

**SHERINGHAM – PF/24/2541 - Proposed change of use from a shop (Class E) to a hot food takeaway (no specified use class), installation of extraction flue at Shop 1, 37 High Street, Sheringham, Norfolk, NR26 8DS**

**Other Minor Development**

**Target Date: 31.03.2025**

**Extension of time: 31.03.2025**

**Case Officer: Miss Isobel McManus**

**Full Planning Permission**

**RELEVANT SITE CONSTRAINTS:**

Within Sheringham's designated Town Centre Within a Primary Retail Frontage which runs from 27 High Street to 13-15 Station Road

Within a Primary Shopping Area

Within Sheringham's designated Settlement Boundary

Within Sheringham Conservation Area

**RELEVANT PLANNING HISTORY:**

IS1/22/2621: Proposed change of use from a shop (Class E) to a hot food takeaway (no specified use class) - Advice Given (for pre-apps)

Whilst not part of the planning history of the application site, the recent decision relating to planning application PF/24/1827 is relevant given the similar circumstance being also for a hot food takeaway at a property very close by at 10 Church Street (85 metres away) which is also within the Town Centre and Primary Shopping Area.

That application was refused by the Development Committee contrary to the officer recommendation to approve it at its meeting on 14 November 2024 for the following reason:

*The Local Planning Authority considers that the proposed change of use would result in harm to the vitality and viability of Sheringham Town Centre through the loss of a retail unit within the Primary Retail Frontage Area and would result in an over concentration of hot-food takeaways within this designation contrary to the aims of adopted North Norfolk Core Strategy Policy EC5.*

*Furthermore, the proposed change of use and associated operational activity would be considered detrimental to the amenity of the occupiers of the residential flats above the development contrary to the aims of Policy EN 4 in respect of protecting residential amenity.*

**THE APPLICATION:**

Site description

The site is occupied by a two-storey terraced building within the town centre of Sheringham. The current ground floor has a Use Class E and the first floor is a two bedroom residential flat. The site is situated within the Sheringham Conservation Area. The site is accessed off the high street to the west. The site is adjoined by a charity shop (use class E) to the south and a gelato and coffee café (use class E) to the north.

Proposal

The application seeks permission for a change of use from a shop (Class E) to a hot food takeaway (no specified use class) and the installation of an extraction flue to the rear roof slope of the building. It would project approximately 2 metres above the roof itself with the top sitting very slightly lower than the ridge. It would sit approximately 7 metres back from the front elevation.

## **REASONS FOR REFERRAL TO COMMITTEE:**

At the request of the Assistant Director – Planning on the following basis:

“While Council Officers will be recommending refusal of this application (PF/24/2541), the recommendation is for different reasons than those used when a similar(ish) application (PF/24/1827) was refused for a site on Church Street, Sheringham at a recent Committee meeting (on 14th November 2024).

That application (PF/24/1827) was called in by Councillor Withington – and that was an instance where Council Officers had recommended approval of the application.

As a consequence of the above it is considered appropriate for the Committee to also consider this current application (PF/24/2541)”.

## **CONSULTATIONS:**

**Sheringham Town Council: Object.** Their comments in summary are:

- The application is contrary to the Guidance from Public Health England supporting environments that contribute to healthy lifestyles and reduces obesity.
- There are already circa 40 food outlets in Sheringham, object to the further proliferation of hot food takeaways in Sheringham.
- Issues with car parking posing safety and nuisance issues.
- Property unsuitable in size with lack of outdoor space for refuse collection, impractical to install a flue without impacting on neighbours.
- Noise and odour will impact on neighbouring residents.
- Thought to be a high risk of an unacceptable high level of litter generated.
- In the Town Council’s response to NNDC planning policy consultation in 2019, of the two general points made, one was that the Town Council were keen for the policy to limit the development of floorspace for food and beverage.
- Would be pleased to see the currently vacant retail outlet returned to use but a hot food takeaway is the least attractive proposition.

**North Norfolk District Council Conservation and Design: Object.** The comments in summary are:

Concern that the position and size of the proposed flue will make it overly prominent from High Street and in turn have a negative visual impact on the character and appearance of the Conservation Area. This would result in a degree of harm at the lower end of the ‘less than substantial’ scale paragraphs 213 and 215 of the NPPF require any degree of harm to a designated heritage asset to be supported by clear and convincing justification in addition to being outweighed by any public benefit the scheme may offer. Whilst there may be limited options for arranging the internal space and the ducting for the extract system, if the flue could be situated further across the roof slope it would help to reduce its visibility from the

street. It should also be given a dark finish to help ensure that where it might be visible it is at least recessive.

**North Norfolk District Council Environmental Health: No objection** subject to a condition regarding the installation and maintenance of the extraction system. The comments in summary are:

Welcome the provision of the detailed noise and odour reports and the controls outlined therein.

Provided that the extract system and abatement is installed and maintained as submitted there are no objections.

**Norfolk County Council Highways: No objection**. The comments in summary are:

Would not affect current traffic patterns or the free flow of traffic

## **REPRESENTATIONS:**

Two received **OBJECTING** on the following summarised grounds:

- Amenity – odour and noise due to the location of the flue being adjacent to residential properties and businesses.
- Proposal would be detrimental to a balanced thriving town.
- Refuse access is down a private right of way. Refuse would create a vermin problem.
- Current drains struggle, the additional waste created as a result of the proposal would cause drain issues.

## **HUMAN RIGHTS IMPLICATIONS**

It is considered that the proposed development may raise issues relevant to

Article 8: The Right to respect for private and family life.

Article 1 of the First Protocol: The right to peaceful enjoyment of possessions.

Having considered the likely impact on an individual's Human Rights, and the general interest of the public, refusal of this application as recommended is considered to be justified, proportionate and in accordance with planning law.

## **CRIME AND DISORDER ACT 1998 - SECTION 17**

The application raises no significant crime and disorder issues.

## **LOCAL FINANCE CONSIDERATIONS**

Under Section 70(2) of the Town and Country Planning Act 1990 the council is required when determining planning applications to have regard to any local finance considerations, so far as material to the application. Local finance considerations are not considered to be material to this case.

## **RELEVANT POLICIES:**

**North Norfolk Core Strategy (September 2008):**

Policy SS 1 Spatial Strategy for North Norfolk  
Policy SS 5 Economy  
Policy SS 12 Sheringham  
Policy EC 5 Location of retail and commercial leisure development  
Policy EN 2 Protection and Enhancement of Landscape and Settlement Character  
Policy EN 4 Design  
Policy EN 8 Protecting and enhancing the historic environment  
Policy EN 13 Pollution and hazard prevention and minimisation  
Policy CT 5 The Transport Impact of New Development  
Policy CT 6 Parking Provision

Material Considerations:

**National Planning Policy Framework**

Chapter 2 Achieving sustainable development  
Chapter 4 Decision-making  
Chapter 6 Building a strong, competitive economy  
Chapter 7 Ensuring the vitality of town centres  
Chapter 8 Promoting healthy and safe communities  
Chapter 12 Achieving well-designed and beautiful places

**OFFICER ASSESSEMENT:**

**MAIN ISSUES FOR CONSIDERATION:**

- 1. Principle of development**
- 2. The external appearance of the proposed development and its effect on the character and appearance of the conservation area**
- 3. The effect on the living conditions of the occupiers of adjacent dwellings**
- 4. Highways**

**1. Principle of development**

Planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise.

The application site is located within the designated Settlement Boundary of Sheringham, which is classed as a Secondary Settlement for the purposes of the spatial strategy set out in Core Strategy (CS) Policy SS 1. Policy SS 5 sets out a retail hierarchy to guide decisions on the scale of new retail and leisure developments that will be permitted with Sheringham having a "Small Town Centre" for the purposes of the policy. The site is within the designated Town Centre, a Primary Shopping Area (PSA) and a Primary Shopping Frontage (PRF). It is a location where new main town centre uses including hot food takeaways are considered acceptable in principle.

The proposal is for the change of use from a shop to a hot food takeaway (which does not fall within a specified use class). Following amendments to the Town and Country Planning (Uses Classes Order) 1987 in 2021, the existing lawful use of the property as a shop now falls within Class E(a) whereas previously it was within Class A1. Hot food takeaways were previously with Class A5.

Policy EC 5 states Primary Shopping Areas and Primary Retail Frontages are defined in order to concentrate retail development in central areas of towns and to protect shopping areas. Within Primary Retail Frontages as defined on the Proposals Map, proposals that would result in more than 30% of the defined frontage being used for non-A1 uses (as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended)) will not be permitted.

The weight given to the restrictive aspect of this policy has become diminished following changes to the Use Classes Order and The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) which has allowed more flexibility between use classes and changes of use. As of September 2020, a number of categories of uses within Class A were brought into a new Use Class E. Classes A1 (shops), A2 (financial and professional), A3 (restaurants and cafes) as well as parts of D1 (non-residential institutions) and D2 (assembly and leisure) are now all within Class E and they can change between the different uses within it without the need for planning permission.

Whilst the site does lie within a Primary Retail Frontage, it is considered that the intention of the recent changes to the Use Classes Order was to enable greater flexibility in terms of changes of use within town centres. As such it is considered that only very limited weight should now be attached to this part of the policy.

Notwithstanding this, even if significant weight were to be attached to the 30% restriction of Policy EC 5 then the proposal would not conflict with the aims of Policy EC 5. The table below shows that there are 16 shopfronts in the Primary Retail Frontage within which the property is located, two of which are not within Class E (or what was previously Class A). Whilst approval of the proposal would increase the number to 3, this would be below the 30% limit which equates to 4.8, rounded to 5 – the proposal therefore complies with the policy.

***Table 1 Breakdown of the use classes within the relevant Primary Retail Frontage (PRF) area.***

No.	Unit	Use Class E	Sui Generis
1	Public House		x
2	Estate agent	x	
3	Post Office customer services point	x	
4	Newsagent	x	
5	Gift shop	x	
6	Cafe	x	
7	Coffee shop	x	
8	Bank	x	
9	Pizza restaurant	x	
10	Gift Shop	x	
11	Charity Shop	x	
12	<b>Hot food takeaway (as proposed)</b>		x
13	Cafe	x	
14	Toy shop	x	
15	Optician	x	
16	Hot food takeaway		x
TOTAL		13	3

As noted in the representations, Public Health England have published guidance on how to use the planning system to promote healthy weight environments. With hot food takeaways now not within a specified use class, there is scope for local authorities to have greater control, through using the planning application process, to prevent the proliferation of hot food takeaways. The Planning Practice Guidance (PPG) also supports actions, such as the use of exclusion zones, to limit the proliferation of certain unhealthy uses within specified areas such

as proximity to schools and in areas of deprivation and high obesity prevalence. However, within the context of North Norfolk there is no current policy basis upon which to reject proposals on such grounds within either the current Core Strategy, nor the emerging policies with the North Norfolk Local Plan. There is also not a planned Supplementary Planning Document relating to these issues.

Overall, it is considered the principle of the proposed change of use is acceptable and in accordance with CS policies SS 1, SS 5 and EC 5.

## **2. External appearance of the proposed development and its effect on the character and appearance of the conservation area**

Policy EN 4 amongst other matters requires all development to be designed to a high quality, reinforcing local distinctiveness, ensuring appropriate scale and massing, whilst having regard to the North Norfolk Design Guide.

CS Policy EN 8 states that development proposals, including alterations and extensions, should preserve or enhance the character and appearance of designated assets through high quality, sensitive design.

Section 72 of the Planning (Listed Buildings and Conservation Areas Act) 1990 (LBCA) states that with respect to any buildings or other land within a conservation area, in the exercise of relevant functions under the Planning Acts, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. In this instance the whole site falls within the Sheringham Conservation Area and as such the statutory duty imposed by Section 72 is engaged.

Paragraph 212 of the National Planning Policy Framework (NPPF) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 215 of the NPPF provides that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

Given the location of the site within the town centre which contains a mix of commercial use, the proposed change of use would preserve the character and appearance of the Sheringham Conservation Area.

No changes to the shopfront are proposed with the only external alteration being the installation of the extract flue which would be located on the rear of the property. The proposed flue would be sited to the rear roof slope of the property. It would project approximately 2 metres above the roof itself with the top sitting very slightly lower than the ridge. It would sit approximately 7 metres back from the front elevation. The Conservation and Design officer considers that because of its size and siting the proposed flue would be prominent in views from High Street which would result in negative visual impact on the character and appearance of the Sheringham Conservation Area.

The flue would only be visible in a relatively limited view from the north along High Street over the top of the adjoining single storey shop unit (35 High Street). It would not be visible in longer views south along High Street or in the views northwards. It is unlikely that it would be visible from public vantage points elsewhere within the conservation area. Given this and with a condition requiring the flue to have a dark matte finish to ensure that where it would be visible it is at least recessive, it is considered the visual impact would be limited resulting in a low level of less than substantial harm to the significance of the heritage asset along it.

Weighing this harm against the public benefits as is required by paragraph 215 of the NPPF, it is considered that securing a viable use of a vacant town centre property and the retention / creation of four local full and part-time jobs are such benefits that outweigh the limited harm. Therefore, on balance, it is considered that the proposals accord with CS Policies EN 4 & EN 8.

### **3. Living conditions**

Policy EN4 requires that proposals should not have a significantly detrimental effect on the residential amenity of nearby occupiers. Residents have the right to adequate privacy levels and to be kept free from excessive noise and unwanted social contact.

The site is located in a town centre and is surrounded by a mixture of uses comprising of commercial, retail as well as residential units. The closest dwellings are to the rear and a flat on the upper floor of the building.

The proposed opening hours of the hot food takeaway would be 11:00 to 23:00 daily (Monday – Sunday). This reflects the opening times of similar businesses found in the town centre and are not considered to be unreasonable.

A noise impact assessment has been submitted in support of the application. The proposed noise mitigation measures as outlined on page 16 of the noise report are:

- To install an in-line attenuator between the fan and the outlet duct terminus

An odour impact assessment conducted in accordance with the guidance set out in the EMAQ (2022) Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems has also been submitted in support of the application.

As detailed on page 6 of the odour report, the odour levels produced by a fish and chip shop (as proposed) are considered high on the EMAQ total significance score scale (at 31 out of a possible 45). A high level of odour control is therefore required.

The proposed odour mitigation measures as outlined on page 16 of the odour report are:

- The kitchen ventilation system proposed will include Electrostatic Precipitator technology (which removes oil, grease and smoke particles) followed by carbon filtration with pre-filters before discharging vertically via a high velocity flue 1m+ above eaves at the rear of the building.

The Council's Environmental Health Officer (EHO) has confirmed that the measures outlined within both the noise and odour reports are adequate provided that the proposed extract

system and abatement is installed prior to the use commencing and for it to thereafter be maintained in accordance with the manufacturer's instructions.

On that basis and with no objections raised by the EHO, the proposed development does not give rise to any environmental concerns relating to contamination, noise or odour that would be harmful to the living conditions of nearby occupiers. Accordingly, subject to the imposition of conditions, the proposed development complies with Policy EN 13 of the adopted North Norfolk Core Strategy.

#### **4. Highways**

The property currently has no car parking for either staff or customers and there is no scope to provide any, which is the case for the vast majority of commercial properties within the town centre. Being within the town centre however, means that the site has good accessibility for walking, cycling and by public transport. The town centre is well served by public car parking, the closest being at Morris Street to the west of the site which provides approximately 115 spaces. The larger car park off Station Road is also a short distance away and there are some limited waiting time on street parking spaces on the west side of High Street including directly opposite the property.

Norfolk County Council Highways have raised no objection to the proposal.

Officers consider that, on balance, the lack of onsite vehicle parking would not result in any significant harmful highway impacts. The proposal complies with CS policies CT 5 & CT 6 relating to highway safety and parking provision.

#### **Other considerations:**

##### Waste management

The nature of the proposal is a hot food takeaway with no indoor seating proposed, this means the food would be eaten off site. However, an operational hot food takeaway has a need to dispose of rubbish onsite. Officers note that the only available outdoor space where refuse bins are proposed to be stored is a very small open courtyard which is immediately adjacent to dwellings (no.33a and 33b). There remains a possibility that the storage of refuse bins in such close proximity to dwellings could have a significant and detrimental impact on the outlook of adjoining residents as well as materially harming the living conditions of occupiers due to odours deriving from the storage of waste in relation to the hot food takeaway.

In addition, there is no access to the rear of the premises apart from through the front premises. The refuse bins would therefore have to be taken through the premises for collection. Officers concur with the Councils Environmental Protection and Public Protection (food safety and hygiene) department that this refuse arrangement is not acceptable.

With no adequate provision for refuse storage and disposal the proposal gives rise to serious concerns relating to Environmental Public Protection (food safety and hygiene). Whilst The Environmental Protection Act (1990) is a separate legislation to The Town and Country Planning Act (1990), Officers still need to be content as part of the planning application process that the premises could operate with acceptable means of refuse.



From a site visit and google street view, it is evident that the premises was previously occupied by a food business known as 'Just Noodles' which the Council do not have records that they were operating with the correct planning permission. In any case, the use has not yet become immune from enforcement action.

Despite this, Officers acknowledged that the previous food business would have probably operated in a similar vein with regards to refuse collection, this is not to say this was acceptable or operating with the appropriate consents.

If the application were to be approved with a condition requiring details of adequate refuse storage and collection, it would likely not be acceptable to be discharged or enforceable. This is because the land locked nature of the site with no rear access would mean any waste would have to travel through the kitchen where food preparation would take place as well as the customer service point.

### Public Health

This is often a concern regarding the number of fast-food takeaways in Sheringham and matters relating to public health and obesity.

Given general concerns regarding obesity, the effect on public health is a material consideration in the assessment of this application and paragraph 96 of the NPPF sets out amongst other things that planning policies and decision should aim to achieve healthy and safe places which enable and support healthy lives, through both promoting good health and preventing ill-health, for example through access to healthier food.

Specifically, with regards to hot food takeaways as is proposed, paragraph 97 states that "*Local planning authorities should refuse applications for hot food takeaways and fast food outlets:*

- a) *within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre; or*
- b) *in locations where there is evidence that a concentration of such uses is having an adverse impact on local health, pollution or anti-social-behaviour".*

With regards to a) above, there are no schools in close proximity to the site – both the primary and secondary schools are approximately 1.25km away. This would be a reasonable walking distance for secondary school children but not for those in primary school as it would involve crossing busy roads. Nevertheless, the site is located within a designated town centre, so is in an acceptable location in this respect

With regards to b) there is no evidence to suggest that there is a concentration of hot food takeaways in the town centre resulting in an adverse impact on local health, pollution or anti-social behaviour.

The proposal is therefore considered to comply with the guidance in the NPPF, which is a material consideration in planning decisions

Finally, there is no Core Strategy policy that would restrict the provision of 'fast' or unhealthy food options on health grounds.

## **Planning Balance and Conclusion**

The principle of the proposed change of use is considered to be acceptable in terms of Core Strategy Policies SS 1, and SS 5. Following the changes to the Use Classes Order and GPDO, the 30% non-A1 restriction set out under Policy EC 5 is considered to be diminished and in any event the proposal still complies with this policy because the 30% limit would not be exceeded.

Officers identified some, albeit limited, heritage harm resulting from the proposed flue siting and size. However, subjecting to securing the colour finish by condition, the public benefits of securing a viable use with the retention / creation of four local full and part time jobs are considered to outweigh the limited less than substantial harm to the heritage asset (Sheringham Conservation Area).

There are no concerns with regards to highways safety and parking impacts or residential amenity in terms of noise or odour from the proposed extraction system subject to conditional control over the kitchen extraction.

However, the identified benefits as stated above are not outweighed by the lack of adequate refuse storage and appropriate means of waste disposal at the premises. With no adequate provision for refuse storage and disposal the proposal gives rise to serious concerns relating to Environmental Public Protection (food safety and hygiene). This is because the land locked nature of the site with no rear access would mean any waste would have to travel through the kitchen where food preparation would take place as well as the customer service point. These concerns are not outweighed by other planning considerations and on balance, having regard to all the matters raised, the application should be refused on public safety and hygiene grounds.

Overall, the application is not considered acceptable, and REFUSAL is recommended as per the reason listed below.

### **RECOMMENDATION:**

#### **REFUSAL for the following reasons:**

**In the opinion of the Local Planning Authority the inadequate bin storage at the application site will give rise to potential odour issues. In addition, the site constraints are such that the bins would need to be transported through the premises for collection.**

**As such, it has not been satisfactorily demonstrated that the proposal would not be detrimental to the residential amenities of the occupiers of nearby dwellings by way of odour impacts from the bins as well as the health and safety of the public. The proposal is therefore contrary to Policies EN 4 and EN 13 of the North Norfolk Core Strategy and paragraph 187 of the National Planning Policy Framework (February 2025).**

**Final wording of refusal and any others considered necessary to be delegated to the Assistant Director – Planning**