

## **PLANNING & DEVELOPMENT COMMITTEE**

**24 FEBRUARY 2022**

### **REPORT OF: DIRECTOR PROSPERITY AND DEVELOPMENT**

#### **PURPOSE OF THE REPORT**

Members are asked to determine the planning application outlined below:

**APPLICATION NO:** 21/1498/10 (EL)  
**APPLICANT:** Mr M Tat  
**DEVELOPMENT:** Change of use from card shop (Class A1) to takeaway (Class A3).  
**LOCATION:** 27B OXFORD STREET, MOUNTAIN ASH, CF45 3PG  
**DATE REGISTERED:** 10/11/2021  
**ELECTORAL DIVISION:** Mountain Ash West

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#### **RECOMMENDATION: APPROVE SUBJECT TO CONDITIONS**

**REASONS:** The proposal is in keeping with policies AW5 and NSA19 of the Rhondda Cynon Taf Local Development Plan and National Policy in that, the proposed activity would be compatible with the surrounding land uses and the sites position in the key settlement of Mountain Ash. Furthermore, the proposal would not result in an adverse impact upon either the character of the site, the amenity of neighbouring occupiers or highway safety.

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#### **REASON APPLICATION REPORTED TO COMMITTEE**

- Three or more letters of objection have been received.

#### **APPLICATION DETAILS**

Full planning permission is sought for the change of use of 27B Oxford Street, Mountain Ash, from a card shop (Class A1) to a hot food take away (Class A3).

The change of use would be undertaken largely within the fabric of the existing building, with only minor adaptations to the existing layout required to create the proposed hot food takeaway. The existing means of access to the building from the front elevation onto Oxford Street would be retained and utilised. To the front elevation the property already benefits from a shop front, which would be retained and utilised. The site occupies a corner position on the junction of Oxford Street and Henry Street, with vehicular access to a small yard area being located to the south (side) off Henry Street (used as a small service yard).

#### **SITE APPRAISAL**

The application property is an end of terrace property located on Oxford Street, Mountain Ash. The property is located within the retail centre for Mountain Ash, which is defined as a key settlement. The property occupies a corner position on the junction

of Oxford Street and Henry Street, with the existing shop front addressing Oxford Street. To the south (side) is a vehicular access, which provides access to a small hardstanding, which it is understood acts as service yard for the premises. There are a variety of commercial uses located in the vicinity of the site, including a convenience store, hairdresser, solicitors and existing takeaway businesses.

## PLANNING HISTORY

20/0584	27b Oxford Street, Mountain Ash	Proposed change of use of first floor to a residential flat.	Granted with conditions  20/08/20
11/0140	27b Oxford Street, Mountain Ash	Retention of roller shutters	Granted 14/04/11
10/0610	27b Oxford Street, Mountain Ash	Retention of roller shutter. To be painted brown to match.	Withdrawn

## PUBLICITY

The application was advertised by direct neighbour notification and site notices. Four letters of objection have been received in response to the proposals which are summarised as follows;

- It is stated that the applicant already operates a takeaway in Mountain Ash and it is claimed that rather than relocating their business, the applicant is seeking to open an additional premises.
- It is claimed the proposed takeaway would have an adverse impact effect on existing businesses and the community.
- It is claimed that proposal would give rise to a greater intensity of on-street parking along Oxford Street, which would be detrimental to highway and pedestrian safety.
- It is commented that the town centre already experiences issues associated with antisocial behaviour and noise.
- An operator of a nearby takeaway comments that whilst they understand that competition is not a material planning consideration, they comment that they believe Mountain Ash needs more businesses that will trade during the day rather than the evening.
- It is commented that the proposals will not bring 'new business' to the town centre as the applicant already operates from the town centre, and is re-locating.

## CONSULTATION

Transportation Section – no objections raised.

Public Health & Protection - no objections raised, conditions suggested.

Land Reclamation & Drainage – no objections raised.

Dwr Cymru - no objections raised, conditions suggested.

Natural Resources Wales – no objections raised, informative notes suggested.

## **POLICY CONTEXT**

### Rhondda Cynon Taf Local Development Plan

Members will be aware that the current LDP's lifespan was 2011 to 2021 and that it is in the process of being reviewed. The Planning (Wales) Act 2015 introduced provisions specifying the period to which a plan has effect and providing that it shall cease to be the LDP at the end of the specified period. These provisions were commenced on 4<sup>th</sup> January 2016 but do not have retrospective effect. Therefore, the provisions do not apply to LDPs adopted prior to this date and plans adopted before 4<sup>th</sup> January 2016 will remain the LPD for determining planning applications until replaced by a further LDP. This was clarified in guidance published by the Minister on 24<sup>th</sup> September 2020. Subsequently, Members are advised that the existing Plan remains the development plan for consideration when determining this planning application.

Indicates that the site is within defined settlement limits and within the key settlement of Mountain Ash.

AW2 promotes development in sustainable locations.

AW 5 sets out the criteria for new development in relation to amenity and accessibility.

AW6 sets out the criteria for new development in terms of design and place-making.

AW10 sets out criteria for new development in relation to environmental protection and public health.

NSA12 sets out criteria for development within and adjacent to settlement boundaries.

NSA18 sets out the retail hierarchy for the Borough.

NSA19 sets out the criteria for retail development in principal towns and key settlements.

### National Guidance

In the determination of planning applications regard should also be given to the requirements of national planning policy which are not duplicated in the Local Development Plan, particularly where national planning policy provides a more up to date and comprehensive policy on certain topics.

Planning Policy Wales Edition 11 (PPW) was issued on 24<sup>th</sup> February 2021 in conjunction with Future Wales: The National Plan 2040 (FW2040). PPW incorporates

the objectives of the Well-being of Future Generations (Wales) Act into town and country planning and sets out Welsh Government's (WG) policy on planning issues relevant to the determination of all planning applications. FW2040 sets out the National Development Framework for Wales (NDF), WG's current position on planning policy at regional and national level.

It is considered that the proposed development is consistent with the key principles and requirements for placemaking set out in PPW; and is also consistent with the Well-being of Future Generations (Wales) Act's sustainable development principles through its contribution towards the Welsh Ministers' well-being objectives of driving sustainable development and building healthier communities and better environments.

It is also considered the proposed development is compliant with the NDF, with the following policies being relevant to the development proposed:

- Policy 1 – Where Wales will grow – Employment/Housing/Infrastructure
- Policy 2 – Shaping Urban Growth – Sustainability/Placemaking

## **REASONS FOR REACHING THE RECOMMENDATION**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Furthermore, applications that are not in accordance with relevant policies in the plan should not be allowed, unless material considerations justify the grant of planning permission.

The application property represents an established building, located within settlement limits and within the key settlement of Mountain Ash. The proposal seeks to change the use of the building from a retail card shop (Class A1) to a hot food takeaway (Class A3). As such, the key considerations in determining this application are the compatibility of the proposed use within the established area and the potential impact upon the amenity of neighbouring occupiers. The impact of the change of use upon both highway safety and the character of the building and its setting are further considerations.

### Proposed Use

The building itself forms part of an established street scene located on Oxford Street, which is the main shopping street, in the area defined as the key settlement of Mountain Ash. Planning policy NSA18 sets out the retail hierarchy for the Borough, stating that *'Proposals for retail development or changes of use to Class A retail uses inside the defined boundaries of retail centres, which would maintain or enhance a centre's position in the retail hierarchy will be permitted.'*

Furthermore, policy NSA19 states that *'within the defined retail centres of Ferndale, Hirwaun, Mountain Ash, Porth, Treorchy and Tonypany development proposals for*

*Class A1, A2, A3 and other uses that will add vitality and viability to the retail centre by attracting footfall that benefits the daytime and evening economy will be permitted.'*

The current application seeks to change the use of the existing building from Class A1 to Class A3. Based on the appearance of the building and planning history of the site, it is clear that the property has been in use for commercial retail uses for an extended period of time. It is accepted that in retail centres, the preference will usually be for Class A1 uses, which provide a range of services to members of the public during daytime hours and into the early evening. Equally, it is accepted that the many Class A3 uses operate primarily during late afternoon/ evening hours, therefore reducing their contribution to daytime trade.

Notwithstanding this fact, it is acknowledged that Class A3 uses still play a part in providing services to members of the public in town centres. Furthermore, it is important to consider the make up the area within which the use is proposed, and note that each application must be considered on its own merits. In the case of the current submission data has been obtained which illustrates the composition of uses in Mountain Ash town centre. Whilst the Council's most recent retail survey (dated July 2021) reveals that whilst there are already 10 Class A3 uses in the town centre, this equates to only 10.9% of the total units surveyed. Furthermore, the data reveals that 51 premises, which equates to 56% of the total number of units, were in use for Class A1 or A2 activities. In addition to these figures, it was found that, at the time of the survey, Mountain Ash had the second highest vacancy rate of all the key settlements and town centres in the Borough. Therefore, whilst it is acknowledged that a use which offers a greater degree of day time trading would be preferential, given the high vacancy rate recorded in the town centre, combined with the fact that Class A1 and A2 uses still make up the largest proportion of all retail units; on balance, it is not considered that the proposed Class A3 takeaway use would unacceptably harm the character, vitality or viability of the retail centre and is therefore considered acceptable in planning policy terms.

### Amenity Impacts

As set out above, the property is located within Mountain Ash town centre, specifically on Oxford Street, the main road through the town. As such, the vast majority of properties located in the vicinity of the site are commercial in character. Nevertheless, it is necessary to consider the potential impacts of the proposed Class A3 use upon the occupiers of those residential properties that are located in the vicinity of the site. It is considered that any disturbance, which may be likely to arise from the operation of a Class A3 use, is usually related to the comings and goings of customers and odours generated from food preparation. Whilst these matters are relevant in the assessment of the current application, it is considered that the impacts arising from both matters, could be mitigated by the use of planning conditions. With regard to issues relating to odour, the Council's Public Health and Protection Section recommend the use of a condition which would require the installation of a suitable extraction system, which would suppress and disperse smells produced by the preparation and cooking of food.

Consideration must also be given to the fact that some residential properties are located within and close to the town centre, these include residential flats located

above ground floor commercial units. However, it is reasonable to assume that occupiers of such properties would be accustomed to a degree of activity, in the form of 'comings and goings' through the day and into the evening. Nevertheless, in an attempt to limit such impacts to an acceptable degree, the hours of operation of the business could also be controlled via a planning condition. The applicant has suggested that the business would trade between the hours of 16.00 – midnight Sunday to Friday with closing time extended until 01.30 on a Saturday night. Whilst it is acknowledged that the Saturday close time is clearly late, given that the site is located in the retail centre, where there are fewer residential properties, it is not considered that the hours presented are unreasonable. This is particularly the case as, it is noted that the hours proposed align closely with a number of existing licensed takeaways operating in the vicinity of the site.

Overall, whilst the proposals represent the development of a commercial use in an area where residential dwellings are close by, having considered both the fact that the site lies within the retail centre of Mountain Ash and that some amenity impacts could be mitigated by the use of planning conditions; it is considered that the proposed use is acceptable. As such, the proposals are considered to be compatible with the sites setting and are in accordance with the requirements of policies AW5 and AW10 of the Local Development Plan.

#### Character and Appearance

As set out above, the proposed conversion would be undertaken largely within the fabric of the existing property. Internally the existing layout would be adapted with the large open retail shop area being divided up to form a customer area/ serving counter to the front of the premises and separate food preparation and kitchen area to the rear. The existing pattern of fenestration and shopfront would also be retained, along with the means of access. As such, with no increase in the footprint of the building and no additional openings proposed it is not considered that the either the character of the building would be greatly altered, or the privacy of any neighbours adversely affected.

Overall, with only limited physical alterations required to enable the conversion of the building, it is considered that any impacts upon the character and appearance of both the building and its setting would be minimal and would not adversely affect the character and appearance of the site or immediate area. Therefore, in this regard, the proposals are considered to be compliant with policies AW5 and AW6 of the Local Development Plan.

#### Highway Safety

In order to aid in the assessment of the proposal upon highway safety, consultation has been undertaken with the Council's Transportation Section. Their response comments that the application site is located on Oxford Street Mt Ash, in the centre of the retail area, in close proximity to public transport and public car parks. To the front and the side of the property are double yellow lines on both sides of the carriageway, preventing indiscriminate on-street car parking.

*It is also noted that there is a loading bay adjacent to the site, on Oxford Street with restrictions for goods vehicle loading 9:00am-3:00pm Monday – Saturday. This would be acceptable to accommodate service vehicles that may serve the proposed use.*

In terms of parking, the Councils Supplementary Planning Guidance requires that servicing can take place without impacting on the free flow of traffic and that customers can park within the vicinity without impacting on highway safety.

Taking into account the close proximity of the service bay and the fact there is a public car park within easy walking distance of the site, combined with the existing traffic regulations, preventing on-street car parking, despite the absence of any formal off street car parking within the curtilage of the site, it is considered that the proposal is acceptable.

It is acknowledged that in their representations, occupiers of neighbouring commercial units have expressed some concern with regard to the potential for the proposal to result in an increase in traffic and parking on the highway outside the premises. However, in response to this matter, in their observations the Council's Transportation Section make reference to the Inspectors comments in a recent appeal decision, which related to the refusal of a Class A3 takeaway at a premises located to the north of the current application site on Oxford Street. In respect of the appeal, which was allowed, the Inspector concluded that;

*“Whilst I accept that the take away could lead to increased demand for short term parking in the locality, I have no evidence to indicate that the existing enforceable parking restrictions in the area would not be effective. Indeed, there are numerous other take away outlets and convenience stores along Commercial Street, and I have not been provided with any information that indicates that these premises currently cause highway safety issues or have a detrimental impact on the free flow of traffic.*

*I noted that there was some on-street parking available within a short distance of the appeal premises close to the Best-In Grocery Store. There is also a large car park adjacent to the town's railway station, and although this would require a short walk to the premises this would be in the region of approximately 4-5 minutes, and in my experience would not be a prohibitive distance for even a short visit to a takeaway. In addition, the appeal property lies within the retail centre of Mountain Ash and some customers may undertake linked trips to the take away with other shopping journeys to the centre.*

*It is suggested that customers and delivery drivers would ignore the on-street parking restrictions and may risk parking on the double yellow lines in contravention of existing waiting restrictions. However, my decision is made on the basis that those restrictions would be enforced by the relevant authorities”.*

Therefore, to conclude, whilst there may be some concern that takeaways, by their nature, encourage short term indiscriminate on-street car parking, taking into account the close proximity of the service bay to accommodate deliveries, the public car park within easy walking distance and the existing traffic regulations preventing on-street car parking, it is not considered that the concerns are so great as to warrant a highways objection. As such, the proposed change of use is considered acceptable

in highway safety terms, accords with the requirements of policy AW5 of the Rhondda Cynon Taf Local Development Plan.

### Flood Risk

Following consultation with Natural Resources Wales, they have confirmed that the application site lies entirely within zone C1 of the Development Advice Map as contained in TAN15. However, their observations raise no objections to the application, commenting that, given the nature of the proposed development (the retention of a less vulnerable use) they consider that the proposals could be acceptable, subject to the developer being advised to install flood proofing measures as part of the development. As such, should Members be minded to approve planning permission, informative notes to this effect are recommended.

### Community Infrastructure Levy (CIL) Liability

The Community Infrastructure Levy (CIL) was introduced in Rhondda Cynon Taf from 31 December 2014.

The application is for development of a kind that is liable for a charge under the CIL Regulations 2010 (as amended) however, the CIL rate for this type of development as set out in the Charging Schedule is £nil and therefore no CIL is payable.

### Conclusion

Having taken account of all of the issues outlined above, the application proposal is considered to be in accordance with the requirements of the Rhondda Cynon Taf Local Development Plan and National Policy in that, the proposed activities would be compatible with the surrounding land uses in the town centre and would not result in an unacceptable adverse impact upon either the character of the site, the amenity of neighbouring occupiers or highway safety. Therefore, the proposal is recommended for approval, subject to the conditions specified below.

### **RECOMMENDATION: Grant**

1. The development hereby permitted shall be begun before the expiration of five years from the date of this permission.

Reason: To comply with Sections 91 and 93 of the Town and Country Planning Act 1990.

2. The development hereby approved shall be carried out in accordance with the approved plan(s) no(s):
  - Drawing no. hdw/ph/mba.01 Site location plan and Existing and Proposed Plans and Elevations



and documents received by the Local Planning Authority on 11/06/21 unless otherwise to be approved and superseded by details required by any other condition attached to this consent.

Reason: To ensure compliance with the approved plans and documents and to clearly define the scope of the permission.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting of that Order) no other use (other than the Class A3 takeaway use hereby permitted) shall be operated from the property site without the prior express permission of the Local Planning Authority.

Reason: To define and limit the extent of the permission and to protect the residential amenity of those closest to the site in accordance with Policies AW5 and AW10 of the Rhondda Cynon Taf Local Development Plan.

4. The takeaway use hereby approved shall not operate other than between the hours of:

Sunday – Friday 16.00 – 00.00

Saturday 16.00 – 01.30

Unless agreed otherwise in writing by the Local Planning Authority.

Reason: To ensure that the noise emitted from this development is not a source of nuisance to occupants of nearby residential properties in accordance with Policy AW10 of the Rhondda Cynon Taf Local Development Plan.

5. Prior to the use, hereby permitted, commencing a scheme of odour/effluvia/fume control shall be submitted to and approved in writing by the Local Planning Authority. If there are inhabited premises in close proximity to the intended discharge point of any extraction system, a noise impact assessment must be carried out by a competent person and must be submitted to and approved in writing by the Local Planning Authority prior to the installation of the extraction system. The building/premises shall thereafter only be operated in accordance with the approved scheme, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the amenities of the occupiers of adjoining properties in accordance with Policies AW5 and AW10 of the Rhondda Cynon Taf Local Development Plan.

6. Details of a system to prevent waste cooking oil, fats and grease and solid waste from entering the drainage system shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the use of the premises commences and then shall operate in perpetuity unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the amenities of the occupiers of adjoining properties and to protect the foul drainage system in accordance with Policies AW5 and AW10 of the Rhondda Cynon Taf Local Development Plan.