

## PETITION

COMMITTEE DATE: 18/08/2021

APPLICATION No. **21/00829/MNR**

DATE RECEIVED: 01/04/2021

ED: **FAIRWATER**

APP: TYPE: Full Planning Permission

APPLICANT: Mr Roach.

LOCATION: 173 Pwllmelin Road, Fairwater, Cardiff, CF5 3QB

PROPOSAL: CHANGE OF USE FROM A2 ESTATE AGENCY TO A3 HOT FOOD TAKEAWAY

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**RECOMMENDATION 1:** That planning permission be **GRANTED** subject to the following conditions:

- 1 C01 – Statutory Time Limit
- 2 The premises shall principally be used as a restaurant/hot food takeaway, café or coffee shop only and for no other purpose (including any other purpose in Class A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any statutory instrument amending, revoking or re-enacting that Order).  
Reason: The use of the premises for other purposes within Class A3 could detract from the amenities of nearby occupiers.
- 3 Members of the public shall only be admitted to or allowed to remain on the premises between the hours of 08:00 and 23:00 on any day.  
Reason: To ensure that the amenities of other premises in the vicinity are protected, in accordance with policy EN13 of the Local Development Plan.
- 4 If at any time the use of the premises requires the installation of any external extraction equipment associated with the permitted use, details of the equipment shall be submitted to and approved by the Local Planning Authority in writing prior to installation of the extraction equipment.  
Reason: To ensure that the amenities of occupiers of other premises in the vicinity are protected, in accordance with policy EN13 of the Local Development Plan.
- 5 Prior to beneficial use secure and covered cycle storage shall be provided for staff use within the site to accommodate at least 1 cycle and shall thereafter be retained.  
Reason: To ensure that secure and under cover cycle parking facilities are provided to encourage other modes of transport over the private

car, in accordance with Policy T5 of the Local Development Plan.

**RECOMMENDATION 2:** The applicant is advised that a commercial contract is required for the collection and disposal of all commercial wastes under section 34 of the Environmental Protection Act 1990. Owners or developers of commercial developments/properties who require Cardiff County Council to collect and dispose of their waste are advised to contact the Commercial Services dept. (tel: 029 2071 7500).

**RECOMMENDATION 3:** The granting of planning permission does not remove the need to comply with the statutory nuisance provisions of the Environmental Protection Act 1990. The rating level of the noise emitted from fixed plant and equipment on the site shall achieve a rating noise level of background -10dB at the nearest noise sensitive premises when measured and corrected in accordance with BS 4142: 2014 (or any British Standard amending or superseding that standard).

**RECOMMENDATION 4:** The applicant is advised that a suitable grease trap should be provided to prevent entry into the public sewerage system of matter likely to interfere with the free flow of the sewer contents, or which would prejudicially affect the treatment and disposal of such contents.

## 1. **DESCRIPTION OF PROPOSED DEVELOPMENT**

- 1.1 The application seeks planning permission to change the use of a single storey commercial building from a letting agent (class A2) to a hot food takeaway (class A3).
- 1.2 Internally the premises has a floor area of 46 square metres. Pedestrian access would be via the existing shop front door.

## 2. **DESCRIPTION OF SITE**

- 2.1 The premises is lies within a group of commercial units adjoined by a beauty salon at no. 171B Pwllmelin Road and a pharmacy shop at no. 68 Plas Mawr Road.

## 3. **SITE HISTORY**

- 3.1 17/02034/MNR – planning permission granted for single storey extension to office unit (A2).

07/00011/W – planning permission granted for single storey extension to shop unit.

06/02175/W – planning permission granted for change of use from A1 shop to A2 financial and professional services and alterations to shop front.

92/00774/W – planning permission refused for extension of opening hours of proposed cafe and use as a take-away.

91/00778/W – planning permission granted for conversion to café.

3.2 Related History:

12/01520/DCO – planning permission granted and implemented for refurbishment of existing A1 retail unit and change of use to A3 hot food takeaway including new external fascia sign new gated access to rear service yard reinstating existing rear access door and windows to rear side & front elevations at no. 56A Plas Mawr Road.

10/02218/DCO – planning permission granted for new hot food takeaway in single storey extension to side and rear of existing fish and chip shop new mechanical extract flue and relocation of rear external fire escape staircase at no. 58 Plas Mawr Road.

4. **POLICY FRAMEWORK**

4.1 Relevant National Planning Guidance:

Planning Policy Wales (Edition 11, 2021)  
Future Wales - the National Plan 2040

4.2 Relevant Cardiff Local Development Plan (2006-2026) policies:

Policy EN13 (Air, Noise, Light Pollution and Land Contamination)  
Policy R8 (Food and Drink Uses)  
Policy T5 (Managing Transport Impacts)  
Policy W2 (Provision for Waste Management Facilities in Development)

4.3 Relevant Supplementary Planning Guidance

Food, Drink and Leisure Uses (2017)  
Managing Transportation Impacts (Incorporating Parking Standards) 2018  
Waste Collection and Storage Facilities (2016)

5. **INTERNAL CONSULTEE RESPONSES**

5.1 Neighbourhood Services – request a condition to require details of external kitchen extraction equipment to be submitted and agreed.

5.2 Transportation – no comments received.

5.3 Waste Management – A change of use from A2 to A3 may lead to an increase in the volume of waste produced. The proposed storage area at the rear of the property is acceptable. All A3 units are required to provide litter bins at the front of the unit in order to prevent littering on the adopted highway. The tenant will be required to provide, service and empty a litter bin to be placed at the front of the unit during opening hours and removed from the highway

during closing hours. (Please refer the applicant to Paragraph 5.12 of the Food, Drink and Leisure Uses Supplementary Planning Guidance: 2017).

## 6. **EXTERNAL CONSULTEE RESPONSES**

6.1 South Wales Police – no comments received.

## 7. **REPRESENTATIONS**

7.1 The application was publicised by letter and site notice. A petition of objection was received, signed by 195 residents. Full details are viewable online.

7.2 Objections were received from nos. 171B Pwllmelin Road, 56A and 58 Plas Mawr Road. Full details are viewable online, their comments are summarised as follows:

- a) *Noise and smell impact;*
- b) *No details of extraction system;*
- c) *Concentration of existing class A3 uses;*
- d) *Antisocial behaviour;*
- e) *Parking impact;*
- f) *Waste;*
- g) *Impact upon business of existing hot food takeaway premises.*

7.3 The landlord of the property (Cardiff Council Estates) have commented, summarised as follows:

*As landlord, unwilling to provide consent for the permission of a change of use as per the lease commencing 1<sup>st</sup> May 1982. The parade on which the unit is situated currently provides a good tenant mix. It incorporates the right proportion of various retail traders that satisfies the surrounding residential area. It is considered that another A3 user within the parade will not benefit the parade or existing community.*

## 8. **ANALYSIS**

### 8.1 **Land Use Policy**

The application site is located within the settlement boundary as defined by the LDP proposals map and outside of a designated district or local centre. The existing A2 use is afforded no specific land use policy protection or designation. The application premises comprise one of a number of commercial premises (Use Classes A1/A2/A3/) within a commercial frontage.

The proposal should be assessed against Policy R8: Food and Drink Uses which identifies that food and drink uses are most appropriately located in the city centre (Central Business Area), the inner harbour/waterfront area of Cardiff Bay (Bay Business Area) and District and Local Centres. Food and drink uses are unlikely to be acceptable within or adjacent to residential area,

where they would cause nuisance and loss of amenity, or result in the loss of a residential property.

Although outside of a designated district of local centre, the application premises fall within an extended commercial shopping parade, where similar uses are already located and the change of use would not result in the loss of residential accommodation. Assessed against the above policy framework, the application raises no land use policy concerns.

## 8.2 Residential Amenity

Policy R8 of the LDP identifies that A3 (food and drink) uses are most appropriately located in the City Centre, the Bay and District and Local Centres, and the Food, Drink and Leisure Uses SPG identifies that A3 (food and drink) uses are most appropriately located in the City Centre Principal Shopping Area, District and Local Centres and the City Centre Principal Business Area. It is noted that the site is not located within a designated commercial centre and there is residential accommodation above other commercial premises in the locality. However, having regard that the premises is located within a terrace of commercial uses including class A3 uses at nos. 56a & 58 Plasmawr Road, the proposed use is considered appropriate. Residents in a mixed use commercial location cannot expect the same standards of amenity as those living in a wholly residential area.

It is noted that a previous application (92/00774/W) to extend the opening hours of and use as a take-away was refused, for loss of amenity from opening after 6pm. However, since then class A3 hot food takeaway uses with evening opening have been approved at 56A and 58 Plas Mawr Road, and the Cardiff Local Development Plan was adopted in January 2016 superseding previous development plan policies.

Conditions are considered necessary: (2) to prevent any future changes of use within the A3 use class to a more harmful use such as a public house; (3) to restrict the opening hours to 08:00 – 23:00; and (4) to require details of any future extraction system to be submitted and agreed. Having regard to the above it is considered that the proposal would not have any unreasonable amenity impact.

## 8.3 Crime & Disorder

Paragraph 3.11 of Planning Policy Wales states that '*Local authorities are under a legal obligation to consider the need to prevent and reduce crime and disorder in all decisions that they take. Crime prevention and fear of crime are social considerations to which regard should be given in the preparation of development plans and taking planning decisions.*' The Food, Drink and Leisure Uses SPG identifies District Centres as an appropriate location for food and drink (A3) uses, subject to detailed considerations. The SPG states that consideration should be given to whether a proposal, in conjunction with existing and approved similar uses, would create a concentration of such uses, or give rise to (or exacerbate) problems of public safety and security.

South Wales Police were consulted, no comments were received.

Condition 3 would restrict opening to the hours of 08:00 – 23:00, and condition 2 would prevent any future changes of use within the A3 use class to more harmful uses such as a public house. Having regard to the above it is considered that the proposal would not have any unreasonable crime/disorder impact.

#### 8.4 Transportation

The Managing Transportation Impacts (Incorporating Parking Standards) SPG identifies a minimum requirement of no car parking spaces and cycle parking for staff at a ratio of 2 per 100 square metres for class A3 uses. The proposed use is therefore considered to be car parking policy compliant. Secure and covered cycle parking for staff use can be satisfactorily accommodated at the rear, condition 6 is considered necessary to ensure cycle storage is provided prior to beneficial use. A condition preventing hot food takeaway sales would be unsustainable on the basis that existing class A3 uses within close proximity to the site have no restriction on hot food take away use.

#### 8.5 Access

The entrance is level with the street, it is therefore considered that the proposal is inclusive in terms of access equality.

#### 8.6 Other Matters

The request from Waste Management for a litter bin to be placed outside the unit is not considered reasonable having regard that there are existing litter bins within close proximity to the application site in front of this frontage of commercial units.

#### 8.7 Representations

The representations received from neighbouring residents/business occupiers are noted. Specific issues are addressed as follows:

- a) Noise/smell impact: It is considered that the proposal would not result in unacceptable noise consequences as detailed within the above analysis. Condition 3 would restrict opening to the hours of 08:00 – 23:00, and condition 4 would require details of any kitchen extraction system to be submitted and agreed prior to installation, as requested by Neighbourhood Services. There are also additional statutory powers to control noise under the Control of Pollution Act 1990.
- b) No details of extraction system: Condition 4 would require details of any kitchen extraction system to be submitted and agreed prior to installation.
- c) Concentration of existing class A3 uses: The proposed use is considered policy compliant as detailed within the land use policy analysis.
- d) Antisocial behaviour: It is considered that the proposal would not result in unacceptable impact as detailed within the above analysis. Condition 3

would restrict opening to the hours of 08:00 – 23:00, and condition 2 would prevent change of use within the A3 use class to more harmful uses such as a public house.

- e) Parking Impact: The proposed use is compliant with the Council's adopted Managing Transportation Impacts (Incorporating Parking Standards) SPG with no off street parking provision as detailed within the transportation analysis.
- f) Waste: A location for the storage of waste within the site has been identified, and confirmed acceptable by Waste Management.
- g) Impact upon business of existing class A3 premises: Not a material planning consideration.
- h) Landlord consent/terms of lease: Not a material planning consideration.

## 9. **OTHER CONSIDERATIONS**

*Crime and Disorder Act 1998* – Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

*Equality Act 2010* – The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The Council's duty under the above Act has been given due consideration in the determination of this application. It is considered that the proposed development does not have any significant implications for, or effect on, persons who share a protected characteristic.

*Well-Being of Future Generations Act 2016* – Section 3 of this Act imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (Section 5). This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.

## 10. **CONCLUSION**

It is concluded that the application is acceptable in accordance with the planning policies listed, and is recommended that planning permission be granted, subject to conditions.

## 11. **ALTERNATIVE RECOMMENDATION**

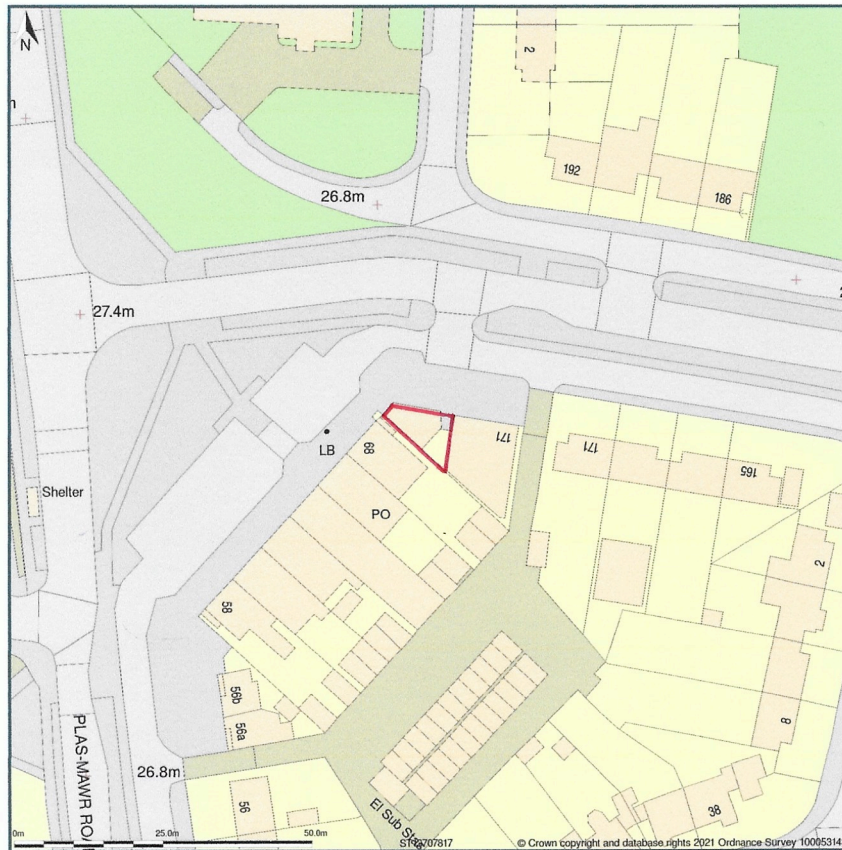
- 11.1 This application was considered at 28<sup>th</sup> July 2021 Planning Committee where it was resolved to defer the application to the next meeting of Planning Committee

for reasons for refusal. If members remain minded to refuse the application the following reasons are suggested :

1. The premises are located in a primarily residential area outside an existing district or local centre and the proposed use is considered likely to result in nuisance and loss of amenity to adjoining and nearby residents by virtue of smell, noise, and general disturbance, particularly during the evenings. The proposal is therefore contrary to Policies EN13 and R8 of the Cardiff Local Development Plan (2016-2026), and the advice given in the Council's Food and Drink and Leisure Uses Supplementary Planning Guidance.



**Mr Homes, 173, Pwllmelin Road, Fairwater, Cardiff, CF5 3QB**



Site Plan shows area bounded by: 313630.35, 178104.16 313771.78, 178245.58 (at a scale of 1:1250), OSGridRef: ST13707817. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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173 PWLLMELIN ROAD, FAIRWATER, CARDIFF, CF5 3QB

PROPOSED CHANGE OF USE FROM A2 ESTATE AGENCY TO A3 HOT FOOD TAKEAWAY, 1:500 SCALE

