

**PLANNING COMMITTEE**

**July 4<sup>th</sup> 2023**

**APPLICATION FOR CONSIDERATION**

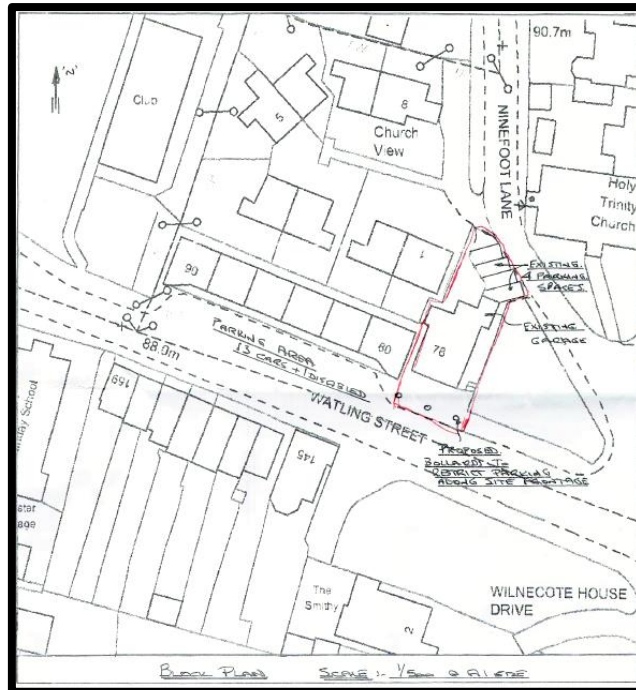
**REPORT OF ASSISTANT DIRECTOR - GROWTH & REGENERATION**

<b>Application Reference</b>	0061/2023
<b>Proposal</b>	Change of use from Retail (Class E) to a mixed use Restaurant (Class E) and Takeaway (Sui Generis)
<b>Site Address</b>	78 Watling Street Wilnecote B77 5BJ
<b>Case Officer</b>	Debbie Hall
<b>Recommendation</b>	Approve subject to Conditions

## 1. **Introduction**

- 1.1 This application is for a change of use from retail (Class E) to a mixed use of Restaurant (Class E) and Takeaway (Sui Generis).
- 1.2 This application is reported to committee as it has been in by Councilor Tina Clements on 24<sup>th</sup> March 2023. It has been called in for the following reasons:
- Possible parking and highway safety issues
  - Lack of space for refuse bins
  - Concern that a hot-Food takeaway is not required in the local area
  - Loss of privacy and overlooking
  - A previous similar application has been refused
- 1.3 Since the original submission, an amended plan has been submitted to give clarity on the parking arrangements with the amended plan showing four parking spaces at the rear. The plan also shows the proposed location for bin storage and a waste bin is proposed by the entrance/exit to the building. In addition, in response to the initial feedback from County Highways, the plan indicates bollards to the front of the building and covered cycle parking to the side.
- 1.4 As a result of the submission of this amended plan an additional consultation exercise was undertaken between 11<sup>th</sup> May and 25<sup>th</sup> May 2023.
- 1.5 Site proposals are to change the use of 78 Watling Street from a retail unit selling windows and conservatories to a restaurant and takeaway. On last enquiring the theme of the restaurant/takeaway was to be Carribean.
- 1.6 The opening hours are proposed to be from 17:00 till 23:00 Monday to Saturday and 18:00 till 23:00 Sundays and Bank Holidays.
- 1.7 The site is located in Wilnecote on the north side of Watling Street approximately 0.2 miles east of the roundabout where Watling Street meets Marlborough Way and Ninian Way and approximately 2.5 miles southeast of Tamworth town centre. To the east of the site is incidental open space, to the west a small shopping parade with parking to the front, and to the north and south is land in residential use.

## Location Plan



## 2. Policies

### 2.1 [Local Plan Policies](#)

- SS1 - The Spatial Strategy for Tamworth
- SS2 – Presumption in Favour of Sustainable Development
- EC1 – Hierarchy of Centres for Town Centre Uses
- EC4 – Supporting Investment in Local and Neighbourhood Centres
- EC6 – Sustainable Economic Growth
- EN5 – Design and New Development
- EN6 – Protecting the Historic Environment
- SU1 - Sustainable Transport Network
- SU2 – Delivering Sustainable Transport
- SU3 – Climate Change Mitigation
- Appendix C – Car Parking Standard

### 2.2 Supplementary Planning Documents

[Design SPD](#)  
[Planning Obligations](#)

### 2.3 National Planning Policy

[National Planning Policy Framework 2021](#)  
[National Planning Practice Guidance 2014-](#)

## 3. [Relevant Site History](#)

T02727	The Erection Of A 2 Storey Building With Retail Shop On Ground Floor And Self-Contained Flat Above.	APPROVED
T03540	Chinese Food Take-Away And Restaurant	REFUSED
T04004	Change Of Use Of 1st Floor To Showroom	APPROVED
T11315	Extension To Existing Shop For Storage Purposes	REFUSED
T12209	New Shop Window And Canopy To Existing Shop Windows And Door	APPROVED
T10025	Advertisement at The Top Shop, Watling Street.	UNKNOWN
T01457	Single storey lock up retail shop	REFUSED

#### **4. Consultation Responses**

- 4.1 Whilst every effort has been made to accurately summarise the responses received, full copies of the representations received are available to view at <http://planning.tamworth.gov.uk/northgate/planningexplorer/generalsearch.aspx>

The consultation responses comments are précised if conditions are proposed these are included at the end of the report unless stated otherwise.

##### **Tamworth Borough Council Consultees**

- 4.1.1 *Tamworth Borough Council Development Plans*  
No objection
- 4.1.2 *Tamworth Borough Council Environmental Protection Officer*  
No objection subject to conditions

##### **Staffordshire County Council Consultees**

- 4.1.3 *Staffordshire County Council Highways*  
No objection subject to conditions

#### **5. Additional Representations**

- 5.1 As part of the consultation process adjacent residents were notified. Whilst every effort has been made to accurately summarise the responses received, full copies of the representations received are available to view at; [Planning Application Search \(tamworth.gov.uk\)](http://planning.tamworth.gov.uk/planning-application-search)
- 5.2 27 letters of objection were received. A summary of their objections is listed below. These are the planning related objections:
- Noise and Smells
  - Highway safety including car parking
  - Air pollution
  - Concerns about littering
  - Light pollution
  - Loss of privacy/overlooking
  - Impact on adjacent conservation area

Other objections were received which were not material to this application.

#### **6. Equality and Human Rights Implications**

- 6.1 Due regard, where relevant, has been given to Tamworth Borough Council's equality duty as contained within the Equalities Act 2010. The authority has had due regard to the public sector equality duty (PSED). Under section 149 of the Equality Act 2010, a public authority must in the exercised of its functions, have due regard to the interests and needs of those sharing the protected characteristics under the Act, such as age, gender, disability and race. This proposal has no impact on such protected characteristics.
- 6.2 There may be implications under Article 8 and Article 1 of the First Protocol of the Human Rights Act, 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.

## **7. Planning Considerations**

7.1 The key issues to be considered at this stage are;

- Principle
- Character and Appearance
- Neighbour Amenity
- Highway Safety
- Other Issues

7.1 Principle

7.1.1 The Tamworth Borough Council Local Plan 2006-2031 (the local plan) was adopted in February 2016. The most up to date national planning guidance which relates specifically to commercial development are contained in the recently adopted Local Plan Policies. As well as the policies contained within Local Plan there is guidance within the National Planning Policy Framework (NPPF) and the accompanying Planning Practice Guidance (PPG).

7.1.2 78 Watling Street is located within neighbourhood centre NC14. This neighbourhood centre is defined in Policy EC4 (Supporting Investment in Local and Neighbourhood Centres) of the Local Plan and its boundaries can be identified on the accompanying Local Plan Policies Map.

7.1.3 Neighbourhood centre NC14 is part of a wider network, together with the town centre and supporting local shopping parades forming Tamworth's hierarchy of centres. This hierarchy is within which main town centre uses should be located, as identified in Policy EC1 (Hierarchy of Centres for Town Centre Uses) of the Local Plan.

7.1.4 Under Policy EC4, neighbourhood centres are suitable for retail, leisure, employment uses, services and community facilities serving local needs. Any change of use which is proposed within a neighbourhood centre should maintain or enhance the range of uses available. Current uses within NC14 include a hairdressers, beauty Salon and numerous other retail premises.

7.1.5 The restaurant element of the proposed use is classified as a 'main town centre use' under the definition set out in the National Planning Policy Framework (NPPF). Although a takeaway does not necessarily fall within this same definition, it would be a use which is compatible with the neighbourhood centre location and therefore would conform to to EC4 of the Local Plan.

7.1.6 More widely, Class E is a wide-ranging use class introduced in 2020 that encompasses commercial, business and services use including retail, restaurants, professional services, non-residential day care services, fitness related services and others as defined by the Town and Country Planning (Use Classes) Order 1987 as amended in September 2020. The application proposes a restaurant use which would be considered permitted development under the new legislation. In effect therefore, the applicant is seeking permission for the hot food takeaway only as this is a sui-generis use and not within Class E.

6.2 Character and Appearance

7.2.1 Policy EN5 – Design of New Development states that developments should be of a scale, layout form and massing which conserves or enhances the setting of development and utilize materials and overall detailed design which conserves or enhances the context of the development. Proposals should respect and where appropriate reflect existing local architectural and historic characteristics but without ruling out innovative or contemporary design which is still sympathetic to the valued characteristics of an area.

7.2.2 The site is located immediately adjacent the Wilnecote Conservation Area. The site is an existing building constructed from brick and tile with large shop windows on the southwest elevation, and two sets of large windows and an entrance door on the southeast elevation. Externally there is a raised area with railings around on the southeast side and four parking spaces and a garage at the rear. The site has been previously used by a retailer selling windows and conservatories however that business has vacated the premises. Above the site is a first-floor apartment which does not form part of the application.

- 7.2.3 A flue is proposed on the southwest elevation facing the conservation area. The elevational drawing shows a boxed in flue extending to just above the eaves of the application building. The flue would not be visible from the majority of the conservation area and the area immediately adjacent the southwest elevation is open space featuring tree cover providing green screening. There are a number of modern buildings and lamp posts in the vicinity and therefore the flue is considered to not be an incongruous feature in the local area.
- 7.2.3 Internal changes which would not require planning permission include the provision of a small waiting area to the left of the entrance and seating to the remainder of the front area. At the rear there would be toilets and a cooking area with a corridor leading through to an emergency exit.
- 7.2.4 Any changes in terms of advertisements, such as fascia signs or window dressings would need to be the subject of a separate advertisement consent and are therefore not being considered in this application.
- 7.2.5 There is therefore considered to be an unlikely to be an impact on this area of special architectural and historic interest. The character and appearance of the proposed development would therefore sit well within the streetscene and is considered to be in compliance with Policy EN5 Design of New Development of the Tamworth Local Plan 2006-2031 and the National Planning Policy Framework.
- 7.3 Neighbour Amenity
- 7.3.1 Policy EN5 – Design of New Development states that developments will be expected to minimise or mitigate environmental impacts for the benefit of existing and prospective occupants of neighbouring land. Such impacts may include loss of light, privacy or security or unacceptable noise, pollution, flooding, or sense of enclosure.
- 7.3.2 The application site is a detached property at the end of a row of single storey commercial units. There are also properties to the rear of the property; 1 Church View being adjacent to the rear of the site. 145 Watling Street is located on the other side of the road from the application site but not directly in front of the ground floor windows.
- 7.3.3 Given the indirect relationship between the front windows on 78 Watling Street and the transient nature of the proposed use, it is unlikely that there will be a significant privacy issue created by the change of use. Furthermore, no external changes are being proposed that would create a significant loss of privacy or overlooking resulting from the proposal.
- 7.3.4 There are no immediate neighbours to the side of the application building where the extraction system is proposed to be located. Therefore, there is unlikely to be an impact on adjacent dwellings in terms of noise and smells from the extraction system. No additional information was submitted in relation to the extraction system however environmental protection are satisfied that this information can be requested as a pre-commencement condition.
- 7.3.5 There may be some additional noise from guests arriving and leaving the restaurant but this is not expected to be excessive. In any event the restaurant use is within Class E and the key issue is whether the inclusion of a takeaway would result in increased noise and disturbance. Tamworth Borough Council's environmental protection department have not objected on the grounds of noise from users of the building nor asked for a condition limiting the opening hours. Were there to be a noise issue, then this would be a matter which would be referred to the council's environmental protection team for investigation and address.
- 7.3.6 Reference was made to light pollution in the objections received. There may be some additional evening lighting in the area resulting from the proposal however there are no neighbours immediately opposite and 145 Watling Street is approximately 20m from front elevation to front elevation at a 30-degree angle. Furthermore, the environmental protection team have not objected on the grounds of excessive light impacting on neighbour amenity.
- 7.3.7 Concerns have been expressed by neighbours regarding littering and concerns about inadequate space for bin storage. In order to address this concern the amended plans includes a waste bin and identified bin store areas.

- 7.3.8 In summary, neighbours have expressed concerns about noise, smells, light pollution and waste and it is considered that measures have been taken to limits these impacts in the form of amendments to the plan and with the use of conditions. Loss of privacy has also been reference however the use as a restaurant is transient in nature
- 7.3.9 As a result the proposal is therefore considered to be in accordance with Policy EN5 Design and New Development of the Tamworth Local Plan 2006-2031 and the National Planning Policy Framework
- 7.4 Highway Safety
- 7.4.1 Policies SU2 and EN5 require development proposals to have particular regard to highway safety, service requirements and the capacity of the local road network and the adopted parking standards set out in Appendix C of the Local Plan.
- 7.4.2 Watling Street is a classified 30 mph road which benefits from street lighting and has footway provision on both sides. There are currently 'No Waiting at any Time' parking restrictions (double yellow lines) along both sides of the road. There is a wide footway fronting the property with a public footpath running along the western boundary linking Watling Street with Ninefoot Lane. Ninefoot Lane which is adjacent to Watling Street is an unclassified lit 30mph road with double yellow lines up to the rear of the property. To the west of the site is a row of businesses which include a beauty salon, barbers, hairdressers, and fabric shop. Fronting the shops is a layby with approximately 15no parking spaces including 1no disabled bay. Parking is restricted to 2 hours Monday to Saturday between 08:00 and 18:00 with no return within 1 hour.
- 7.4.3 This location is an established residential area and has access to the number 8 bus service to the west which runs to Tamworth town centre every 15 minutes. The design and access statement states there will be 4/5 members of staff who live locally and it is recommended that cycle parking is provided for both staff and customers which would enable sustainable travel to and from the proposed hot food takeaway.
- 7.4.4 Deliveries would be to the rear via Ninefoot Lane where there is an existing vehicular access and garage. County Highways have expressed no objection to the use of the rear access for deliveries. Parking is available to the rear with two spaces for the flat and two spaces available for use for the patrons of the hot-food takeaway. For a three bedroom flat this quantum of spaces meets the Appendix C guidelines in the local plan. Two spaces for the hot food takeaway is also considered acceptable. There are several dedicated parking spaces for the users of the retail uses too which notably provide acceptable parking which will be available for users of the takeaway.
- 7.4.5 Staffordshire County Highways have stated that, as the site is close to free public car parking and is in a sustainable location, the proposed level of parking provision is acceptable. Given how busy the pedestrian footway is in this location with the adjacent shops and nearby pedestrian crossing, County Highways have requested bollards are erected lining the full perimeter of the footway fronting the property boundary to prevent vehicles from driving up over the kerbs. This measure will have a positive safety impact for pedestrians walking along the public footway.
- 7.4.6 The County Highways authority did also recommended a Construction Management Plan. This however in planning terms would not meet test c) of planning conditions in the NPPF in being 'fairly and reasonably related in scale and kind to the development.'<sup>1</sup> The only physical external development requiring construction is the erection of a flue which as to be constructed on the side of the building. On this side, there is a grass mound and pedestrian access to the building and therefore it is difficult to see a reasonable need for such a plan to be produced. This has therefore not been included as a requirement on the applicant.

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<sup>1</sup> Page 16 of the NPPF

7.4.7 In summary the amended plan includes measures to address highway safety concerns that were expressed by County highways. Furthermore the amended plan also shows the parking available to the rear with four spaces and County Highways are satisfied the combined on-site and local parking provision is adequate to protect highway safety in the area. The provision of adequate car parking spaces, cycle parking provision and servicing facilities, combined with the sustainable location, means that the proposed development is considered to be a sustainable form of development in accordance with Policy SU2 Sustainable Transport; Appendix C of the Tamworth local Plan 2006-2031 and the National Planning Policy Framework.

## 7.5 Other Issues

7.5.1 Neighbours have expressed concern about the possible air pollution resulting from congestion however it is considered that whilst this is an issue to consider, the impacts for an additional commercial use in a neighbourhood shopping centre are acceptable. Secure cycle parking does also promote sustainable options for travel. Furthermore, it has been deemed that there is adequate parking for the proposal and for planning purposes it must be assumed that visitors to the restaurant and takeaway will park responsibly and therefore there is unlikely to be any additional congestion as a result of the proposal.

7.5.2 A Chinese takeaway restaurant has previously been refused on this site reference T03540 however this took place in 1979 and it is considered that many changes to national and local planning policy have been made since that time. Therefore, little weight is given to this previous determination and the fact that each application has to be judged on its own merits.

7.5.3 Whilst it is appreciated that within the Wilnecote area there are already a number of takeaway restaurants and fast-food outlets it is not for the planning system to determine whether there is the need or demand for such a facility in this context. Therefore, this is not a material consideration that can be considered in determining this application.

## 8 Conclusion

8.1 It is proposed to change the use of the ground floor of 78 Watling Street from retail to a mixed use of restaurant and takeaway. Limited changes to the external appearance of the building are proposed and those that are which are considered to have a minimal impact and therefore the proposal complies with policy EN5 in relation to character and appearance. Restaurant uses can be used without the need for planning permission given that it falls within Class E and therefore the key consideration is whether the introduction of a takeaway element will cause material planning harm to the amenity of the neighbourhood in terms of noise and traffic.

8.2 Environmental Protection have considered the potential impact on neighbours in their response and have suggested a condition that would protect neighbours from excessive noise and smells from the extraction system. Notwithstanding this they provide no overriding concern that the use would significantly harm amenity.

8.3 Staffordshire County highways view that the proposal is acceptable in terms of the impact on the highway and parking subject to conditions relating to parking and bollards which has been agreed by the applicant.

8.4 Overall it is considered that whilst the proposal represents a change to the use of the building which may introduce noise, light and additional traffic/parking over and above what has been experienced thus far, this is not considered to be so significant as to warrant a recommendation for refusal and complies with the Tamworth Local Plan and the NPPF.

## 9 Recommendation

9.1 Approve subject to conditions



## **Conditions**

1. The development shall be started within three years from the date of this decision.

Reason: In compliance with Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. The development hereby permitted shall only be carried out in accordance with the application form and drawing titled 'PROPOSED CHANGE OF USE FROM A SHOP (E CLASS) TO A MIXED USE RESTAURANT (E CLASS) AND TAKEAWAY (SUI GENERIS)' received 21/04/2023 unless otherwise agreed in writing by the Local Planning Authority.

Reason: To define the permission.

3. Before the commencement of the development hereby approved a scheme for the extraction, dispersal and where necessary abatement and control of cooking odour, along with details of all elements of the inlet and extract systems (including noise output if available) and including the external design and appearance, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full prior to the first use of the development hereby approved and shall be retained as such thereafter throughout the life of the development. No modifications to the scheme shall be undertaken without the prior written approval of the local planning authority.

Reason: Given the nature of the proposed development and the insufficient information provided in the planning application, this is required to protect surrounding area from nuisance noise and odour ingress into dwellings and to comply with policy EN5 of the Tamworth Local Plan 2006-2031.

4. The proposed parking as shown on the approved plan shall be provided prior to the first occupation of the proposal hereby permitted. Thereafter these parking areas shall be retained in accordance with the approved plans for the lifetime of the development.

Reason: In the interests of highway safety and to comply with policy SU2 and EN5 of the Tamworth Local Plan 2006-2031.

5. Before the commencement of the development hereby approved, the exterior frontage bollards must be provided in accordance with 'Proposed Ground Floor Plan'. The bollards shall thereafter be constructed out in accordance with the approved plans and shall thereafter be retained as such for the lifetime of the development.

Reason: In the interests of highway safety and to comply with policy SU2 and EN5 of the Tamworth Local Plan 2006-2031.

## **Informative**

- i) The conditions requiring off-site highway works shall require a Highway Works Agreement with Staffordshire County Council. The applicant is requested to contact Staffordshire County Council in order to secure the Agreement. The link below is to the Highway Works Information Pack including an application form. Please complete and send to the address indicated on the application form or email to ([trafficandnetwork@staffordshire.gov.uk](mailto:trafficandnetwork@staffordshire.gov.uk)). The applicant is advised to begin this process well in advance of any works taking place in order to meet any potential timescales.  
<https://www.staffordshire.gov.uk/Highways/highwayscontrol/HighwaysWorkAgreements.aspx>
- ii) The application hereby permitted does not give express consent for any advertisements. This would require separate consent. Details can be found [here](#).

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