areas in particular have an above average level of obesity in children from Yr6 (aged 10-11). It is also clear that the obesity levels rise from YrR to Yr6. This is also reflected in the average BMI of adults referred to a 12 week programme with Slimming World or Weight Watchers by their GP in these wards from 2012/13 data, which is 40.2.

These wards are in the 20% most deprived wards in Central Bedfordshire.

Obesity is a major cause of concern and especially in areas of multiple deprivations, where this food outlet is proposed. The type of food that will be offered for sale from the take-away has not been decided within the planning application, and this would be an issue for consideration.

Higher levels of obesity affect the more disadvantaged and deprived communities. i.e. high blood pressure, cardiovascular disease, diabetes, shortened life expectancy.

From a survey carried out on behalf of the Food Standards Agency - 'Low Income Diet and Nutrition' The

summary states that:-

1. Average consumptions of fruit and vegetables were one half of the recommended five portions a day.
2. A substantial proportion of men and women were overweight or obese.
3. The poor diets of the low income population were accompanied by higher levels of smoking, higher alcohol intake and lower physical activity compared with the general population.

### **Potential risks to Public health:-**

- There are already 6 other take-away food outlets within 0.65 miles from this proposed development. By having more availability to food that is unhealthy, if consumed in large quantities, and by not giving people a choice of a healthier alternative, there could be a further rise in obesity rates.
- The ward data also shows that both these wards have a younger age profile than Central Bedfordshire and that deprivation is an issue with high proportions of children and older people living in income deprived households.
- The Take-away is situated very close to a school which from September 2013 is deemed Primary. This means that the school now takes pupils from nursery to Yr 5 (9-10 years of age), and from September 2014, nursery to Yr 6 (10-11 years of age).
- The raising of the age of pupils at the school will lead to more young people coming to school by themselves, either by walking or cycling. The older pupils may have money to use on school meals or break-time snacks.
- The concern would be that the older pupils may use the money off site at the take-away and buy food which is not regulated in the same way as school food must be under current legislation of food across the whole school day.
- Even if pupils were not allowed off-site during lunchtime, there could still be access to the take-away on the route home. As the opening hours could not be specified in the planning application this is something that would need to be taken into account.

### **National and Local Guidance**

Two of Central Bedfordshire's priorities in the Health and Wellbeing Strategy 2012-2016 are:-

- Helping people make healthy lifestyle choices
- Reducing childhood obesity

### **Determining Issues**

The acceptability of the proposed extension has been confirmed by the grant of planning permission CB/12/0685/FULL and therefore the main considerations of the application apply to the use of the proposed extension as a hot food takeaway. The main considerations of the application are;

- 1. Principle of the Development**
- 2. Impact on Residential Amenity**
- 3. Parking and Highway Safety**
- 4. Other Issues**

### **Considerations**

#### **1. Principle of the Development**

The preamble to Policy 21 of the emerging Development Strategy for Central Bedfordshire includes local food outlets within the definition of community infrastructure. Both the National Planning Policy Framework (NPPF) and Policy 21 encourage the provision of community infrastructure within residential communities. The principle of providing a new community facility such as a food outlet within a residential area is therefore considered to be acceptable.

#### **2. Impact on Residential Amenity**

##### Impact of the structure

The extension would not be any closer to the nearest residential dwelling at the rear of the shop than the existing building. Furthermore, because of its subservient relationship with the existing building, it is considered that the extension would not appear overbearing when viewed from Number 147. The extension would not be fitted with any windows in the rear elevation and hence there would be no overlooking and loss of privacy to the adjoining property occupiers. Taking these factors into account, it is considered that the proposed physical extension would not be harmful to residential amenity.

##### Noise and Odour

Policy BE8 of the South Bedfordshire Local Plan Review requires that proposals for new development or change of use have no unacceptable impact upon residential amenity and that development likely to generate noise, disturbance and other pollution emissions does not unacceptably disturb or otherwise affect adjoining properties and use. Policy 43 of the emerging Development Strategy for Central Bedfordshire also require proposals to respect the amenity of surrounding occupiers and to comply with current guidance on noise and odour. Policy 44 states that proposals which are likely to cause pollution in relation to noise and odour will not be permitted unless it can be demonstrated that measures can be implemented to minimise impacts to a satisfactory level which protects health, environmental quality and amenity.

The Public Protection Officer has made it clear that insufficient information has been submitted to demonstrate that odour and noise from extraction mechanisms would not exceed a satisfactory level. As a result, it cannot be

stated that residential amenity would be adequately protected from environmental pollution in terms of mechanical noise and odour resulting from the proposed new takeaway and thus the proposal fails to conform with Policy BE8 of the South Bedfordshire Local Plan Review and Policies 43 and 44 of the emerging Development Strategy for Central Bedfordshire.

The applicant has been made aware of the comments of the Public Protection Officer and has expressed an intention to supply further information to overcome these concerns prior to the Committee meeting. An update will be provided on the Late Sheet.

#### Noise and Disturbance

The application does not include proposed opening hours, however it is anticipated that a use of this nature would wish to be open until late in the evening. The site is in very close proximity to residential dwellings and it is considered that allowing a takeaway to be open until late in the evening would result in an increase in levels of activity during the later evening, and consequently an unacceptable level of noise and disturbance to local residents, contrary to Policy BE8 of the South Bedfordshire Local Plan Review and Policy 43 of the emerging Development Strategy for Central Bedfordshire.

The comments of the Community Safety Officer are noted. It is considered that the concerns of the local Police give weight to the consideration that the takeaway would be likely to result in higher levels of noise and disturbance, particularly between 9pm when the existing shop closes and the eventual closing time of the takeaway.

It is considered that if the takeaway were to close at the same time as the existing shop this would prevent an increase of activity within the area from 9pm onwards and would offer a greater protection to the amenity of residential occupiers within the vicinity. Opening hours can be controlled by condition, and should planning permission be granted for the proposal, a condition would be imposed preventing the takeaway from operating beyond 9pm on any evening.

It is noted that the extant planning permission for an extension to the existing shop has unrestricted hours and the shop itself could be open 24 hours a day. However, the characteristics of convenience shops and takeaways are different, as is the nature of the activity that these uses generate and it is not considered that this provides sufficient weight to justify the granting of planning permission for a takeaway without carefully controlling opening hours to protect residential amenity.

In conclusion, while residential amenity can be adequately protected from noise and disturbance as a result of increased activity by a suitable condition, it is considered that the applicant has not demonstrated that the proposed takeaway would not have an unacceptable impact on the amenity of neighbouring residents in terms of odour and mechanical noise. As a result, the proposal conflicts with the National Planning Policy Framework, Policy BE8 of the South Bedfordshire Local Plan Review and Policies 43 and 44 of the emerging Development Strategy for Central Bedfordshire.

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

It is noted that the Highways Officer has no concerns in regards to the use of the approved extension as a takeaway as there is sufficient off-street parking available in the immediate vicinity.

The comments regarding the structure of the Highway are also noted and, should planning permission be granted, the recommended condition and informatives would be imposed as suggested.

It is considered that the proposal would not have a detrimental impact upon highway safety.

### **4. Other Issues**

#### Waste Management

It is noted that there is an existing waste collection problem at the existing convenience store. It is not considered that this has any bearing on the determination of the current application. It is considered that the waste management for the proposed takeaway could be controlled with the use of an appropriate condition should planning permission be granted.

#### Public Health

The comments of the Public Health Officer and the neighbouring residents regarding the existence of other takeaways in the vicinity and the location of a school within easy walking distance are noted. However, there are no current planning policies at local or national level that preclude the locating of takeaways near school premises and therefore it is considered that it would not be possible to defend a reason for refusal on the basis of the proximity of the school to the site.

#### Human Rights issues

The neighbouring residents have raised a number of concerns that could impinge on their Human Rights, which are protected by the Human Rights Act. These have been carefully considered in Section 2 above. It is not considered that any other Human Rights issues are raised by the application.

#### Equality Act 2010

The proposal does not make clear whether or not the proposed unit would be fully accessible, however, this is not considered a sufficient reason to withhold planning permission. It is considered that, should planning permission be granted, an informative should be added reminding the applicant of their responsibilities under the Equality Act 2010.

### **Recommendation**

That Planning Permission be REFUSED subject to the following:

### **RECOMMENDED REASON**

- 1 The application contains insufficient information to show that the proposed hot food takeaway would not have an adverse impact on residential amenity by reason of mechanical noise and odour and is therefore contrary to Policy BE8 of the South Bedfordshire Local Plan Review and Policies 43 and 44 of the emerging Development Strategy for Central Bedfordshire.

**Notes to Applicant**

1. Please note that the unnumbered drawings submitted in connection with this application have been given unique numbers by the Local Planning Authority. The numbers can be sourced by examining the plans on the View a Planning Application pages of the Council's website [www.centralbedfordshire.gov.uk](http://www.centralbedfordshire.gov.uk).

**Statement required by the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 - Article 31**

Planning permission has been refused for this proposal for the clear reasons set out in this decision notice. The Council acted pro-actively through positive engagement with the applicant in an attempt to narrow down the reasons for refusal but fundamental objections could not be overcome. The applicant was invited to withdraw the application to seek pre-application advice prior to any re-submission but did not agree to this. The Council has therefore acted pro-actively in line with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012.

**DECISION**

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