

APPLICATION REFERENCE: PL/2022/00493/PPFL**Site Address:** 58 Station Road, Marston Green, Solihull. B37 7BA.

Proposal:	Change of use of existing units 1, 2 and 3 from Class E (retail) to sui generis to form a hot food takeaway. Amalgamation of units 1 and 3 to form a single unit including the erection of a single storey extension. Unit 2 to remain separate.
Web link to Plans:	Full details of the proposal and statutory consultee responses can be found by using the above planning application reference number at: https://publicaccess.solihull.gov.uk/online-applications/

Reason for Referral to Planning Committee:	THE PROPOSAL HAS GIVEN RISE TO SUBSTANTIAL WEIGHT OF PUBLIC CONCERN AND IN THE OPINION OF THE HEAD OF DEVELOPMENT MANAGEMENT SHOULD BE REFERRED TO PLANNING COMMITTEE.
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Recommendation:	APPROVAL SUBJECT TO CONDITIONS
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EXECUTIVE SUMMARY

The proposed development is for a change of use from retail (Class E) to a hot food takeaway (Sui Generis) including the internal reconfiguration of the unit to form 2 units. The application seeks consent for a single storey rear extension with a depth of 3 metres and height of 4 metres. It is considered that the proposal is compliant with the necessary planning policies and subject to conditions, is not expected to cause any material harm to public health, local living conditions or to highway safety.

The proposal is therefore recommended for approval.

MAIN ISSUES

The main issues in this application are:

- Whether the proposal provides an appropriate use in accordance with relevant planning policy;
- The effect of the proposal on public health;
- The effect of the proposal on highway safety and the free flow of the road network.

- Living conditions
- Other material considerations:-
 - Local Plan Review
 - Other matters
 - Public sector quality duty
 - Human Rights
- Conclusion

CONSULTATION RESPONSES

Statutory Consultees - The following Statutory Consultee responses have been received:

Bickenhill Marston Green Parish Council - The Parish Council objects based on the loss of a retail unit to yet another takeaway service outlet especially given the proximity to neighbouring properties and the school. The Parish Council is concerned about the permitted opening hours, the potential noise from the unit and the omitted odours. Furthermore, the Parish Council is also concerned about inadequate parking and disruption to residents above and adjoining the premises and in the immediate vicinity out of normal business hours.

Non Statutory Consultees - The following Non-Statutory Consultee responses have been received:

Lead Local Flood Authority - No objection, applicant is advised to build using flood resilient techniques due to known surface water flooding issues.

SMBC Highways – No objection.

SMBC Public Protection – No objection subject to conditions.

PUBLICITY

The application was advertised in accordance with the provisions set down in the Town and Country Planning (General Development Procedure) Order 2015.

59 responses (all objections) were received including an objection from Councillor Bob Sleigh. All correspondence has been reviewed and the main issues raised are summarised below:

Amenity

- Adverse impact on neighbour amenity
- Noise and disturbance, sleep quality will be affected.
- Smells and odours

Design

- Adverse impact on character and appearance of the area.

Highways

- Adverse impact on local highway conditions
- Lack of adequate parking provision will cause parking problems and exacerbate an existing issue

Other

- Over-concentration of takeaways in Marston Green
- Question of whether application is retrospective
- Details of negative impacts experienced by local residents following planning approval for takeaway at 64 Station Road
- Increase in litter
- Increase in anti-social behaviour
- Unacceptable proximity to Marston Green School.
- This development brings no benefits or amenity value to Marston Green due to the amount of other hot food takeaways.
- Questions suitability of building for the preparation of food.
- Conflict with Policy P18 (Health and Well Being) of the adopted Local Plans 2013.
- Conflict with Policy P18 of the Local Plan Review 2020.
- Conflict with SMBC 1995 Hot Food Takeaway SPD.

RELEVANT PLANNING HISTORY

PL/2020/01392/PPFL - Sub-division of single A1 retail shop to 2 No. A1 retail shops, two storey rear, single storey rear extension, dormer window to rear, alterations to shop front and conversion of first floor to 2 No. self-contained flats – approved by planning committee on 14th October 2020.

PL/2021/00318/PPFL - Sub-division of single Class E (a) retail shop to 2 No. Class E (a) retail shops, two storey rear, single storey rear extension, dormer window to rear, alterations to shop front and conversion of first floor to 2 No. self-contained flats (Resubmission of planning approval PL/2020/01392/PPFL) – approved under delegated powers on 4th June 2021.

PL/2021/03181/CLOPUD - Certificate of lawful development for the proposed conversion of Units 01 & 03 to a single unit including internal remodelling with use class to remain in Class E – certificate granted 20th December 2021 to confirm planning permission is not required.

PLANNING ASSESSMENT

Section 38(6) of the Planning & Compulsory Purchase Act 2004 requires that: -

'Where in making any determination under the planning acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise'.

The National Planning Policy Framework at paragraph 2 states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

On the 13th May 2021 the Local Plan Review was submitted (via the Planning Inspectorate) to the Secretary of State for independent examination.

This marks the next stage in the preparation and adoption of the plan. The advice in the NPPF at paragraph 48 states "Local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)".

Greater weight, but not full weight, can therefore be given to the submitted plan, but this may still be dependent on the circumstances of each case and the potential relevance of individual policies. In many cases there are policies in the new plan which are similar to policies in the adopted plan which seek the same objectives, although they may be expressed slightly differently.

It is considered that relevant policies pertinent to this application have limited weight in the planning balance, and as a result do not alter the recommendation of approval reached in this report.

This report also considers the proposal against the Development Plan (Solihull Local Plan), the relevant policies of the National Planning Policy Framework ("NPPF") 2021, the National Planning Practice Guidance.

Whether the proposal provides an appropriate use in accordance with relevant planning policy

Policy P19 (a) (Range and Quality of Local Services) of the Local Plan identifies Marston Green as a Local Centre and advises that "*appropriate development could include retail, leisure, community and other facilities. All new development will need to be sensitive to local character and enhance the public realm [and] the scale and nature of new development should reflect the centre's role and function in serving local needs,*

the opportunity to reduce the need to travel or the need to sustain the economic viability and vitality of the centre". Policy P19 of the Local Plan is consistent with policies set out in the Framework and full weight can be attributed to this Local Plan Policy.

The application site is located within the village of Marston Green and a site visit confirmed that the conversion and extension of the building, in accordance with planning permission PL/2021/00318/PPFL, has commenced. Building works have halted and the building remains vacant.

Policy P19 (a) of the Local Plan does not prevent changes of use of ground floor premises within the village of Marston Green from Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended), which includes retail premises, to a Sui Generis Use Class, such as a takeaway / restaurant. There is also no identified or prescribed requirement for a set proportion of Class E units in local centres to be maintained at a certain given level.

The proposal would support the local area of Marston Green and add to the variety of facilities, bringing back into use a vacant unit. The proposal would be a mixed use of takeaway and restaurant use and Class E would remain as the dominant use in the local area. The proposed use would maintain and enhance the function of the Village Centre, contribute towards day to day needs and the viability and vitality of the local area.

For the reasons set out above, the proposal is supported by Local Plan Policy P19 (a).

This should be afforded moderate positive weight in the planning balance.

The effect of the proposal on public health

The Framework advises that planning policies and decisions should aim to achieve healthy, inclusive, and safe places which enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of local shops and access to healthier food (paragraph 92 c).

Further guidance is provided in the Government's Planning Practice Guidance (PPG) which advises that "*planning can influence the built environment to improve health and reduce obesity and excess weight in local communities. Local planning authorities can have a role by supporting opportunities for communities to access a wide range of healthier food production and consumption choices. Planning policies and supplementary planning documents can, where justified, seek to limit the proliferation of particular uses where evidence demonstrates this is appropriate (and where such uses require planning permission) uses*" [emphasis added].

Paragraph: 004 Reference ID:53-004-20190722.

Policy P18 (Health and Well Being) of the Local Plan advises that "*the Council will resist development proposals for hot food takeaways in areas where there is already a high concentration of such uses*".

The supporting text to Policy P18 at paragraph 12.2.11 advises that “*poor diet is a significant factor in obesity and associated poor health. The policy aims to provide opportunities to consume fresh food and seeks to manage the concentration of hot food takeaways, particularly around schools, which may increase the propensity to consume unhealthy food*” (p.138).

Policy P18 of the Local Plan is consistent with policies set out in the Framework and full weight can be attributed to this Local Plan Policy.

The Local Plan does not quantify what is meant by the term ‘high concentration’ for the purposes of Policy P18. It is therefore a matter of planning judgement as to whether there is a ‘high concentration’ of hot food takeaways in an area. The proposal would not provide opportunities for growing local produce and there is no evidence to suggest the proposal would increase access to healthy food. The applicant has not provided any details of the intended end-user of the proposed premises therefore the type of food proposed is unknown.

A visual survey of the Village of Marston Green undertaken on 25th May 2022 observed 34no. ground floor commercial uses in the Village of which 4no. units are classified as hot food takeaways as defined in the Town and Country Planning (Use Classes) Order 1987” (as amended). This equates to 12 percent of the total commercial units within the village. It is not considered 4 units or 12 percent equates to a ‘high concentration’ of hot food takeaways for the purposes of Policy P18 of the Local Plan.

It is noted that a number of the objections raised by local residents state that there are at least 8 hot food takeaways within the village. From the site visit completed in May 2022, it is evident that there are more than 4 commercial units within the village which sell hot food and drinks that can be consumed off the premises, such as Subway. However, these premises are not classified as ‘hot food takeaways’ as defined in the Town and Country Planning (Use Classes) Order 1987” (as amended).

A site visit also confirmed that the application site is located approximately 50 metres from the entrance to Marston Green School. The supporting text to Policy P18 is clear that this policy aims to manage the concentration of hot food takeaways, particularly around schools. There is no question that the proposal is located very close to Marston Green School, however, Policy P18 does not preclude hot food takeaways being located very close to schools, it only seeks to prevent a ‘high concentration’ of such uses. In this regard, the 4 existing hot food takeaways are located towards the centre of the village and further along this parade of shops at No.64 where there is a mix of commercial uses. As such, the proposal could not reasonably be described as causing a ‘high concentration’ hot food takeaways around Marston Green School.

For the reasons set out above, it is concluded that there would be no conflict with the requirements of Local Plan Policy P18.

This matter should be afforded neutral weight in the planning balance.

The effect of the proposal on highway safety and the free flow of the road network

Policy P8 of the Solihull Local Plan explains that development which results in a reduction in safety for any users of the highway will not be permitted. Policy P8 of the Local Plan is consistent with policies set out in the Framework and full weight can be attributed to this Local Plan Policy.

The proposal includes the change of use of the ground floor of existing premises to a takeaway and restaurant use. The established use is Class E – retail. The last known occupier of the site was a florist. The single storey extension is substantially complete, having been granted consent under both PL/2021/00318/PPFL and PL/2020/01392/PPFL.

The Highway Authority notes that on-street parking bays are available to the frontage of the application site and neighbouring retail units. Parking is permitted for one hour, with no return within one hour between the hours of 08:00 and 18:00, Monday to Saturday. It is envisaged that customers visiting the proposed takeaway will utilise the on-street parking bays fronting the site, or travel by sustainable modes of transport (i.e. walking, cycling, bus, etc.). On-street parking restrictions are also in place along Station Road and nearby connecting junctions, to prohibit on-street parking from occurring, other than within the parking bays provided.

The proposed change of use should not generate a significant increase in vehicle trips or demand for car parking compared to the existing use, to have a severe impact on public highway safety, or on the operation or capacity of the local highway network.

For the reasons set out above, there would be no conflict with the requirements of Local Plan Policy P8.

This matter should be accorded neutral weight in the planning balance.

Living conditions

Policy P14 of the Solihull Local Plan seeks to protect the amenity of existing and potential occupiers of houses and businesses. Policy P14 of the Local Plan is consistent with policies set out in the Framework and full weight can be attributed to this Local Plan Policy.

Concerns have been raised regarding the potential for noise and anti-social behaviour. The application site lies within a row of shops and other commercial uses above which there are a number of residential units, including those two units granted at the application site by previous extant planning consents. There are also residential dwellings directly opposite the application site, to the western boundary and in the surrounding area. It was evident during the site visit in May 2022 that the application site is located within an active and well used commercial parade with associated levels of noise one would expect from such uses. The parade consists of a pharmacy, children's day nursery, estate agents, hairdressers and hot food takeaway (No.64). Consequently, officers do not consider that the proposed daytime and early evening use of the site for a hot food takeaway and restaurant to be incompatible with the use of parade.

The concerns raised by local residents relating to the impact of a takeaway operating into the evening on residential amenity is noted. Whilst there are residential properties within close proximity to the application site, there are also a number of commercial operations in the immediate area which operate into the evening. These include the petrol filling station and Londis supermarket near to the junction of Station Road and Wayside Road. These operate 06:00 to 23:00 Monday to Saturday and 07:00 to 22:00 on Sundays. The petrol filling station and Londis supermarket are surrounded by a mixture of residential and commercial uses and the Council has no record of any noise complaints regarding its late night use. In addition to the existing late night commercial activity in the area, Station Road provides an important vehicular route into and out of the village for vehicles travelling from the east, and regular bus services (72 & 72A) runs late into the evenings.

This application seeks consent for two takeaway units at the ground floor of No.58 Station Road. The introduction of a further late night use in the form of two hot food takeaways will undoubtedly increase the level of late night activity in the area but the impact of the proposal needs to be considered in the context of the existing noise environment as detailed above. Unit 1 will include the provision of a breakfast bar and seating booths to allow customers to wait for their food to be prepared whilst also providing a dine in option. The applicant has not provided detailed floor plans for Unit 2 however this unit is smaller so is unlikely to offer the dine in provision.

The applicant has detailed, at part 19 of the submitted application forms, that the proposal seeks consent to operate 11:00 to 23:00 Monday to Saturday and Sundays and Bank Holidays. The Council's Public Protection Officer have reviewed these proposed hours of opening. Having regard to the existing noise environment, the Council's Public Protection Officer considers that the opening hours should be restricted to 10:00 to 23:00 Monday to Saturday, and 10:00 to 22:00 on Sundays and Bank Holidays to protect the amenity of residents in the local vicinity including those above the commercial units within the parade. These amended opening hours are consistent with the hours of opening granted for the takeaway at No.64 Station Road.

Whilst it is acknowledged that limiting the hours of opening will assist in reducing the potential for anti-social behaviour, the concerns raised by local residents regarding the potential noise and disturbance from customers collecting food either on foot or by vehicle are understood. The proposed floor plan confirms no outdoor seating is proposed to the front of the premises, this is consistent with the approved takeaway at No.64 Station Road. Whilst this may reduce the likelihood of customers gathering to the front of the premises, the absence of outdoor seating does not preclude customers gathering and this may result in some disturbance to local residents if not suitably managed or controlled.

Therefore, a planning condition is recommended preventing any food or drink being consumed on land to the front of the site outside the following hours: Monday to Saturday 10:00 – 20:00 and 10:00 – 18:00 Sunday and Bank Holidays. Conditions are also recommended in relation to CCTV and external lighting. These conditions will help manage and control external activity in interests of protecting local living conditions, particularly those residing in the residential units above the commercial units. Planning conditions can be used to prevent an increase in ambient noise levels

emanating from within the building. These conditions include sound insulation of plant/machinery and of ceilings / internal walls and doors as well as details of the ventilation system to be installed.

Local residents have also raised concerns regarding potential smells and odours from the proposed takeaways premises. The applicant has provided details of the proposed ventilation system. The Council's Public Protection Officer has reviewed these details, and advises that the details are insufficient due to the two residential units located above the proposed ground floor takeaway units. As such, the Council's Public Protection Officer has requested a planning condition to be imposed to ensure the extraction system provides adequate ventilation to protect the neighbourhood from dust, fumes or odour emissions.

The Council's Public Protection Officer having reviewed all evidence submitted has raised no objection subject to the imposition of conditions.

In conclusion, while matters further to above could be expected to result in some disturbance, within the context of the existing noise environment, it would not be expected to be harmful. The imposition of the proposed planning conditions would enable any impacts on health and quality of life to be mitigated and reduced to a minimum. It is expected that these planning conditions would ensure the proposed development respects the amenity of existing and future residents in the locality.

The proposal also seeks consent for a further single storey extension to the rear of the premises. The application site has benefitted from previous consent for a two storey and single storey rear extension under application references PL/2020/01392/PPFL and PL/2021/00318/PPFL. This application seeks consent for a single storey rear extension, measuring 3 metres in depth and 4 metres in height. The proposed extension would extend to almost the full width of the rear of the premises, 6.8 metres. The proposed extension would be attached to the consented rear extension, so in total the single storey rear extension would be 5.6 metres in depth. The depth of the rear extension, taking into account the two storey and single storey already constructed, would be approximately 9.8 metres. The design would alter from that approved under PL/2020/01392/PPFL and PL/2021/00318/PPFL and would be flat roofed, rather than mono pitched.

The proposed extension would be 1 metre from the boundary with either neighbour. To the west is a residential dwelling which has not been extended to the rear. To the east, and adjoining the application premises, is the pharmacy. This unit has also not been extended to the rear. Whilst the pharmacy occupies the ground floor of No.60 Station Road, it is understood that the first floor is utilised for residential purposes.

It is not considered that the proposed rear extension, given its single storey design with a flat roof, would have an unacceptable impact on the amenity of either neighbour in terms of loss of light, overlooking or overbearing.

For the reasons set out above, there would be no conflict with the requirements of Local Plan Policy P14. The matter should be accorded neutral weight in the planning balance.

Other issues

- Character and appearance

Policy P15 of the Solihull Local Plan expects all development proposals to achieve good quality, inclusive and sustainable design. Policy P15 of the Local Plan is consistent with policies set out in the Framework and full weight can be attributed to this Local Plan Policy.

The rear elevation of the application premises has been significantly altered through the addition of the approved two storey and single extension. This application seeks to add a further single storey addition, extending the ground floor by a further 3 metres. The fenestration detail will also be amended to include a further door on the side elevation at ground floor level, and the replacement of a door on the rear elevation with a window.

It is considered that the external changes, including the addition of the further ground floor extension, are appropriate in scale, size and design terms to the extended premises and would enhance the character and appearance of the premise. There are limited views of the rear elevation and none from any public vantage points therefore the impact of the proposed extension and fenestration changes on the character and appearance of the street scene are minimal.

For the reasons set out above, there would be no conflict with the requirements of Local Plan Policy P15.

This should be accorded neutral weight in the planning balance.

- Local Plan Review

Local residents have commented on the emerging Local Plan and the potential conflict of this proposal with the emerging policies in particular Policy P18 (Health and Wellbeing). The proposal by virtue of being approximately 50 metres from the entrance to Marston Green School would conflict with emerging Policy P18 point 5, which advises *that “applications for hot food takeaways will not be granted within a 400m radius from an entrance to a primary or secondary school, youth centre, or similar location”*. However, Policy P18 of the Local Plan Review currently has limited weight.

- Other matters

Concerns have been raised that proposal conflicts with the Council’s Hot Food Takeaway SPG 1995. This SPG pre-dates the Local Plan 2013, the Framework and guidance in the PPG, so can only be afforded limited weight in the planning balance. Moreover, the aims of the SPG are more broadly reflected in Policies within the Local Plan which seeks to: manage the concentration of hot food takeaways (P18), ensure the viability of local centres (P19), protect neighbour amenity (P14), secure quality design (P15), and prevent highway and traffic issues (P8). The proposal has been found to be in accordance with the identified policies of the Local Plan and it is

therefore considered that it could not reasonably be described as conflicting with the Council's Hot Food Takeaway SPG 1995, particularly given its limited weight.

- Public Sector Equality Duty

In determining this application, Members must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions).

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149 is only one factor that needs to be considered, and may be balanced against other relevant factors. It is not considered that the recommendation to grant permission in this case will have a disproportionately adverse impact on a protected characteristic.

- Human Rights

In determining this request for approval, Members should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority to act in a manner that is incompatible with the European Convention on Human Rights.

Members are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence. The recommendation for approval is considered a proportionate response to the submitted request based on the considerations set out in this report.

CONCLUSION

Planning law requires that applications for planning permission be determined in accordance with the adopted development plan, unless material considerations indicate otherwise.

In terms of the benefits of the scheme, although there is local opposition to the proposal, if the proposal were to be subject to appropriate planning conditions, it would not cause harm to public health, local living conditions or to highway safety, or indeed, to any other planning considerations raised in this case. This is an area where commercial development can be expected to occur and for the reasons above, any effects of the proposal on local residents' would not be disproportionate. The proposal would bring a vacant commercial premises located in a highly accessible location back into use to provide services to its customers. It would add to the mix of uses in the village of Marston Green, creating social and economic benefits. In terms of scheme's benefits, taken together, *moderate weight* should be given to the economic and social benefits of the proposal in accordance with policies P18 and P19 of the Local Plan and guidance in the Framework .

The proposed single storey rear extension is considered to be acceptable in terms of scale and design. The extension would be utilised as the food preparation area and

subject to planning conditions relating to the ventilation system, would be acceptable and would not have an adverse impact on neighbouring properties in terms of loss of light, overshadowing or overbearing. The proposal therefore accords with Policy P14 and P15 of the Local Plan and guidance in the Framework.

In conclusion, for the reasons outlined above, the proposal would benefit from the presumption in favour of sustainable development and the overall planning balance is in favour for this proposal.

In coming to this recommendation, officers have also taken into consideration all of the representations made in respect to the proposal. In view of the matters set out above however, they do not alter the overall conclusion.

The proposal is therefore recommended for approval subject to appropriate conditions.

RECOMMENDATION

Approval is recommended subject to the following précis of conditions a full list of standard conditions is available using the following link:

<http://www.solihull.gov.uk/Resident/Planning/searchplanningapplications:>

1. CS00 - Three years
2. CS05 - Approved plans
3. CN15 - Ventilation system to be installed
4. CN10 - Sound insulation of plant/machinery
5. CN03 - Sound insulation of Ceiling

6. The use hereby permitted shall not be open to customers outside the following times: Monday to Saturday 10:00 – 23:00 and 10:00 – 22:00 Sunday and Bank Holidays.

To protect the neighbourhood from any increase in ambient noise levels in accordance with policy P14 of the Solihull Local Plan 2013.

7. No development shall take place until details of external lighting and CCTV have been submitted to and approved in writing by the local planning authority. No part of the development hereby permitted shall be brought into use until lighting and CCTV has been installed in accordance with the approved details, and this lighting and CCTV shall be retained thereafter. To protect the neighbourhood from any increase in ambient noise levels in accordance with policy P14 of the Solihull Local Plan 2013.

8. No food or drink shall be consumed on the land to the front of the premises as identified on the Location Plan (drawing number 31047) outside the following hours: Monday to Saturday 10:00 – 20:00 and 10:00 – 18:00 Sunday and Bank Holidays.

To protect the neighbourhood from any increase in ambient noise levels in accordance with policy P14 of the Solihull Local Plan 2013.

Note

Climate Change – Building Regulations

