



Ashfield
DISTRICT COUNCIL
MAP SCALE 1: 1250
CREATED DATE: 07/10/2024

COMMITTEE DATE 23/10/2024 **WARD** Kirkby Cross & Portland

APP REF V/2024/0377

APPLICANT Mr Ibrahim Benzer

PROPOSAL Change of Use of Ground Floor From Shop (Use Class E) to Hot Food Takeaway, Installation of Flue to Rear and Associated Internal Works.

LOCATION 8 Church Street, Kirkby in Ashfield, Notts, NG17 8LE.

WEB-LINK https://www.google.com/maps/@53.1006286,-1.2700497,118m/data=!3m1!1e3?entry=tту&g_ep=EgoyMDI0MDkyOS4wIKXMDSOASAFQAw%3D%3D

BACKGROUND PAPERS A, B, C, D, E, J & K.

App Registered: 07/08/2024

Expiry Date: 01/10/2024

Consideration has been given to the Equalities Act 2010 in processing this application.

This application has been referred to Planning Committee by Cllr Zadrozny to discuss highways and impact on the Conservation Area.

The Application:

This is a full planning application for the conversion of an existing ground floor retail shop to a hot food takeaway. Permission is also sought for the provision of an extraction flue. Access to the first floor flat will be provided internally.

The application site is understood to have been vacant for approximately 30 years, and is located within the Kirkby Cross Conservation Area. Listed Buildings, a Scheduled Ancient Monument, and other non-designated heritage assets are also within the vicinity.

Planning permission has previously been refused at the site for a hot food takeaway under planning application reference V/2023/0365 due to its impact upon heritage assets, residential amenity, and highway safety and capacity.

A number of supporting pieces of documentation have been submitted with the application.

Consultations:

A site and press notice has been posted together with individual notifications to surrounding residents.

The following responses have been received:

Resident comments:

50 written representations have been received by 40 residents, objecting to the proposal, raising the following points:

- Inappropriate development in a Conservation Area.
- Does not enhance the Conservation Area.
- The flue will still be visible even if painted brown.
- Highway safety concerns:
 - Insufficient off-street parking.
 - Parking will cause obstruction and disrupt free flow of traffic.
 - Parking on pavements.
 - Customer parking will block driveways / access.
 - More cars coming to area.
 - Road is already busy and narrow.
 - Main route from Pinxton, Selston and Kirkby in Ashfield.
 - Increase in accidents.
 - The Transport Assessment is flawed and misleading.
- Little change from previous application which was refused.
- Unwanted smells / odour.
- More litter.
- Will attract vermin.
- Property been derelict for 30 years.
- Is a school nearby – children at risk of accidents with cars.
- Late night opening – Antisocial behaviour.
- Unreasonable opening hours.
- Noise concerns.

- Works have taken place at the site.
- Loss of privacy.
- Overbearing impact.
- Light pollution.
- Vandalism.
- Increasing unhealthy lifestyles.
- Community benefits not identified.
- Impact on property value.
- Interferes with human rights.
- Drainage and flooding concerns.
- Do not agree with the fallback position.
- Fire safety concerns.

Ashfield District Council Tree Officer:

- Trees on site may be adversely affected by the proposal.
- The development seems feasible from an arboricultural perspective.
- Would request further information.

Ashfield District Council Environmental Health:

- There is no information contained within the application relating to how the control of odour will be achieved by the extraction system as proposed.
- It is unknown if the extract system will be able to satisfy the requirements of relevant guidance.
- The plans provided do not provide enough information to allow us to comment upon the anticipated performance of the extract system and so we are not able to confirm that it will be sufficient to ensure effective extract, control and dispersion of cooking odour.
- No details provided as to how air replenishment will be achieved.
- The noise impact assessment does not provide information in regard to the use of refrigeration, freezer or air-conditioning units.

- A technical concern associated with the submitted noise impact assessment is that it was completed using modelling software and so we have no ability to verify the outputs.
- Without the necessary evaluation and mitigation being demonstrated for the kitchen extract system and any potential air replenishment arrangements (both in terms of its practicality and efficiency) we cannot recommend approval of the proposed development.

Ashfield District Council Conservation Officer:

- Whilst the proposed flue is now on the existing flat roof and is to be painted brown, it is likely that it will still be seen from views along Church Street, resulting in a degree of less than substantial harm to the significance of the Conservation Area.
- The proposed window changes to timber have been the subject of an enforcement notice and a Section 215 notice, and thus they are not considered as part of the benefits of the scheme.
- Proposal will exacerbate parking issues.
- Object to the proposal, and find that there will be less than substantial harm to the significance of the Conservation Area.

Historic England:

- Are not offering advice in this instance.

Nottinghamshire County Council Highways:

Comments dated 27/08/2024:

- The submitted Transport Note (TN) does not provide any accident data.
- Width of the driveway does not comply with guidance.
- No off-street parking is proposed for the flat, and on-street parking for the flat does not appear to have been considered in the overall impacts.
- Any reversing off the driveway would be detrimental to highway safety.
- On-street parking in the vicinity of the site would obstruct the free flow of traffic, and any parking on footways would obstruct pedestrian movement.
- Parking survey data does not account for bus stops.
- Parking survey over-estimates the availability of on-street parking.
- The TN over-estimates the traffic generation and parking demands associated with the extant retail use.

- Parking space sizes are too small. Increasing the size of the spaces to meet guidance will restrict vehicle manoeuvring space.
- Parking requirement for the takeaway is under-estimated in the parking calculation.
- No cycle parking shown on the submitted plans.
- The proposed funding for a TRO (double yellow lines) acknowledges that there would be an impact from on-street parking. In any event the Highway Authority could not guarantee a TRO could be implemented.
- Conflicting information within the Planning Statement and the TN.

Comments dated 17/09/2024:

- Accident data provided is out of date, but shows several accidents at the Church Street / Chapel Street roundabout.
- On-street parking and delivery activity will give rise to the risk of obstructive parking.
- Proposed 'no waiting' restrictions, bus stop clearway and associated signs and road markings identify on-street parking from the use of the site would be an issue, otherwise such mitigation measures would not be necessary.
 - Such restrictions will only displace parking.
- Lack of off-street parking will likely see customers performing u-turns or other manoeuvres to return to their original direction, which would adversely impact highway safety.
- Amended parking plan provided. Cycle parking details not acceptable.
- Proposal would give rise to an adverse impact on highway and pedestrian safety, and would not be mitigated by the measures suggested.
- Object due to unacceptable impact on highway capacity and safety.

Policy:

Under the Planning and Compulsory Purchase Act 2004, section 38(6) applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Therefore, the starting point for decision-making are the policies set out in the Ashfield Local Plan Review 2002 (saved policies). The National Planning Policy Framework (NPPF) is a material consideration.

Having regard to Section 38 of the Planning and Compulsory Purchase Act 2004 the main policy considerations are as follows:

Ashfield Local Plan Review (ALPR) (2002):

ST1 – Development.

ST2 – Main Urban Area.

EV8 – Trees and Woodland.

EV10 – Conservation Area.

EV11 – Ancient Monuments and Archaeological Sites.

National Planning Policy Framework (NPPF) (December 2023):

Part 2 – Achieving sustainable development.

Part 5 – Delivering a Sufficient Supply of Homes.

Part 8 – Promoting Healthy and Safe Communities.

Part 9 – Promoting Sustainable Transport.

Part 12 – Achieving Well Designed and Beautiful Places.

Part 15 – Conserving and Enhancing the Natural Environment.

Part 15 – Conserving and Enhancing the Historic Environment.

Planning (Listed Buildings and Conservation Areas) Act 1990.

Supplementary Planning Documents:

Residential Design Guide (2014).

Residential Extensions Design Guide (2014).

Residential Car Parking Standards (2014).

Nottinghamshire Highway Design Guide (2021).

Relevant Planning History:

V/1980/0068 - Carport + garage - No Decision Made.

V/2008/0320 - Alterations and Extension to Derelict Shop Premises to Re-Open Convenience Store with Living Accommodation Above and Garage to Rear - FUL CC.

V/2023/0365 - Change of Use from Shop to Hot Food Take-away. External Staircase to First Floor, External Flue and Single Storey Rear Extension – FUL Refusal.

Material Considerations:

- Principle of Development.
- Visual & Residential Amenity.
- Historic Environment.
- Highway Safety.
- Ecology and Arboriculture.
- Other.
- Conclusions.

Section 70(2) of the Town and Country Planning Act 1990 provides that, in dealing with proposals for planning permission, regard must be had to the provisions of the development plan, so far as material to the application, and to any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that, if regard is to be had to the development plan for any determination, then that determination must be made in accordance with the plan, unless material considerations indicate otherwise. Therefore, the starting point for decision-making are the policies set out in the Ashfield Local Plan Review 2002 (saved policies).

The National Planning Policy Framework (NPPF) (December 2023) is a material consideration. The policies in the development plan have to be considered in relation to their degree of consistency with the provisions of the NPPF (NPPF paragraph 225). This will depend on the specific terms of the policies and of the corresponding parts of the NPPF when both are read in their full context. An overall judgement must be formed as to whether or not development plan policies, taken as a whole, are to be regarded as out of date for the purpose of the decision.

Principle of Development:

The site is located within the main urban area of Kirkby in Ashfield, where the principle of development is acceptable.

The application site is located within the Kirkby Cross Conservation Area, and there are several Listed Buildings within the vicinity, the closest being approximately 24m to the north. In addition, there is a Scheduled Ancient Monument (SAM) approximately 50m to the north of the application site.

The area is predominantly residential in character, although it is acknowledged that some businesses are located within the general area, such as car sales garages and a public house.

Conflicting information has been submitted in relation to the specific operation of the business. The submitted 'Planning, Design, Access & Heritage Statement' (Dated August 2024, Report Ref: 2521450.1, Prepared by 'Marrons', Received 07/08/2024) identifies that the proposed takeaway will operate exclusively via online delivery services (such as JustEat, Deiveroo & Uber Eats), implying that the premises will not accept in-person walk-ins. However other details submitted with the application suggest that customers will visit the site to collect their orders etc. In any event the premises will be subject to motor vehicles visiting the site for purposes associated with collecting food.

The same statement identifies that following the refused application, only minor alterations, deemed absolutely necessary for the future operation of the site, are proposed to the building.

Whilst the principle of the development may be acceptable purely from a policy perspective (i.e. the site is located within the main urban area - ST2 of the ALPR 2002), consideration and weight must be given to other competing interests before reaching a decision.

Visual Amenity:

Paragraph 131 of the NPPF sets out that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning process should achieve. Paragraph 135 of the NPPF goes on to set out that planning decisions should ensure that developments are sympathetic to local character, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.

Additionally the NPPF, paragraph 139, states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

It is acknowledged that properties within the vicinity of the application site vary in size, style and design, although the immediate setting of the site is considered to display a traditional vernacular given the adjacent heritage assets/conservation area status.

The existing building is rendered with a suspended front bay window at first floor level. The existing shop front at ground floor level utilises timber pilasters and corbel details with a fascia sign board. These details are to be retained in the proposed scheme.

Timber windows and doors are proposed as part of this proposal. The repair/replacement of the existing timber windows, door, and pilasters were requirements of a Section 215 Notice previously served at the property. Therefore these aspects now proposed as a benefit of the scheme is considered to attract no weight and any benefits are neutral.

The Planning (Listed Buildings and Conservation Areas) Act 1990 requires a Local Planning Authority to have special regard to the desirability of preserving the setting of Listed Buildings, and pay special attention to the desirability of preserving or enhancing the character and appearance of a Conservation Area (Sections 66 and 72 respectively).

An external flue is proposed to project from a section of flat roof to the rear of the property. The flat roof in question is two storeys in height, although the highest point of the flue still sits significantly lower than the highest point of the roof from a discharge of odours perspective. The application proposes to paint the flue brown to help it appear as a less prominent addition to the building, with the submitted details emphasising specific views of the flue only to passersby of the site. No regard appears to have been had to other views of the flue and the visual impacts this could have.

Irrespective of the proposed painting of the flue, it is still considered to amount to a visually prominent feature, constituting a harmful addition to the building which would negatively affect the character of the building, character of the street scene, and does not preserve or enhance the character of the Conservation Area, and would amount to harm to the historic environment.

The harm caused by the flue is considered to only be exacerbated further, given visibility from nearby residential properties and areas of public realm, especially by patrons waiting at the bus stop opposite the application site.

The submitted details indicate that the applicant applied gravel to the rear garden area of the premises. This was observed at the time of the Officers site visit, although weeds and other vegetation has began to grow through the gravel. Aside from the details suggesting that the lawn will be re-introduced, little information has been forthcoming in relation to any proposed landscaping / boundary treatments. Given the sites location in a Conservation Area and its close proximity to Listed Buildings and a SAM, these details would form fundamental parts of the proposal and are intrinsically linked to the safe operation of the premises when considering the proposed parking area to the rear (discussed further below).

Overall it is considered that the design and scale of the proposed development, specifically the external flue, is inappropriate and would significantly harm the character of the street scene, and does not preserve or enhance the character or appearance of the Conservation Area, the setting of nearby Listed Buildings and the SAM.

Historic Environment:

In addition to the provisions contained within the Planning (Listed Buildings and Conservation Areas) Act 1990 as mentioned above, Paragraph 206 of the NPPF (December 2023) identifies Scheduled Ancient Monuments to be assets of the highest significance, and any harm to the significance of such assets (including from development within their setting), should be wholly exceptional.

The setting of a heritage asset is accepted as the surroundings in which the heritage asset is experienced, bearing in mind that those surroundings may change over time. Paragraph 200 of the NPPF (December 2023) builds upon this, requiring an applicant to describe the significance of any heritage assets affected by a development, including any contribution made by their setting. The level of detail should be proportionate to the assets importance and no more than is sufficient to understand the potential impact of the proposal on their significance.

A 'Planning, Design, Access & Heritage Statement' (Dated August 2024, Report Ref: 2521450.1, Prepared by 'Marrons', Received 07/08/2024) has been submitted with the application. The planning and heritage statement incorrectly identifies the site being within the 'Rothley Ridgeway Conservation Area' (an area within Leicester).

The planning and heritage statement also identifies that a number of mitigation methods were explored, including a conservation style false chimneys to cover the flue. However the statement identifies that due to the colour of the neighbouring roof tiles and brick wall the option to paint the flue brown was chosen. Other methods besides the false chimney and painting the flue have not been identified.

Numbers 2 and 6 (and adjoining stable) Church Street are late 17C and 19C properties, which are Grade II Listed Buildings (List Entry Number: 1234864). The listing description for these, which are located to the north, typically refers to their significance deriving from their age, design and plan form.

In addition the Kirkby Cross SAM, which is also Grade II Listed, is a free standing upright structure constructed from dressed stone, erected during the medieval period (mid-10th to mid-16th centuries) (List Entry Numbers: 1012926 and 1275165 respectively). Standing crosses contribute significantly to our understanding of medieval customs and to our knowledge of medieval parishes and settlement patterns, and were used for a variety of purposes (per Historic England's Listing description). Kirkby Cross is a reasonably well preserved example of a market cross displaying an unusual form.

The siting of the flue was chosen as the applicant considers that it would now occupy the most unobtrusive location, and because of this, considers that no harm would be

caused to the Conservation Area or the setting of Listed Buildings. No mention is made to the impact upon the SAM.

Section 72 of the 'Planning (Listed Buildings and Conservation Areas) Act 1990' requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of that area. The applicant identifies the installation of the flue as necessary to facilitate the takeaway use, however the installation of the flue at the site is considered not to preserve or enhance the Conservation Area.

The public benefits which may arise from the development are acknowledged, such as providing additional market choice for consumers for such services (for example), although in this instance it is considered that the limited public benefits associated with the scheme would not outweigh the harm in this instance.

The development will be visible in views through the Conservation Area, views towards Listed Buildings and a SAM. Overall, it is considered that the development would cause less than substantial harm to the significance of the Conservation Area, nearby Grade II Listed Buildings and a SAM, by introducing an inappropriately designed development within their setting. Limited details have been presented to justify the harm caused to designated heritage assets.

Residential Amenity:

A key consideration as part of this application is the impact upon the amenity and living conditions of neighbouring properties. The area is considered to be predominantly residential in nature, with residential dwellings immediately adjacent to the application site, with an existing flat about the shop at first floor level (which is proposed to be retained). The applicant acknowledges and accepts that the area is predominantly residential.

The submitted planning and heritage statement therefore references deliveries to the site, parking / comings and goings, and the 'fall back' position for the site. A Noise Assessment has been submitted with the application.

The applicant considers that daytime deliveries will be acceptable, and that by reducing the number of vehicle parking spaces to the rear of the site for customer use, this will not result in a noise impact to neighbours. Officers disagree with this conclusion, and reducing off-street vehicle parking generates its own issues (discussed further below in the highway section).

How deliveries will be made to the site is unclear, with conflicting information submitted. Some details suggest that deliveries will take place on the public highway, whereas other details indicate that delivery vehicles will enter the site and unload in the rear parking/access areas. Each method of delivery is considered to have its own implications, with deliveries taking place on the access drive / rear parking area likely to have the greatest impact upon the amenity of residents. Restrictions to deliveries

could be managed through the use of planning conditions, but officers are not satisfied that this would overcome the disturbance the neighbouring/nearby residents.

It is acknowledged that this stretch of Church Street, and in particular the nearby mini-roundabout junction with Chapel Street a short distance to the north, is subject to high volumes of traffic as it forms one of the main thoroughfares between Sutton in Ashfield, Kirkby in Ashfield, and nearby settlements such as Selston, Pinxton etc. Volumes of traffic are particularly higher at rush hours. However, as it becomes later in the day and activity/noise levels within the vicinity reduce etc, it is during this period when residents will reasonably expect a lower level of noise in their properties.

It is proposed to operate the premises between the hours of 16:00 – 23:00 Monday to Friday, Saturdays and Sundays and Bank Holidays.

It is not unreasonable to assume that varying levels of noise will be emitted from the site during its use from patrons visiting the premises. The noise generated by customers would have a specific character. It would be irregular enough to attract attention, and due to the nature of the noise likely being voices, vehicle engines, vehicle doors opening/closing etc, this would be particularly distracting to nearby residents. The potential for car engines to be left running ('idling') whilst customers/delivery drivers visit the premise further highlights the sporadic nature of the disturbance.

The proposed parking area to the rear of the premises, which is in close proximity to neighbouring properties and their garden areas, would cause further disturbance, impacting the enjoyment of areas of garden space for residents. The car parking area could be subject to a high turnover of customers, in addition to customers potentially waiting in the car park for a space.

A 'Noise Impact Assessment' (Dated 28/06/2024, Report Ref: 2422539, Prepared by 'Sharps Redmore Acoustic Consultants', Received 07/08/2024) has been submitted with the application, which measures the sound insulation performance of the separating floor between the proposed hot food take out and the flat above, and to measure the existing environmental noise levels in the area.

The assessment identified that noise levels were dominated by road traffic. The modelling undertaken on associated plant at the site has used methodology from daytime operation, however the takeaway is proposed to operate between the hours of 16:00 and 2300 hours. As such, it is considered that the modelling used for the plan is not representative of the developments true impacts. In addition, it is considered that it is difficult to accurately measure noise levels from patrons through a quantitative noise assessment exercise.

The application property forms one half of a semi-detached building, being adjoined to the adjacent residential dwelling of No.8a Church Street. There are significant

concerns that the proposed takeaway, which adjoins the neighbouring property, could give rise to unreasonable levels of noise transmitting through the adjoining wall. No information has been submitted as to how this impact could be mitigated, such as through the installation of sound insulation, for example. However even if this was done to mitigate internal noise levels, concerns still remain surrounding the wider operation of the takeaway and its impact on neighbours. The impact upon No.8a was not assessed as part of the Noise Impact Assessment.

No information has been submitted with the application with regards to the specific type of flue proposed, and no details have been submitted in relation to measures to control odour from the flue.

Consultation comments received from the Council's Environmental Health Team confirm that the plans provided do not provide enough information to allow them to comment upon the anticipated performance of the extract system, and so they are not able to confirm that it will be sufficient to ensure effective extract, control and dispersion of cooking odour.

The Council does recognise the economic and social benefits associated with the creation of a new business, and the Council does like to support businesses where possible, however these matters are considered not to outweigh the significant weight which is attributed to protecting the living conditions of nearby residents in this instance.

Overall due to the proximity between the application site and nearby dwellings, neighbouring residents would be aware of and subject to the noise generated by customers using the takeaway, with the level of noise and disturbance which would be generated being greater than what nearby residents could reasonably expect, especially late into the evenings. This would not only affect the external amenity areas of nearby dwellings but also habitable rooms, which is considered to significantly affect residential amenity and the quality of life of residents. This is reflected in the consultation comments received from the Council's Environmental Health Officer and is also reflected in the objections raised by residents.

Details submitted with the application suggest that the site has a number of options available for its use as a fall-back position under a Class E use, which may be implementable under Permitted Development Rights and therefore would not require planning permission. The applicant identifies that within Class E the site could operate as a restaurant without the need for planning permission. Whilst this may be the case, planning permission would still be required for any external plant / equipment / flue etc, and therefore the issues as discussed above would still be applicable. However whether the applicant exercises their Permitted Development Rights or not is their own prerogative.

Highway Safety:

A number of resident objections received relate to concerns over highway safety, on-street parking, and the safety/proximity of road junctions etc.

The submitted 'Planning, Design, Access & Heritage Statement' (Dated August 2024, Report Ref: 2521450.1, Prepared by 'Marrons', Received 07/08/2024) identifies that the application site is located within walking distance of the majority of Kirkby in Ashfield's residential areas, and that the village centre offers a number of sustainable transport options to be used by staff and customers of the proposed takeaway. Specific sustainable transport methods have not however been identified, with Kirkby town centre being located approximately 1.39km to the east of the application site.

Conflicting information has been submitted in relation to customer access to the site, and the level of off-street parking to be provided. Some details suggest that only two off-street vehicle spaces will be provided for the whole site, whereas other details suggest four spaces will be available for customers, with a further two spaces being available for the first floor flat. Other information then suggest no parking is to be made available for the first floor plan, whereas the layout plan submitted indicates two car parking spaces.

Although the point of access from the highway is extant, there are fundamental concerns regarding how the proposal will impact upon the safety and capacity of the local highway network.

The nature, frequency and mode of travel used to visit the site is considered to alter significantly when compared to the existing established use as a retail unit.

Given the location of the application site, its proximity to a bus stop and busy roundabout junction, including the presence of H road markings, there is limited opportunity for safe on-street parking in the immediate vicinity of the application site. Double yellow lines also exist along stretches of Chapel Street (to the east) which restricts on-street parking in the area further. In addition, it has been observed by officers on previous occasions that on-street parking appears to already be well utilised by existing residents in the area.

A vehicle tracking plan has been provided for the two spaces proposed to the rear. This shows that although it appears physically possible to manoeuvre in and out of the spaces to ensure the cars are leaving in a forward gear, the turning area appears tight and constrained, which could be obstructed if the waste bins are not sites appropriately. It has also been suggested that delivery vehicles may also utilise the rear parking area for deliveries. No vehicle tracking plan has been provided for anything other than a 4.84m long car.

The width of the access drive has not been indicated on the submitted plans, but in any event, the access would not allow two vehicles to pass on the access. In addition, if a vehicle had reversed out of the northern space as another vehicle had entered the site, it is unclear whether the vehicle waiting to exit the site would block

access to the parking space. The constrained rear parking area and narrow access, which prevents two vehicles from being able to pass, has the possibility for unsafe manoeuvres to take place such as vehicles reversing out of the site and/or vehicles blocking the free flow of traffic if a car was waiting to turn right into the site whilst a vehicle was waiting to exit.

Although it is recognised that the access is extant, there has been no indication as to what pedestrian and vehicle visibility splays can be achieved, or what could potentially be done to improve these splays if deemed necessary.

The use of the existing access drive at No.8 also has the potential to conflict with pedestrians using the side door of the premises into the kitchen, where an employee could inadvertently step out the door into the path of an oncoming vehicle.

Although an area for bin storage has been indicated to the rear of the premises, it is unclear whether this is for both commercial waste bins and residential waste bins. Additionally it is unclear where the bins would be sited on collection days. The Council would not wish to see several waste bins placed on the public highway as this could cause an obstruction. Similarly any waste bins placed on the access drive could restrict access for residents / customers. Additionally inappropriately placed bins could also reduce visibility, possibly leading to the increased likelihood of pedestrian-vehicle conflict.

The application has been supported by the submission of a 'Transport Note' (TN) (Dated August 2024, Report Ref: 24/404/06A, Prepared by 'MAGNA Transport Planning Ltd', Received 07/08/2024), and the submission of two further Transport Note Letters, both intent of rebutting the consultation comments of the Highway Authority.

The TN has been prepared on the assumption that six off-street car parking spaces will be provided, but then contradicts itself to state only two will be provided as existing, and that the first floor flat will have no designated off-street parking.

The TN included an assessment of on-street parking for 200m to the north and south of the application site, and concluded that both streets were likely parked with availability for on-street parking associated with the application site. Encouraging opportune parking from customers near to the site, close to the busy mini-roundabout junction is considered to be harmful to the safety and capacity of the local highway network.

The TN also suggests that a cycle stand for two spaces will be provided at the rear within a cycle shelter, but no information has been provided to illustrate this.

The Highway Authority have provided consultation comments on the application and raise significant concerns regarding the safe operation of the premises and impacts upon the safety and capacity of the highway network. Their comments are considered to carry significant weight.

The applicant suggests they make a financial contribution towards implementing a Traffic Regulation Order(s) (TRO) in the vicinity of the site to implement either or all of double yellow lines to prevent waiting at any time, and a bus stop clearway (and any associated road markings and signs). This, as the Highway Authority have pointed out, highlight that the applicant acknowledges that the proposed development would give rise to on-street parking problems, otherwise such mitigation measures would not be considered necessary.

Overall, it is considered that the development proposal would result in an unacceptable impact upon the safety and capacity of the local highway network, and it has not been demonstrated that safe and suitable access to the site can be achieved for all users. The proposal is therefore considered to be contrary to paragraphs 114 and 115 of the NPPF (December 2023), which states that development should be refused where there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Ecology and Arboriculture:

Ecology

A 'Biodiversity Impact Assessment' (Dated 28/05/2024, Report Ref: RHE.4254, Prepared by 'Rachel Hacking Ecology', Received 07/08/2024) has been submitted with the application.

The submitted details identify that the applicant has hard-surfaced the entirety of the rear garden area with gravel. This was observed to be the case at the time of the Officers site visit, although weeds and other vegetation has begun to grow through in parts.

It is claimed within the biodiversity assessment that the proposal will result in a biodiversity gain of 11.73%, however intentionally removing the garden and then trying to claim reinstating it achieves a gain in biodiversity is considered to be inappropriate and misleading. The planting of three trees is also proposed, but no further details have been provided in relation to this.

Arboriculture

There is a mature tree situated on what appears to be the boundary line between the application site and the neighbouring property of No.8a.

The tree on site, although not protected by a Tree Preservation Order, is located within a Conservation Area and therefore no works can be undertaken to the tree without a notification of the works first being submitted to the Local Planning Authority.

Following a review of the tree, the extent of the damage to bark around its base and the associated loss of canopy cover due to the trees health, would render it unworthy of protection by a Tree Preservation Order due to it being a tree of a relatively poor quality.

Conclusion:

It is considered that the proposal as submitted would negatively harm the visual amenity of the street scene, and cause significant detriment to the amenity and living conditions of nearby residents byway of noise, general disturbance and odour occurring from the use of the premises as a takeaway.

The development would cause less than substantial harm to the significance of nearby Grade II Listed Buildings and a SAM, by introducing an inappropriately designed development within their setting, and no justification has been put forward to justify the harm caused to designated heritage assets, and limited wider public benefits have been explicitly identified. In addition, the design and scale of the development does not preserve or enhance the character or appearance of the Conservation Area.

It is considered that the development proposal would result in an unacceptable impact upon the safety and capacity of the local highway network, and it has not been demonstrated that safe and suitable access to the site can be achieved for all users. The proposal is therefore considered to be contrary to paragraphs 114 and 115 of the NPPF (December 2023), which states that development should be refused where there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Overall, having reviewed and taken account of all the submitted information and comments, and assessing this against all relevant policies and material planning considerations, whilst the Council are keen to support businesses where possible, within the planning balance, a refusal of planning permission is recommended for this application.

Recommendation: Refuse planning permission.

Reasons:

1. The proposed flue would have a detrimental impact on the character and appearance of the Kirkby Cross Conservation Area and wider street scene and would therefore not enhance or preserve the historic environment as required by legislation and policy. It would also result in harm to the character and appearance of nearby Grade II Listed Buildings and a Scheduled Ancient

Monument, by introducing an inappropriately designed development within their setting. The proposed development therefore conflicts with Policies ST1 (a and b) and HG5 (g) of the Ashfield Local Plan Review (2002), and Part 16 (Conserving and enhancing the historic environment) of the National Planning Policy Framework (December 2023)..

2. It is considered that the proposed development would have a detrimental impact upon the residential amenity of nearby residents due to the level of noise, general disturbance and odour being generated as a direct result of the nature, scale and level of activity associated with the business. The proposal is therefore considered to be contrary to Policy ST1 (b, and e) of the Ashfield Local Plan Review (2002) which seek to ensure a proposal does not adversely affect the character, quality or amenity of an area. The proposal is also considered to conflict with Part 12 (achieving well-designed and beautiful places) of the National Planning Policy Framework (December 2023) which seeks to improve the overall quality of an area by creating environments which secure a high level of amenity for existing and future users.

3. It has not been demonstrated that the development as submitted can achieve safe and suitable access to the site for all users, and as such it is considered that the development would have an unacceptable impact upon the safety and capacity of the local highway network, exacerbated by the sites proximity to road junctions and highway infrastructure such as a bus stop. Consequently the proposal is considered to conflict with Policies ST1 (a, b and c) and HG5 (e) of the Ashfield Local Plan Review (2002), and Paragraphs 114 and 115 of the NPPF (December 2023).