

Committee Report for P/2023/00852 – Item 6.1

This report has been checked on behalf of Legal Services by Penelope James

Application Number	P/2023/00852	
Planning Officer	Gary Shilton	
Application Type	Change of Use	
Site Address	1D Rolleston Road, Burton Upon Trent, Staffordshire, DE13 0JT	
Proposal	Retention of use as a cafe (Class E) and for consumption of food/beverages on the premises and to allow for the sale of hot food for takeaway (Sui Generis)	
Recommendation	Approve with conditions	
Reason For Bringing to Committee	<p>The application has been called in by the Local Member, Councillor Shrive for the following reasons:</p> <p><i>“Highway considerations</i></p> <p><i>Residential Amenity</i></p> <p><i>Concerns I have regarding comments put to me by residents, and after looking at the application I feel it needs to be discussed by the planning committee.”</i></p>	
Expiry Dates	Weekly List	10/06/2024
	Neighbours	04/10/2024 (re-consultation)
	Consultations	04/10/2024 (re-consultation)
	Site Notice	15/10/2023
	Newspaper Advert	N/A
Application Expiry Date	11/07/2024	
Application not Determined within Statutory Time Period - Reason	An extension of time has been agreed until the 1 st November 2024	
Environmental Assessment	EIA development	No
Biodiversity Net Gain	Is BNG applicable?	No, this application was received prior to BNG legislation coming into force.
Relevant Planning Policies/Guidance	Government Documents	The National Planning Policy Framework (NPPF) The National Planning Practice Guidance (NPPG)
	Local Plan Policies	SP1 – East Staffordshire Approach to Sustainable Development SP2 – Settlement Hierarchy NP1 – Role of Neighbourhood Plans SP20 – Town and Local Centres Hierarchy SP21 – Managing Town and Local Centres SP22 – Supporting Communities Locally SP25 – Historic Environment SP29 – Biodiversity and Geodiversity SP35 – Accessibility and Sustainable Transport DP1 – Design of New Development DP5 – Protecting the Historic Environment: All Heritage Assets, Listed Buildings, Conservation Areas and Archaeology DP6 – Protecting the Historic Environment: Other Heritage Assets

		DP7 – Pollution and Contamination
	Horninglow and Eton Neighbourhood Plan Policies	HE1 – Protection of Local Centres and Community Facilities HE5 – Parking Standards HE11 – Local Built Heritage Assets
	Supplementary Planning Documents (SPD)	East Staffordshire Design Guide Parking Standards Waste Storage and Collection Guidance
	Other Policies/Guidance	N/A
Relevant History	<p>AD/00936/012 – Display of illuminated fascia sign and hanging sign. Approved 01/05/2003</p> <p>PA/00936/011 – External alterations including erection of a canopy on the side elevation, installation of a new shopfront and first floor extension. Approved 01/07/2003 (Not implemented)</p> <p>PA/00936/007– Erection of two storey side extension, installation of a window in the front elevation and use of the first floor as a flat. Refused 205/05/2000</p> <p>PA/00936/006 – Erection of a rear extension. Approved 05/02/1996</p> <p>PA/00936/005 – Installation of window. Approved 18/02/1990</p> <p>PA/00936/003 – Single Storey rear extension. Approved 28/02/1983</p> <p><u>Neighbouring Housing Development:</u></p> <p>P/2014/00964 – Erection of 14 affordable dwellings, formation of vehicular access with associated parking and landscaping (Non-Material Amendment - alterations to the landscaping scheme). Approved 19/08/2014</p> <p>P/2013/01341– Application under Section 73 of the Town & Country Planning Act 1990 for a minor material amendment for the erection of 14 affordable dwellings, formation of vehicular access with associated parking and landscaping without complying with Condition 2 of the planning permission P/2011/01525 dated 10th January 2013 relating to loss of 2 visitor parking space and amendments to fenestration. Approved 14/02/2014</p> <p>P/2013/00538 – Application under Section 73 of the Town and Country Planning Act 1990 for a Minor Material Amendment to erect 14 affordable dwellings, formation of vehicular access with associated parking and landscaping without complying with Condition 2 of the planning permission P/2011/01525 dated 10th January 2013 relating to loss of 1 visitor parking space and amendments to fenestration. Withdrawn 07/11/2013</p> <p>P/2013/00535 – Discharge of conditions 3 - 10 of planning permission P/2011/01525/MB/PO relating to the erection of 14 affordable dwellings, formation of vehicular access with associated parking and landscaping. Approved 24/09/2013</p> <p>P/2011/01525/MB/PO – Erection of 14 affordable dwellings, formation of vehicular access with associated parking and landscaping. Approved 10/01/2013</p> <p><u>Development no longer relevant to the site due to redevelopment:</u></p> <p>CU/00936/015 – Change of use of existing print room to form a retail unit (A1). Approved 04/04/2005</p> <p>CU/00936/014 – Change of use of part of workshop to form two retail units (A1) and formation of two shopfronts, erection of a single storey link extension and the erection of a fire escape. Approved 04/04/2005</p>	
Site and Proposals	Site and Surroundings	

This application relates to a single storey building sited on the north western side of Rolleston Road just to the east of the junction with Horninglow Road North, in the Parish of Horninglow and Eton. On the opposite side of Rolleston Road lies St Johns Church which is a non-designated heritage asset and further to the south on the corner with Rolleston Road and Horninglow Road North lies the Red Lion House Community Centre (former public house). The application site lies in close proximity to the area defined within the Horninglow Neighbourhood Plan as a Local Centre.

To the north of the building are terraced dwellings, immediately to the south western facing elevation lies a footway and gated access road into the modern residential development, operated by Midland Heart Housing Association, which sits to the west of the site. The access road provides access to the parking area for the residential development and access to parking spaces for 1D Rolleston Road.

Along Horninglow Road North facing the modern residential development lies a shopping parade providing several retail units, a Chinese takeaway and a Fish and Chip Shop.

The shop faces Rolleston Road with the access running along the footway to the front and side of the building.

Since the submission of the application the gates to the parking area serving the neighbouring housing development have been moved further within the site and bollards have been installed along the footway. The access and footway to the front of the premises is within private ownership.

The site was historically a newsagents prior to becoming a hairdressers and then shop selling home beer and wine making equipment. All three uses fell within the same use class.

Map of Site



Proposals

This proposal is for the retrospective change of use of a retail unit to a café with takeaway facilities. The premises is open 08:30 to 14:00 on Mondays to Fridays and between 09:00 to 13:00 on Saturdays and 09:00 to 12:00 Sundays and Bank Holidays.

Additional neighbours were identified and consulted during the course of the application process ensuring all properties utilising the shared access were notified of the application.

During the process of the application the ownership certificate has been amended to also include the owners of the land to the frontage of the premises. The site boundary of the premises (red line) has also been amended to include the access and footway to the front of the premises to indicate access to the two parking spaces to the rear of the premises which rely on the private access. Further amended plans have been submitted which correct the size and position of the building within the plot adjacent to the rear of the highway boundary. Details of the hours of operation (including private events), takeaway hours, deliveries, bin store location and screening (within a parking space) and kitchen ventilation have been provided below:

“Events outside of Café Opening Hours

7 psychic supper evenings per year [FEB-MAY / SEPT-NOV 6:30-9:30PM]

Takeaway Hours

Takeaway hours are the same as opening hours.

Takeaway and deliveries make up approximately 30% of weekly sales.

Average takeaway/delivery orders per day approximately is 14 (significantly less earlier week days). This includes takeaways that are ordered in store by customers eating in who wish to take food away when they leave.

50% of delivery drivers are using pushbikes or electric bikes.

Deliveries

Maximum of 4 deliveries a week, 2 usually on a Tuesday morning, 2 late morning Tuesday to Friday.

Kitchen Hood Extract

ElectriQ 90cm Traditional Chimney Cooker Hood - Stainless Steel

3 Speed settings you can cater the extraction rate to suit what's cooking

The aluminium grease filter is removable & dishwasher safe

65db maximum decibel level

Dimensions: H 570-900 x W 898 x D 448mm

Maximum extraction rate: 333 m3/h

Required distance between hood & hob 65-75 cm

Air outlet diameter: 150 mm”

A small vent has been fitted to the exterior of the building above the kitchen window and measures 150mm x 150mm.

The proposal has also been amended to exclude an outdoor seating area to the front of the premises. The location of the proposed bin store has also been clarified and relocated to adjacent to the rear service door where it has been stored.

As the proposal relates to the change of use of the building with no physical alterations structural surveys of the building are not required.

Consultation Responses

Environmental Health – No objections relating to ground contamination or noise. The ventilation system and compliance with food hygiene are separate legislation. A food safety informative requested in the original response is no longer required

SCC Highway Authority – No objections subject to a condition to restrict the hours of operation. No objections to psychic suppers for 7 nights a year.

Horninglow and Eton Parish Council

Initial Consultation

Comment and photograph as follows:

“We understand a local resident has already put forward comments on the application, these comments are supported by Horninglow and Eton Parish council.

Further to this our Neighbourhood Plan is very clear on parking, the proposed extension reduces the parking spaces from 2 to nil, parking on this site is already an issue with cars blocking the entrance way for those that require access, residents have also reported having their vehicles blocked in.

It is important to note that the surrounding streets are all double yellow lined and there is no other sufficient parking.

The location is also close to a very busy junction with hundreds/thousands of school children walking and traveling this route to the many schools any additional parking

pressure in the area will affect visibility and increases the chance of accidents.

We would seek for the parking issue to be confirmed and a robust parking plan for both staff and visitors to be produced before any consideration is made.”

Photos were also provided showing cars parked directly outside the building, in front of the gated access.

No further comments have been received from the Parish during the re-consultation periods.

Neighbour Representations

Initial Consultation
 One representation has been received in support of the proposal.

16 representations have been received objecting to the scheme with 12 coming from local addresses 4 from non-local address points (which include photographs), summarised below:

Principle of Development

- Loss of local facility as no other facility is within 1000m
- Unlawful change from a retail store to a café is inappropriate due to lack of parking
- Use of café and takeaway is unsupportable due to a lack of facilities and amenities
- Horninglow is not a Tier 1 or Tier 2 area within policy SP2 and should be assessed as a Tier 3 within the settlement hierarchy
- Not in accordance with policy SP8 as residential amenity is not mitigated against
- Loss of retail/community facilities requires a marketing evidence statement
- The application should have been subject to a prior approval application for the change of use when it changed under part 3 Class C of the GPDO 2015 prior to 1st August 2021
- The café should be assessed under the prior approval legislation
- Last known lawful use of the site is F2 being a local shop
- Application should be a change of use from F2 to class E
- Appeal for a change of use from retail to a coffee house and evening micro pub in Bradford, dismissed at appeal is relevant

Visual Amenity

- Not in accordance with policy SP21 and SP24 due to a detrimental impact on residential amenity
- Signage should be included as it is an external change
- External seating is a material change

Residential Amenity

- Vehicles associated with the use are affecting residential amenity
- Residential amenity exacerbated by the takeaway element
- Private late night events are held outside of the stated opening hours
- The premises is adjacent to residential and triggers the requirements for a noise assessment

Highway Impacts

- Parking is not included within the red line of the site
- Block pedestrian access to the adjacent housing development which is not within the ownership of the applicant
- Blocks disabled access as there is insufficient space to create a shared use pavement
- Smoking outside causing a nuisance
- The seating conflicts with the conditions relating to the access and visibility for the housing development
- Fails to meet the criteria for a pavement licence
- Obstructs access visibility with a notice board placed at the highway junction
- Issues parking in the residents car park, access and pavement worsened by the takeaway element

- Clarification should be sought to clarify the reduction of parking spaces from 2 to 0
- Cannot accommodate staff parking in the spaces
- 10 parking spaces are required for a premises with 105sqm footprint
- No disabled parking spaces are provided for the premises and is therefore not accessible to all user groups
- Bin obstructing the pavement
- Policy HE7 of the Horninglow and Eton Neighbourhood plan identifies the junction of Horninglow Road and Rolleston Road as an area for improvement schemes (via developer contributions)
- A change of use of 1m suggested by the case officer for the seating area undermines manual for streets which requires a width of 2.5m
- No cycle provision provided
- No travel plan provided or justification of the loss of parking spaces. Does not comply with policy SP15
- Obstructive parking on double yellow lines and lack of parking with no justification or transport assessment, not in accordance with policy SP35
- No cycle provision made
- A transport assessment is required due to the location on a busy junction

Ecology

- No ecology report , not in accordance with policy SP29
- Biodiversity and Ecology Assessment is required due to the modification and conversion of the structure which is a pre-1940 building within 400m of woodland and/or water and a pre-1914 brownfield site as well as affecting a location where protected species are present.
- Appendix 2 of the LPA's Biodiversity Guidance due to clay tiled pitched roof would trigger a protected species survey for bats, barn owls and breeding birds

Drainage

- No drainage provided, not in accordance with policy SP27

Waste storage

- The Waste SPD states that waste should be stored within the premises or within the external boundary of the premises
- The waste should be screened
- Does not meet the LPAs guidance for waste storage or recycling
- No swept path analysis for the bin collection or delivery/collection route
- Waste is stored in front of the premises under a window
- 9 1100ltr Eurobins are required for the site not 1 which would result in the loss of parking to align with the SPD for wastes requirements

Heritage Impacts

- Not in accordance with SP25 as the impact on the non-designated heritage asset has not been shown with a heritage statement
- A heritage statement should be submitted due to St Johns Church a Local Heritage Asset

Contamination

- Contamination assessment is required due to the former use as part of the Ritchie Products site which is brownfield land

Drawing inconsistencies

- Location and block plan include the footway but the proposed and existing site plans show the boundary to the perimeter of the building
- Do not reflect the title deeds of 1D Rolleston Road
- No elevations are provided

Validation

comments have been received in relation to the following forming part of the validation process:

- Elevations of the building including external alterations should be provided
- A flue system for the café use is required and the need for external ducts /exhaust would be a material change

- Structural survey is required due to conversion
- Certificate B only has 1 stated owner but the site comprises 2 parcels of land which is incorrect. No evidence of Notice 1 forms have been provided
- Application form description is different to that of the application form
- Trade waste is collected from the site weekly which conflicts with the application which states that there is nowhere to store and aid the collection of waste
- Insufficient space and details to store waste/collect from the site
- The applicant is misleading in the site area which is stated as 76sqm not 105sqm
- Forms state that pre-application advice was from a planning enforcement officer rather than a formal pre-planning application
- Enforcement officer advised them to apply for a pavement licence on a separate parcel of private land
- Neighbours not correctly consulted on the proposal
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Other Matters

- Incorrectly validated
- Applicant should be required to provide details of the flues/extraction
- Conflicts between proposal and standards for commercial kitchens
- The neighbourhood plan identifies the site as a part of the former Marston's brewery as such the Brewery Building Conversion Design Guidance is relevant

Comments relating to non-material planning considerations which cannot be taken in to consideration as part of the planning application process

- Legislation relating to food hygiene legislation, ventilation legislation for cooking equipment, internal facilities, noise legislation
- Anti-social behaviour such as drug use and discarded waste within the access and other areas of the site
- The kitchen extract is inadequate
- Rubbish discarded within the residents parking area

1st Re-Consultation (on amended plans and ownership certificates)

9 representations have been received objecting to the scheme 7 from local addresses , 1 from Midland Heart as the landlord of the neighbouring residential development and 1 from a non-local address point which have been summarised below:

Residential Amenity

- Loss of privacy
- Events in the evening and week nights
- Increased noise, litter, pests and traffic than the use as a hair salon
- Adversely affects the residential amenity of the tenants and their needs
- The installed ventilation is inadequate for its size and demand
- Installation of vent is a breach of building control as no application for the alteration/addition of this service has been applied for
- The ventilation is insufficient for the kitchen falls short of the recommendation by Environmental Health Officer
- No assessment has been submitted for the flue
- The wall mounted flue is not appropriate as the building is within 2.3m of neighbouring dwellings and should be 0.6m higher than the neighbouring dwelling (forming a flue 5.6m high)

Highway Impacts

- Customers using residential car park
- Blocking the access to the site
- Not acceptable to use the footway as outdoor seating due to impeding access and should cease forthwith
- Increased traffic movements and parking issues
- More traffic than a hair salon
- Loss of parking space due to storage of waste within a parking space
- Existing parking spaces are substandard
- No plans have been provided of a swept path analysis for waste collection and delivery vehicles for the site
- No turning head has been provided to allow vehicles to enter and leave in a

forward gear

- No transport assessment has been provided for the number of vehicle movements despite 30% of sales coming from the takeaway service
- No bike or E-scooter facilities to store bikes or charge them
- Visitors of residents are not able to park

Waste storage

- Application form ticked no to incorporation of waste facilities
- Query what kind of waste collection is required
- The bin shown is a smaller size to that which is currently used
- Waste is not recycled by the cafe

Contamination

- Site is on a former industrial site which indicates ground contamination is present
- A contaminated land report has not been provided
- Issue of ground gas in the building
- Use of site is vulnerable to issues from contamination

Issues with amended plans

- Too small a scale
- Void of any details
- Parking spaces are not dimensioned
- No turning areas shown or visibility splays
- The existing floor plan is inaccurate as the building is shown 13.4% smaller than existing as it is set in by 300mm on all sides
- Inaccurate floor plans will mislead the decision maker due to inaccuracies
- The plans indicate that the footpath is 12.5% wider than it actually is
- Rear wall is shown 500mm further in from its actual position which shows a space larger than a bin store can be shown
- Bin is shown in a different location to where it is kept
- The screening is not fixed and not installed in accordance with the waste SPD as the bin is higher than the screening and visible from the public highway
- The bin screening is a different size to that shown on the drawings, measures 1480x 1450mm as erected
- The path to the rear is only 0.708m wide not 1.16m wide as shown on the drawings

Other Matters

- Validation date of the application has changed
- Site area is wrong at 76sqm as this is now 300sqm
- Different description to that which is on the forms
- Works to the site are complete despite no being ticked on the forms
- Opening hours do not include hours of opening outside of their declared hours of operation
- Opens out of advertised hours for events more than is indicated
- Number of takeaways is higher than that cited
- Delivery drivers do not arrive by bike or eV as stated within the application
- Anti-social behaviour
- The proposal is not in accordance with BS5906:2005 (waste management in buildings)

Comments relating to non-material planning considerations which cannot be taken in to consideration as part of the planning application process

- The extract system exceeds the noise levels for BS8233:2014 Sound Insulation and Noise Reduction for Buildings
- Breaches the noise regulations

2nd Re-consultation (on amended plans and description)

3 representations have been received objecting to the scheme 2 from a local address and 1 from Midland Heart as the landlord of the neighbouring residential development which have been summarised below:

Principle of development

- 1D should be classified as F2, a community asset and not as a class E retail store
- Previous uses other than this were not constant for 10 years and the use has not changed from the news cabin No permitted development rights for a change from F2 to a class E café
- No application for prior approval sought before the start of the development and the GPDO rights under schedule 2 part 3 class C do not apply and cannot be used as a fall-back option for the applicant
- The application must be made on current legislation without relying on outdated or inappropriate permitted development rights

Visual Impact/heritage impacts

- Harms the views to the locally listed asset

Residential Amenities

- Noise from bin collection in the morning
- Bin is emptied at 03:15am by a truck reversing down the driveway with a reversing alarm

Waste Storage

- Waste storage is not integrated into the scheme and relocating the bin store is in a dominant location obstructing the footway
- Screening for the bin no longer being used and not in keeping
- Application P/2013/01341 states that refuse and recycling will need to be presented to the front of their properties for collection due to the gated access. It would be inconstant of the LPA to take a different stance

Highway Impacts

- Bin obstructs footpath
- Access is inadequate for the bin lorry to access
- Location of bin store conflicts with parking for the cafes spaces and parking spaces for neighbouring houses
- Council collect recycling during a morning school run obstructing the driveway
- No swept path analysis provided
- Width of access should be 5m in relation to BS5906:2005 for waste collection
- Driveway longer than the 12m recommended for reversing vehicles and narrower than 5m
- Highways comments relate to class E, not class F2 as a news cabin this misunderstanding may have arisen due to the LPA's inaccurate and unclear planning history
- Visibility splay and swept path analysis (submitted by neighbour) indicates that the access fails to provide both elements adequately
- Change in use will increase demand on access exacerbating safety concerns
- Original decision for the access is flawed leading to subsequent decisions being compromised
- All objectors have raised significant concerns which appear to have been overlooked by the highway team
- The highway safety concerns need to be re-evaluated
- Material considerations need to be looked at prior to any decision being issued including any new factors that arise (R (Kides) v South Cambridgeshire District Council [2002] EWCA Civ 1370)

Drainage

- Bin store area is poorly drained and causes oily discharge to flow over the pedestrian and vehicular access

Rights of access

- Reserve the right to take action in relation to any trespass and/or excessive use of easements

Planning History

- Application PA/00936/007 was refused due to lack of on-site parking and delivery space highlighted within application PA/00936/006 which stated the extension could only be used for storage not retail space.

- The LPA has maintained that the premises is inadequately equipped and should not have their operational use expanded without provision of much needed off street parking, manoeuvring and delivery space.
- The current application does not address these concerns and could undermine public trust in the LPA
- Applications CU/00936/014 & CU/00936/015 demonstrate that the site had previous access to 26 parking bays when the applications PA/00936/006 & 007 were considered. Since redevelopment the site now has access to 2 parking bays, given previous concerns about the lack of parking any change raise questions about consistency of decision making.
- The full planning history is not available to view online and some of the planning applications are relevant

Case Law

One representation has referred to the following cases:

- Relating to residential to commercial development and cessation of use, Ewen Developments Ltd v Secretary of State for the Environment [1980] JPL 404, CA; Howes v Secretary of State for the Environment [1984] JPL 439, Hodgson J; Somak Travel v London Borough of Brent [1987] JPL 630 Stuart-Smith J
- Hillside Parks Ltd (Appellant) v Snowdonia National Park Authority (Respondent) [2022] UKSC 30. Relating to an historic masterplan for a residential development, due to changes in the site no longer being a valid permission
- Newbury District Council v Secretary of State for the Environment [1981] AC 578. Regarding validity of planning conditions and material considerations relate directly to the use and development of the land
- Courts have further clarified that considerations unrelated to land use, such as financial inducements, cannot be treated as material in planning decisions. This principle has been upheld in subsequent cases, such as Westminster City Council v Great Portland Estates Plc [1985] AC 661 and Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759, reinforcing that material considerations must have a clear and reasonable connection to the development in question.

2 Further representations received after the consultation period ended

First Response using ITE VPH rates (an American based institution, although international)

- 100sqm café traffic generated per hour is 32-46 two way vehicle trips per hour (8-12 two way trips for 40% of takeaway business), retail has 12-20 and a hair salon 6-10, existing office 3-4 per hour during peak trips. Which exceeds the 30 two-way trips traffic generation a traffic plan is required to manage and mitigate the traffic impact
- Highways Authority comments regarding traffic impact of the existing use compared to a café and takeaway are flawed as they are not comparable, no substantive evidence provided to support this and undermines the validity of the application

Second Response using Chartered Institution of Highways and Transportation (CIHT) and trip generation data derived from the TRICS database

- Small cafes generate 17-34 trips per hour exceeding the current or alternative uses (6-10 trips per hour for retail 3-5 per hour for a hair salon) during peak hours exceeds the traffic generated by a retail or hair salon
- Exceeds the 30 two way trips per hours threshold as outlined by Highways England's for requiring a travel plan and a detailed traffic assessment and travel plan should be considered to address traffic impact

Planning Officer's Assessment

ASSESSMENT

The main considerations in the determination of this application are considered to be the principle of the development, the impacts on visual amenities and heritage assets, the impacts on residential amenities and highway safety.

The national and local planning policies relevant to these issues are listed on page one of this report.

Principle of the Development

This proposal relates to an existing retail unit which falls within Class E of the Use Classes Order. The unit is located within the settlement of Burton upon Trent as set out in Policy SP2 of the Local Plan where there is a presumption in favour of sustainable development. The site is located adjacent to a Local Centre, Horninglow Road North as defined within Policy SP20 of the Local Plan and within Policy HE1 of the Neighbourhood Plan. A map extract of Policy HE1 from page 21 of the Neighbourhood plan identifying the Local Centre is indicated below which wraps around the corner of Horninglow Road North and Rolleston Road:



Following the changes to the Use Class Order which came into force on the 1st September 2020 a shop and Café fall within the same use class, Class E, therefore no planning permission is required to change the use from a retail unit to a café. No planning permission or policy requirements such as marketing information would therefore be required for this use change.

However takeaway uses fall within a Sui Generis use and therefore as a result planning consent is required.

Comments have been received in relation to the use class of the premises falling within Class F.2 (community asset). In order to fall within this use class, the shop would have to sell essential goods to visiting members of the public where there is no such facility within a 1000 metre radius of the shops location and the premises covers an area not more than 280 square metres. The previous use did not fall within this definition.

Overall it is considered that given the established Class E use and the proximity to the Local Centre, it is considered that in principle the change of use to incorporate a takeaway element is appropriate as the use would serve the local community and would comply with Policies SP1, SP2, SP20 and SP21 of the Local Plan subject to the other material considerations (being addressed) as set out below.

Visual Amenities

No external alterations to the building have taken place apart from the addition of an external vent, installed since the submission of the application. This was required due to the installation of an internal extraction system (discussed below). The proposal is considered acceptable in visual amenity terms and complies with Local Plan Policies SP1, SP24 and DP1 and the NPPF.

There is signage to the exterior of the building which is considered under separate Advertisement Legislation, an informative to the applicant will be added to any permission making them aware that any signage may require advertisement consent.

Heritage Assets

In determining planning applications with respect to any building or other land in a conservation area, local planning authorities are under a statutory duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special

attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the secretary of state shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

As Sections 66 (1) and Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 are not engaged, no heritage statement would be required.

The site does not sit within or anywhere near a designated Conservation Area. To the south east of the premises on the opposite side of Rolleston Road lies St Johns Church which is identified as a non-designated heritage asset within the Neighbourhood Plan (Policy HE11). There is also a Grade II listed building, The Chestnuts approximately 120m to the west beyond the residential housing development.

In relation to the impact on the Listed building The Chestnuts to the west, given that there are no external alterations and there is no intervisibility between 1D and the Listed Building due to the intervening residential development and separation distance, the proposed development would have not impact on the building or its setting and Sections 66 (1) and Section 72 are therefore not engaged.

In relation to the non-designated Heritage Asset, St Johns Church given that there are no external alterations, the proposed development would have not impact any listed building or its setting and Sections 66 (1) and Section 72 are therefore not engaged.

Residential Amenities (including noise)

In terms of the specific planning grounds with regards to noise, disturbance and pollution the Council's Environmental Health Officer have raised no objections.

During the process of the application an external vent and an internal kitchen extraction system have been installed. Environmental Health have stated that the means of natural or mechanical ventilation to all cooking equipment other than microwave ovens, is required in relation to Regulation (EC) 852/2004 which is separate legislation to planning legislation.

Comments have been received in relation to the need for a flue to be sited on the premises 5.6m high, however no flue forms part of this proposal and therefore does not form part of this application. Environmental Health have confirmed that the kitchen equipment installed only requires an external vent.

The Environmental Health Officer has raised no objections in relation to the noise following the submission of the details for the internal kitchen extract equipment or in relation to noise from the use of the premises. It is acknowledged that the kitchen extraction is a domestic system which can be considered acceptable under separate Environmental Health Legislation.

Comments have been received in relation to the noise level of the Kitchen Extract exceeding the recommendations of BS8233 and the noise at work regulations. This is however located within a separate room to that of the dining/serving area of the premise and Environmental Health have commented that the recommendations of BS8233 are not relevant due to this location. Noise at Work regulations are also separate legislation to that of the planning system and not applicable in this case.

Environmental Health have confirmed that the premises is now registered as a food premises and have confirmed that the food safety informative recommended in their initial comments is no longer required.

It is noted that Environmental Health can also take action under their own powers if there is significant noise, disturbance or smells arising, that impact on any nearby residents.

The previous use of the premises as a retail shop had no restriction in terms of hours of use. The café use proposes the following opening hours:

08:30 to 14:00 on Mondays to Fridays and between 09:00 to 13:00 on Saturdays and 09:00 to 12:00 Sundays and Bank Holidays.

The hours are considered reasonable having due regard to the nearby residential occupiers and a condition is recommended to restrict the opening to these hours.

The application includes late night Psychic supper evenings seven times per year. Given that these are an occasional opening for a specific event, it is not considered that the frequency of these events would be detrimental to the amenities of the occupiers of neighbouring dwellings. A condition is recommended to secure a record of these events.

It is not considered that the new use as a café and takeaway would generate significantly different levels of footfall to cause demonstrable harm to the amenities of the occupiers of the neighbouring dwellings over that of the previous retail use.

The proposals include no external changes to the premises, therefore there is no adverse impact on the amenities of the adjoining occupiers from overlooking, loss of privacy or loss of light over and above the existing situation.

The premises benefits from a Class E use class, which covers a variety of uses which includes but is not limited to: retail, financial and professional, café or restaurant, offices, clinics and health centres, creches, day nurseries, and indoor recreation. Whilst this proposal includes a Sui Generis use of a Takeaway a condition is recommended to ensure that the unit cannot be changed to any other use within Class E without the necessary planning permission in order to limit any impacts to neighbouring properties given these other uses would require the need for different operating arrangements and could potentially give rise to additional impacts over and above that of the proposed café with takeaway use.

Comments have been received in relation to noise and disturbance from a private bin collection in the early hours of the morning which is dealt with under separate Environmental Health Legislation.

As such the proposal is not considered to cause significant harm to the amenities of the occupiers of neighbouring residential dwellings and is therefore considered to comply with the Local Plan policies.

Highway Safety

The site is located within a sustainable location in transport terms with public transport links along Rolleston Road and Horninglow Road North in close proximity to the site. It is also recognised that there are large numbers of residential properties and a number of employment uses within Dover Road, all within walking distance of the premises.

Along Rolleston Road there are double yellow lines on either side of Rolleston Road adjacent to the building which restricts parking in the vicinity. There are two parking spaces associated with the café use situated immediately to the rear of the building, which are accessed via the access road to the residential parking area for the dwellings adjacent. Despite comments from an objector regarding the allocation of these two spaces, they were identified within the redevelopment scheme as allocated to 1D Rolleston Road and did not form part of the parking for the residential development.

The Parking Standards SPD states that for a café use there should be 1 parking space per 10sqm, this proposal would therefore require 8 parking spaces. There are no parking standards for takeaway premises.

Policy HE5 of the Neighbourhood Plan refers to parking standards for residential development only and does not provide any guidance on parking provision for Class E uses. Comments have been received in relation to policy HE7 of the Neighbourhood Plan which identifies the junction of Horninglow Road North and Rolleston Road as an

area for improvement through developer contributions. However no developer contributions can be sought from the current proposals given the scale of the change of use, contributions in this case would not be reasonable, necessary or proportionate to the development.

During the application process the gates to the residential parking area have been relocated further into the site which allows access to the 2 parking spaces allocated for the café use, without reliance on the gates being unlocked or inhibiting the rights of access of the occupiers of 1D to their parking spaces. Bollards have also been installed since the submission of the application along the footway to the front of the premises which prevents parking on the private footway and blocking access to the residential car park.

The Highway Authority have stated that the site is within an area of mixed commercial and residential uses with parking restrictions in the immediate vicinity and little car parking available, whilst the proposal would impact on the morning peak times it will not impact the evening peak times. The Highway Authority have raised no objections on the grounds of highway safety to the use of the premises as a café with takeaway subject to a condition to restrict the hours of opening.

Given the location of the site within a sustainable location it is not considered reasonable to require the provision of a cycle store or facilities to charge Escooters. It is also noted that comments have been received in relation to the site requiring a transport assessment due to the changes in the level of vehicles movements to the site. However given the scale of the development, the change in the number of vehicular movements is not considered significant and a transport assessment is therefore not required.

Comments have been received in relation to the lack of parking facilities for people with a disability and is therefore not accessible to all. Whilst it is acknowledged that there are no disabled parking facilities within the site, the site is within a sustainable location with Blue Badge holders able to park within the Highway for a period of up to 3 hours, and the café premises does have a level access and a wide doorway to allow access for all.

An objection has been received in relation to the number of vehicle trips per hour using different calculations which means a travel plan is required. However the requirement of a travel plan is reviewed on a case by case basis and the Highway Authority have not considered that one is required within their response. A travel plan is therefore not considered necessary.

Whilst it is acknowledged that there is a shortfall in parking, given the sustainable location adjacent to the Local Centre, the extent of both residential properties and commercial premises within walking distance of the site and no objections from the Highway Authority, it is not considered that a reason for refusal on parking/highway safety could be sustained, given that the use of the premises as a café can be carried out without the need for planning permission.

It is noted that the access and footway to the front of the premises are not part of the public highway and the use of these is subject to private legal matters between the applicant and the landowner rather than a planning matter, as would any issues relating to obstruction of this access or footway.

An objector has raised the issue of the lack a swept path analysis within the submission and the adequacy of the access for a refuse lorry. The proposals result in no changes to the access to the residential properties. The bollards now installed prevent parking within the access drive, ensuring that access is maintained. The use of the access by a private refuse company is a private legal matter between the owner of the access, (Midland Heart) and 1D Rolleston Road and is not a planning matter. However it is noted that waste collection for 1D can easily take place from the public highway. A swept path analysis is therefore not required.

Comments have also been received in relation to a movable notice board being sited within the public footpath, this falls within the remit of the Highway Authority rather than the Local Planning Authority.

Comments have also been received in relation to the refuse bin obstructing the disabled footway access to the housing development. The bin is stored behind a ramp to the service doorway, and given the width of the bin and siting, adjacent to the level footway, it is considered that the footway is not restricted over and above that of the existing ramp, therefore it does not prevent access for residents of any ability.

It is also noted that whilst there are restrictions to parking within the vicinity, obstruction of the public highway is a Police/Highway Authority issue.

Contamination

Ground contamination was identified, remediated and gas protection measures installed as part of the adjacent residential development. The proposals result in no alterations to the building or the breaking of any ground therefore there is no risk of any further exposure and Environmental Health have confirmed that no contaminated land assessment or remediation works are required in this case.

Ecology

The proposal has not extended the building and no works to the roof of the building form part of this proposal as such Ecological surveys are not required. Therefore the proposal is not considered to cause harm to the ecology or biodiversity and is therefore compliant with policy SP29 of the Local Plan and the NPPF.

Waste

The site has a Eurobin supplied by a private waste collector sited towards the western end of the building beyond the access ramp to the service door. During the application process a wicker screen has been added to the plans. Whilst the position of the bin means it is visible, the wicker screen proposed would restrict full views of the bin and any recycling from Rolleston Road. A condition is recommended to ensure that the wicker screen is provided and retained for the lifetime of the development.

The adequacy of the waste and recycling facilities on site and compliance with the Waste SPD have been questioned by an objector. The waste at the site is collected by a private company, Wilshees and as such the Council's guidance is not relevant. It is noted that the Council collect cardboard from the site which an objector has noted obstructs the access during collection times.

Issues relating to the storage of waste and collection are covered under separate legislation.

Further comments have been received regarding bin collections from outside of the residential properties and within the access drive, disturbing residents. The footpath and access are private so this is a separate legal matter between the owners of the access, Midland Heart and the operators of 1D Rolleston Road.

Planning Officer's response to Parish Council and Neighbour Comments

An objector has raised comments in relation to the site previously forming part of Marston's Brewery with the Brewery Building Conversion Design Guidance being relevant. The building has been previously used as a retail unit and this proposal has not changed the exterior, therefore this document is not relevant to this proposal as no works to convert the building have taken place which require planning consent.

An objector has cited a case (in Bradford) where a change of use of a retail unit to a daytime coffee shop with micro pub was dismissed at appeal (APP/W4705/W/22/3308920) on the grounds of noise and disturbance to residents and highway safety. This case was for a different use and late opening hours so not a direct comparison to this application. Notwithstanding this, each application must be considered on its own merits.

An objector has questioned the change in development description to that on the application forms. The Local Planning Authority can agree changes to the description with the applicant/agent which differs to that on the forms throughout the course of the application. It is noted that in this case all neighbours have been re-consulted on the changes made.

	<p>An objector has questioned the accuracy of the plans submitted which have been amended during the process of the application. The onus is on the applicant to provide accurate plans</p> <p>Site History An objector has commented on the history of the site and applications previously refused for an extension of the building with a flat above (PA/00936/007 see history above) this is materially different to the current proposals and therefore not relevant.</p> <p>The same objector has made comments in relation to application PA/00936/006, for an extension to the building to be used as storage which included a condition relating to the use of the area for storage only and not floor space. The relevant area is utilised as storage and a WC within the current proposals. It should be noted that subsequent applications/changes of use can supersede previous permissions and their conditions.</p> <p>The same objector has also made comments on application CU/00936/014, for extending the existing building and CU/00936/015 which related to a dropped kerb and a change of use of a different building within the former Ritchie's Site. Neither of these applications are directly relevant to this application due to material changes to the site and were considered under previous Local Plan policies.</p> <p>Other Matters Raised by Objector: In relation to the inconvenience of the access gates to the residential development being locked, this is a legal issue between the residents and Midland Heart as the owners.</p> <p>In relation to Building Regulations, this is not a material planning consideration.</p> <p>In relation to an outdoor seating and pavement licence, this is no longer relevant given the amendment to the application proposal.</p> <p>In relation to drainage issues and the proposal not being in accordance with policy SP27. The proposals are for change of use of an existing premises with no changes to the drainage. As such policy SP27 is not relevant in this instance.</p> <p>In relation to the non-compliance with policy SP15 which refers to Tourism, Culture and Leisure development, this policy is not relevant.</p> <p>In relation to the collection of recycling by the Council during the morning school run. Issues relating to the timing of the waste collection are dealt with under separate legislation. Council bin collections are not relevant to the current application.</p> <p>In relation to an oily discharge from the waste bin flowing onto the private access and footway. This is dealt with under separate Environmental Health Legislation.</p>
<p>Conclusion and recommendation</p>	<p>The application is recommended for approval subject to conditions. The proposal is considered to be in a sustainable location, adjacent to an existing Local Centre as defined within the Policy SP20 and Neighbourhood Plan Policy HE1 and within a Main Town as identified in policy SP2 of the Local Plan.</p> <p>The use of the premises as a Café with Takeaway is therefore considered acceptable and would not harm the character and appearance of the locality and would not cause significant harm to the amenities of the occupiers of the neighbouring residential premises or result in adverse highway safety. The proposal would not result in harm to ecology or adversely affect the setting of the neighbouring non-designated heritage asset and is therefore in accordance with the Local Plan, Horninglow and Eton Neighbourhood Plan, SPDs and the NPPF.</p>
<p>Section 106 required?</p>	<p>No</p>
<p>Recommended conditions</p>	<p>1: Approved Plans The development hereby permitted shall be carried out in accordance with the following approved plans subject to compliance with other conditions of this permission:</p>

Drawing No's:
A201 Proposed floor Plan scaled at 1:1000 and 1:50 dated as received on 15 October 2024
A101 Existing Site Plan scaled at 1:1000 and 1:50 dated as received on 15 October 2024

Reason: For the avoidance of doubt to ensure the development will not adversely affect the appearance of the locality, the amenities of neighbouring properties, or the safe and efficient use of the adjoining highway(s) in accordance with East Staffordshire Local Plan Policies SP1, SP2, NP1, SP20, SP21, SP22, SP25, SP29, SP35, DP1, DP5, DP6, and DP7, Horninglow and Eton Neighbourhood Plan Policies HE1, HE5 and HE11, the East Staffordshire Design Guide, Parking Standards Supplementary Planning Document and the National Planning Policy Framework.

2: Use restricted to that applied for

Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 or any order revoking and re-enacting that Order, this permission shall grant the use of the premises known as 1D Rolleston Road as described in your application and for no other purpose.

Reason: To ensure any future use of the premises does not adversely affect the amenities of occupiers of adjoining properties and the locality in general in accordance with the National Planning Policy Framework and East Staffordshire Local Plan Policies SP1 and DP7.

3: Hours of Opening

The Café and takeaway use hereby permitted shall not be open to customers outside the following times; between 08:00 to 14:00 Mondays to Fridays, 09:00 to 13:00 Saturdays and between 09:00 to 12:00 on Sundays and Bank Holidays.

Reason: To protect the amenities of occupiers of adjoining properties and the locality in general in accordance with East Staffordshire Local Plan Policies SP1 and DP7 and the National Planning Policy Framework.

4: Private Events

Notwithstanding any other conditions within this consent, prior to any Psychic Supper event outside of the opening hours within condition 3 a minimum of one weeks' notice shall be given in writing to the Local Planning Authority detailing the date, event type and hours of opening.

There shall be no more than 7 events of this type per annum.

Reason: To protect the amenities of occupiers of adjoining properties and the locality in general in accordance with East Staffordshire Local Plan Policies SP1 and DP7 and the National Planning Policy Framework

5: Bin Store

Notwithstanding the details identified in Condition 1, within 3 months of the date of this permission details of an adequate bin store including screening shall be submitted to and approved in writing by the Local Planning Authority. Once approved the bin store shall be installed in accordance with the approved details and shall be retained as such for the lifetime of the development.

Reason: To safeguard the character and appearance of the building(s) and its heritage assets surroundings in accordance with East Staffordshire Local Plan Policies SP1, SP24, SP25, DP1 and DP3, the East Staffordshire Design Guide and the National Planning Policy Framework.

Biodiversity Net Gain Wording for Decision Notice:

Biodiversity Net Gain

Unless an exception or a transitional arrangement applies, the effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition "(the biodiversity gain condition)" that development may not

	<p>begin unless:</p> <p>(a) a Biodiversity Gain Plan has been submitted to the planning authority, and (b) the planning authority has approved the plan.</p> <p>The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan in respect of this permission would be East Staffordshire Borough Council.</p> <p>This development has been considered as an exempt development in accordance with the submissions and the requirements set out in the following link: Biodiversity net gain: exempt developments - GOV.UK (www.gov.uk)</p>
Recommended informatives	<p>1: Engagement (Proactive) During the course of consideration of this proposal the Local Planning Authority has negotiated with the applicant to ensure the development complies with relevant development plan policies and material planning considerations including the National Planning Policy Framework. It is therefore considered that the Local Planning Authority has worked proactively with the applicant to secure a development that improves the economic, social and environmental conditions of the area in accordance with the requirements of paragraph 38 of the National Planning Policy Framework.</p> <p>2: Rights of Access Informative You are advised that any grant of planning permission does not override private legal matters such as rights of access onto lands outside the applicant's ownership for the purposes of maintenance or use of the land.</p> <p>3: Signage The applicant is advised that any signage may require an application for advertisement consent to be submitted to the Local Planning Authority.</p>
Officer Details	<p>Gary Shilton Tel: 01283 508607 Gary.Shilton@eaststaffsbc.gov.uk</p>
Human Rights Act Considerations	<p>There may be implications under Article 8 and Article 1 of the First Protocol regarding the right of respect for a person's private and family life and home, and to the peaceful enjoyment of possessions. However, these issues have been taken into account in the determination of this application.</p>
Crime and Disorder Implications	<p>It is considered that the proposal does not raise any crime and disorder implications.</p>
Equalities Act 2010	<p>Due regard, where relevant, has been given to the East Staffordshire Borough Council's equality duty as contained within the Equalities Act 2010.</p>