

## **APPLICATION REPORT – 20/01237/FUL**

**Validation Date: 19 November 2020**

**Ward: Chorley East**

**Type of Application: Full Planning**

**Proposal: Change of use from retail to restaurant and hot-food takeaway (sui-generis) and installation of flue to rear of property**

**Location: P R Crompton Butchers 229 Eaves Lane Chorley PR6 0AG**

**Case Officer: Mrs Hannah Roper**

**Applicant: Mr Patel, Akil Properties**

**Agent: Mr Yunus Jiva, AZH Consultancy**

**Consultation expiry: 15 December 2020**

**Decision due by: 25 June 2021**

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### **UPDATE**

1. Members will recall that consideration of the application was deferred at the Planning Committee on 7 September 2021 to give members the opportunity to visit the site. The original committee report follows on below.
2. Members will also recall that it was reported on the Addendum that additional correspondence had been received from the owner of the first floor flat reiterating their original objections and stating that they have concerns regarding access and egress to their property due to the location of the door at the bottom of the stairs, regarding LCC Highways comments that no parking issues exist, that issues relating to noise and smells have not been adequately addressed and that under no circumstances will they permit a flue to be attached to the external elevation of their property.
3. Correspondence was also received prior to the last committee meeting from Councillor Khan on behalf of a resident raising concerns about vehicles parking on the pavement despite the crossing and bollards, vehicles parking on yellow lines on Kershaw Street and vehicles parking on the pavement over the road. Photos have also been submitted showing Kershaw Street heavily populated with on street parking.
4. An additional condition is also recommended.
5. The recommendation remains to approve the application.

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### **PREVIOUS REPORT**

### **RECOMMENDATION**

1. It is recommended that planning permission is granted subject to conditions.

## **SITE DESCRIPTION**

2. The application relates to a terraced property located on Eaves Lane, Chorley within the Eaves Lane (South) Local Centre. The ground floor unit is currently vacant having most recently been used as a butcher's shop. The first floor is occupied by a residential flat that is accessed by an external staircase to the rear of the property.

## **DESCRIPTION OF PROPOSED DEVELOPMENT**

3. The application seeks planning permission to change the use of the ground floor unit from a retail use to a restaurant and takeaway and for the erection of a flue to the rear of the property. This would protrude from the ground floor rear wall upwards beyond the eaves to approximately ridge height.
4. The proposed hours of operation have not been supplied.

## **REPRESENTATIONS**

5. Two representations have been received citing the following grounds of objection:
  - Parking in the surrounding area
  - Late night noise and disturbance
  - Potential for odours
  - Issues in relation to the upstairs flat including that the owners would not allow the flue to be attached to the first floor rear external wall and it would restrict access to electricity cables and a waste water outlet
  - Smells coming into the property
  - The door at the bottom of the stairs would impede access
  - Buildings insurance would increase
  - Property values would decrease
6. A petition has been received with 18 signatures raising concerns regarding the impact on parking.
7. One letter of support has been received suggesting limited inside eating and good extraction to deal with issues

## **CONSULTATIONS**

8. Regulatory Services - Environmental Health – Noted the potential for increased noise and disturbance as a result of the proposal, especially from the extraction system and requested a noise survey. Subsequently advised the need for a condition to ensure that the noise is mitigated.
9. Lancashire County Council Highway Services (LCC Highways) – Have no objection.
10. CIL Officers – Comment that the proposal is not CIL liable.

## **PLANNING CONSIDERATIONS**

### The principle of the development

11. The application site is located within a settlement area and so policy V2 of the Chorley Local Plan 2012 - 2026 is applicable and provides a presumption in favour of appropriate sustainable development, subject to material planning considerations and the other policies and proposals within the Plan. Relevant such policies are addressed below.
12. The application site also lies within a District Local Centre, to which policy EP7 of the Chorley Local Plan 2012 - 2026 applies. The policy states:

*The boundaries of the District and Local Centres are defined on the Policies Map. The following criteria apply for change of use and development in District and Local Centres:*

- a) Planning permission will be granted for A1, A2, A3, and A4 uses which support the role and function of District and Local Centres.*
- b) A5 uses (hot food takeaways) will be permitted where the proposal would not adversely impact, either individually or cumulatively, on the function, vitality and viability of the centre.*
- c) Planning permission will be not be granted for non-retail uses (including the loss of A1 use) unless it can be shown that there is no demand for retail or commercial use or the property was last occupied by a no- retail/non-commercial use. This will need to be demonstrated through an active 12-month marketing process showing that the property has been offered for sale on the open market at a realistic price and that no reasonable offers have been refused.*

*The provision of flats on the upper floors of the building will be encouraged but this will not apply where the applicant can demonstrate that the whole building will be fully utilised for retail/commercial purposes.”*

13. The premises are currently vacant having previously been used as a butcher's shop. It is not considered that the proposal would adversely impact on the function, vitality and viability of the centre, rather it would likely have a positive impact by removing a vacant unit. It is considered that there would be no conflict with policy EP7 of the Chorley Local Plan 2012 – 2026.

#### Design and impact on the character and appearance of the immediate locality

14. *Policy BNE1 of the Chorley Local Plan 2012 – 2026 states that planning permission will be granted for new development, provided that the proposal does not have a significantly detrimental impact on the surrounding area by virtue of its density, siting, layout, building to plot ratio, height, scale and massing, design, orientation and use of materials.*
15. The proposed flue would be located to the rear of the property on the back wall. It would be predominantly screened by the outriggers of the directly adjacent properties and the side elevation of no.1 Kershaw Street. It would not protrude above the ridge of the property and as such, given the commercial nature of the surroundings and the gates to the rear alleyway that restrict access, it is considered acceptable and that it would not result in a detrimental impact on the surrounding streetscape or locality.

#### Impact on residential amenity

16. *Policy BNE1 of the Chorley Local Plan 2012 – 2026 states that planning permission will be granted for new development, including extensions, conversions and free-standing structures, provided that (amongst other things):*
  - g) The proposal would not cause an unacceptable degree of noise disturbance to surrounding land uses*
17. The unit to which this application relates is located in a mixed residential and commercial area. The property has a residential flat at first floor, as do neighbouring units. At the request of the council's Regulatory Services, the applicant has submitted a noise survey to assess the potential impacts of the extraction system in terms of noise to neighbouring residential properties.
18. This report concludes that a mechanical ventilation system could be installed at the property without detrimental impact on neighbouring dwellings, subject to a number of criteria being met. These criteria could be conditioned.
19. The flue would extract odours 1.69m above eaves level and as such these would be dissipated above the level of any habitable room windows located in the rear elevations of

the adjacent property. The proposed flue would be visible, but not obtrusive in terms of the outlook.

20. No details of the exact extraction system to be used have been submitted, however details of its operation are acceptable. Matters relating to fixing to walls and access to services of the upstairs flat are civil issues and an informative on any planning permission would outline the need for this to be addressed outside of the planning system. This is especially relevant given that the owner of the first floor flat has stated that they will not permit the fixing of any extraction unit to their exterior wall.
21. With regard to internal noise generation and general comings and goings, the proposed use must be considered against the existing lawful use and the uses that would be permitted without planning permission and also that there are no restrictions on the current operating hours. In an area such as this it, it is not unusual for residential and commercial uses to operate in close proximity and as such, it is considered that subject to controls over the hours of operation being conditioned that the proposed use is acceptable. It should be noted that whilst the extraction system may be acceptable between certain hours that other causes of noise and disruption may result in a shorter acceptable period of operation of the business.

#### Highway safety

22. Policy ST4 of the Chorley Local Plan 2012 – 2026 sets out the approach to parking standards, with additional information provided in Appendix A. LCC Highways have been consulted on the proposals and have raised no objection.
23. Whilst the property does not have any dedicated parking it is located in the established commercial and residential area of Eaves Lane. LCC Highways have been consulted on the proposal and have not raised any concerns as there is a pedestrian crossing directly outside the premises with the associated zig zag markings which runs across the majority of the parade of shops. and additional waiting restrictions on the side street to protect the junctions onto Eaves Lane from obstructive parking. It is also noted that there are bollards on the side street closest to the site (Kershaw Street) to ensure part parking does not occur and bollards on the section of footway on Eaves Lane where the site is. These bollards also remove the ability to park on the adopted footway outside the site and the adjacent premises. There are unrestricted parking bays on Eaves Lane which are shared for the residents and businesses.
24. The site is located in a sustainable location, on a main road and close to bus stops. The proposed restaurant and hot food takeaway, therefore, do not raise any highway safety or parking concerns.

#### **CONCLUSION**

25. It is considered that the proposed change of use could operate in close proximity to the nearby residential dwellings without detrimental impact in terms of odours and noise disruption subject to appropriate conditions. LCC Highways have no concerns given the existing lawful use of the property and the sustainable location. It is, therefore, recommended that the application is approved subject to conditions.

**RELEVANT POLICIES:** In accordance with s.38 (6) Planning and Compulsory Purchase Act (2004), the application is to be determined in accordance with the development plan (the Central Lancashire Core Strategy, the Adopted Chorley Local Plan 2012-2026 and adopted Supplementary Planning Guidance), unless material considerations indicate otherwise. Consideration of the proposal has had regard to guidance contained within the National Planning Policy Framework (the Framework) and the development plan. The specific policies/guidance considerations are contained within the body of the report.

### Suggested conditions

1. The development hereby permitted shall be carried out in accordance with the approved plans below:

<b>Title</b>	<b>Plan Ref</b>	<b>Received On</b>
Site Location and Layout Plan	01/PL/D1	19 November 2020
Proposed Floor Layouts	04/PL/D1	19 November 2020
Proposed Elevations	03/PL/D1	19 November 2020

*Reason: For the avoidance of doubt and in the interests of proper planning.*

2. The proposed development must be begun not later than three years from the date of this permission.

*Reason: Required to be imposed by Section 51 of the Planning and Compulsory Purchase Act 2004.*

3. The uses hereby approved shall only operate (including any extraction equipment) between the following hours:

08:00am and 9:00pm Monday to Friday  
08:00am and 10:00pm Saturdays  
09:00 and 09:00pm on Sundays or Public/Bank Holidays

*Reason: In the interests of protecting the amenity of neighbouring properties.*

4. Noise emissions data for the proposed extractor unit shall operate at a level no greater than that outlined in the Noise Impact Assessment completed by Clemence Acoustics, dated 1st June 2021 and received by the Local Planning Authority on 9th June 2021. Mitigation shall be undertaken in line with paragraph 6.3 of this report with both the kitchen extractor fan and attenuator installed internally within the building envelope. These measures shall be maintained in perpetuity for the lifetime of the use unless otherwise agreed in writing by the Local Planning Authority.

*Reason: In the interest of protecting the amenity of neighbouring properties.*

5. Notwithstanding any details already submitted, full details of the extraction/ventilation including all external fixings and flue, shall be submitted to and approved in writing by the Local Planning Authority.

The extraction system and external fixtures shall be installed in accordance with the approved details, prior to the first use of the restaurant/takeaway use and no others substituted without written permission of the Local Planning Authority.

The approved ventilation/extraction system shall be operated only in accordance with the approved opening hours and shall be maintained in perpetuity for the lifetime of the use.

*Reason: In order to protect the amenity of neighbouring occupiers.*

### **RELEVANT HISTORY OF THE SITE**

**Ref:** 78/00381/FUL      **Decision:** PERFPP      **Decision Date:** 2 May 1978  
**Description:** New shop front to butchers shop

**Ref:** 04/00725/FUL      **Decision:** PERFPP      **Decision Date:** 24 August 2004  
**Description:** Conversion of first floor over shop to self contained flat with external staircase

**Ref:** 13/00252/FUL      **Decision:** PERFPP      **Decision Date:** 20 May 2013  
**Description:** Retrospective permission sought for erection of external staircase to rear