

**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

**MUNICIPAL YEAR 2022-2023:**

**PLANNING AND  
DEVELOPMENT COMMITTEE  
8<sup>th</sup> SEPTEMBER 2022**

**REPORT OF: DIRECTOR  
PROSPERITY AND  
DEVELOPMENT**

**APPLICATION NO: 22/0614/10 – Change of  
use of A1 Retail Shop to A3 Fish and Chip  
Shop at 11 Clydach Road, Clydach,  
Tonypany, CF40 2BD**

**1. PURPOSE OF THE REPORT**

Members are asked to consider the determination of the above planning application.

**2. RECOMMENDATION**

That Members consider the report in respect of the application and determine the application having regard to the advice given.

**3. BACKGROUND**

This application was reported to the 04 August 2022 Planning and Development Committee meeting with a recommendation of approval (a copy of the original report is attached as Appendix A). At that meeting Members were minded to refuse the application contrary to the recommendation. Members considered:

1. The general operation of a takeaway unit at the property would result in a significant detrimental impact upon the amenities of neighbouring occupiers, and any impact would be exacerbated by the introduction and use of associated extraction equipment, contrary to Policy AW5 of the Rhondda Cynon Taf Local Development Plan.
2. The operation of a takeaway unit at the property would exacerbate existing parking and highway safety issues on this busy highway, contrary to Policy AW5 of the Rhondda Cynon Taf Local Development Plan.

As a consequence it was resolved to defer determination of the application for a further report to highlight the potential strengths and weaknesses of taking a decision contrary to the recommendation.

#### **4. PLANNING ASSESSMENT**

It is considered the levels of general disturbance associated with the proposed Class A3 use would be similar to that of the previous commercial use at the property, and to that at other commercial properties in the locality. As such, it is not considered the levels of amenity currently enjoyed by neighbouring residents would be significantly altered by the proposed change of use.

It is acknowledged however that the application property is located within an established residential area of the village and at the centre of a row of terraced dwellings, not within an allocated retail zone. Consequently, the operation of a Class A3 takeaway use in such a location would inevitably result in a degree of impact to the amenity standards currently enjoyed by surrounding neighbours, and to a degree which could be considered unacceptable.

While it is noted the property has historically been in commercial use and the immediate neighbours would have become accustomed to associated noise and disturbance, hot food takeaways are considered to have a different trading pattern to retail shops and have a tendency to generate considerable levels of activity, especially into the evenings. This activity can generate noise and disturbance arising from the comings and goings of customers including raised voices, slamming of car doors, starting engines and playing car radios, etc. as well as general anti-social behaviour and litter issues in and around the premises.

It is also noted that a similar Class A3 use to that proposed already operates a short distance along the street. Therefore, given the general residential nature of the locality, the addition of a further takeaway use at this location could exacerbate any existing impacts upon the levels of residential amenity currently enjoyed by surrounding residents.

Additionally, while it is noted the applicant proposes extraction equipment to the rear, no specifications have been provided. This issue could be controlled by way of condition but given the terraced nature of the application property and the fact that it is adjoined by residential dwellings at either side, the introduction of necessary extraction equipment at the site may result in noise/disturbance issues of its own, which would be unacceptable.

Subsequently, the proposed operation of a takeaway at the application property could result in a significant detrimental impact to the amenities of surrounding residents. The proposed development could therefore be considered unacceptable in this respect.

With regard highway safety, no objections were raised or conditions suggested by the Transportation Section following an assessment of the scheme. They did however note that their comments were an 'on

balance' decision and did raise some concern in their comments, which could be considered to have an unacceptable impact in highway safety terms.

Concerns were raised with regard the general operation of hot food takeaways which often generate indiscriminate on-street car parking for short durations of time as close to the property as possible, which in this instance would be on the busy main thoroughfare through the village and potentially on the double yellow lines opposite the site as no off-street parking would be provided. If indiscriminate on-street car parking were to occur as a result of the proposed takeaway, then the free flow of traffic would be detrimentally impacted in this location, which would be unacceptable. Indiscriminate parking would also exacerbate any potential impact to the amenities of surrounding neighbours as set out above.

Consequently, the proposed development could therefore be considered unacceptable in respect of its potential impact upon highway and pedestrian safety.

## **5. CONCLUSION**

Whilst the application is recommended for approval, subject to the conditions set out in the original report, if, having considered the above advice, Members remain of a mind to refuse planning permission, it is suggested that the following reasons for refusal would reflect those views:

**1. The proposed takeaway use would be detrimental to the amenities of neighbouring residents by way of increased noise/disturbance and the introduction of nuisance odours/waste, impacts that would arise as a result of the general operation of the takeaway use and the introduction/operation of any associated extraction equipment. The proposed change of use is therefore contrary to Policies AW5 and AW10 of the Rhondda Cynon Taf Local Development Plan in amenity terms.**

**2. The proposed takeaway use would generate indiscriminate on-street car parking for short durations of time as close to the property as possible on the busy main thoroughfare through the village and potentially on the double yellow lines opposite the site. The proposed development would therefore result in a detrimental impact upon pedestrian and highway safety in the vicinity of the site and to the amenity of surrounding neighbours, contrary to Policy AW5 of the Rhondda Cynon Taf Local Development Plan.**

**PLANNING & DEVELOPMENT COMMITTEE**

**4 AUGUST 2022**

**REPORT OF: DIRECTOR PROSPERITY AND DEVELOPMENT**

**PURPOSE OF THE REPORT**

Members are asked to determine the planning application outlined below:

**APPLICATION NO:** 22/0614/10 (LJH)  
**APPLICANT:** S Simra  
**DEVELOPMENT:** Change of use of A1 Retail Shop to A3 Fish and Chip Shop.  
**LOCATION:** 11 CLYDACH ROAD, CLYDACH, TONYPANDY, CF40 2BD  
**DATE REGISTERED:** 20/05/2022  
**ELECTORAL DIVISION:** Cwm Clydach

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**RECOMMENDATION: GRANT SUBJECT TO CONDITIONS**

**REASONS:**

The principle of the change of use is acceptable and it is not considered that the proposed use would have a significant impact upon the amenity of the neighbouring properties or highway safety in the vicinity of the site.

Whilst a number of objections have been received it is not considered that the issues raised would justify refusing the application and the proposal will be beneficial in bringing a vacant unit back into use.

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**REASON APPLICATION REPORTED TO COMMITTEE**

The application is reported to Committee as three or more letters of objection have been received.

**APPLICATION DETAILS**

Full planning permission is sought for the change of use of the ground floor of 11 Clydach Road, Clydach, Tonypany from a currently vacant A1 retail unit (previously a Newsagents and off-licence) to a Fish and Chip Shop (Use class A3). The existing residential unit within the first floor of the property is to remain unchanged and is to only be rented in connection with the commercial premises so that it is not let to any one unconnected with the operation of the business.

The applicant has indicated that the takeaway would be open to members of the public between the hours of 12pm to 9pm Monday to Sunday including Bank Holidays.

The location of the proposed extraction equipment has been shown on the proposed plans however no detailed specification has been submitted with the application. This could be secured through a planning condition attached to any permission granted.

## **SITE APPRAISAL**

The application property is a mid-terraced two storey commercial building located on the principle thoroughfare through Clydach. It was previously occupied by a Newsagent and Off -licence but has been vacant for some time. The property benefits from a glazed shop front at ground floor level (a residential unit is sited at first floor level). As it is not in a town centre location the property sits within a predominantly residential area however a similar Class A3 chip shop is located approximately 65 metres away to the south-east (Cambrian Chippy) and two convenience stores are located approximately 30 metres to the east (Nisa) and 40 metres to the north-west (Clydach Stores) respectively.

## **PLANNING HISTORY**

There are no records of any planning applications that have been submitted at the site in the last 10 years.

## **PUBLICITY**

The application has been advertised by means of direct neighbour notification and site notices. Seven (7) letters of objection have been received in total; they are summarised below:

- (i) Insufficient parking space on an already congested street.
- (ii) There is already a takeaway in close proximity to this area therefore it is not something that is needed.
- (iii) Loss of customers to Cambrian Chippy could affect their business and cause them to close down.
- (iv) The works to convert the property will disturb those who work from home.
- (v) Late night noise nuisance.
- (vi) Extra litter in and around the area.
- (vii) Cooking smells entering nearby homes.
- (viii) Will the owner have insurance in case of fire?
- (ix) The value of the properties to either side will be negatively impacted.

## **CONSULTATION**

Transportation Section – No objection is raised, or conditions suggested.

Public Health and Protection – No objection, subject to conditions.

Flood Risk Management – No objection.

## **POLICY CONTEXT**

Members will be aware that the current LDP's lifespan was 2011 to 2021, that it has been reviewed and is in the process of being replaced.

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 LDP 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.

### **Rhondda Cynon Taf Local Development Plan**

The application site lies within the settlement boundary for Cwm Clydach and is unallocated.

**Policy CS1** – sets out the criteria for development in the Northern Strategy Area.

**Policy AW2** – states that development on non-allocated sites will only be supported in sustainable locations.

**Policy AW5** – sets out criteria for new development in relation to amenity and accessibility.

**Policy AW6** – requires development to involve a high quality design and to make a positive contribution to place making, including landscaping.

**Policy AW10** – does not permit proposals where they would cause or result in a risk of unacceptable harm to health and/or local amenity.

### **Supplementary Planning Guidance**

- (x) Design and Placemaking;
- (xi) Access, Circulation and Parking Requirements.

## **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), WGs 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 2 – Shaping Urban Growth – Sustainability/Placemaking
- Policy 3 – Supporting Urban Growth – Council and /Placemaking/developers/regeneration/sustainable communities'/exemplar developments.
- (xiv) Policy 33 – National Growth Area – Cardiff, Newport and the Valleys

Other relevant policy guidance consulted:

PPW Technical Advice Note 12: Design;

PPW Technical Advice Note 18: Transport;

PPW Technical Advice Note 23: Economic Development.

## **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.

## **Principle of the Proposed Development**

This application seeks the change of use of an existing commercial premise from A1 to a hot food takeaway (A3). The applicant is seeking a change of use as the unit is presently vacant and thus presents an opportunity to bring a unit back into effective use and attract further custom to this area of Clydach.

There is currently an A3 use in the immediate vicinity (a fish & chip shop). Even with the existing A3 use present within the vicinity, it is considered that it would be more appropriate to encourage this type of use than to have an additional vacant unit and thus potential decline.

It is not considered the proposed change of use would lead to an overconcentration of A3 uses in the town, and it would in fact make a valuable contribution to the local area, complying with the objectives of Policy CS1 which seeks to promote sustainable growth within the Northern Strategy Area, particularly by reusing vacant and under used buildings.

It is also noted that the property is located within a sustainable location being well served by public transport, medium and high frequency bus services run through the area. As such it is considered that the proposal is also compliant with the requirements of Policy AW2.

It is therefore considered that the change of use would be compliant with the relevant policies set out in both the Rhondda Cynon Taf Local Development Plan and Planning Policy Wales and the development is acceptable, in principle. As the property is not located within a retail zone, the main considerations for this application are Policies AW5, AW6, and AW10, which are included within the assessment set out below.

## **Visual Impact**

The application site is situated on the main thoroughfare through Clydach. As a result of the buildings siting and the lack of proposed alterations it is not considered that the change of use would form a visible feature in the street scene. The application is therefore considered to comply with Policy AW6 of the Rhondda Cynon Taf Local Development Plan.

## **Residential Amenity**

The proposal will utilise an existing commercial unit that is located within a predominantly residential area. As such, the majority of surrounding properties are residential in nature. It is therefore considered that any potential impact in respect of amenity would mainly occur upon residential premises; however, it is not considered there would be a significant impact in this respect for the following reasons:

As is a concern of the objectors, it is not considered the proposal to operate an A3 use in this setting will significantly alter the current level of disturbance with customer comings and goings being similar in number to that which



already exists at the commercial properties to the north-west, east, and south-east, being two convenience stores and a chip shop, and what would have previously existed when the application property operated as a newsagents and off-licence, and prior to this 'Bargain Booze'. As such, it is not considered that the proposed change of use would have any further impact upon the amenity of the surrounding properties or would encourage any further anti-social behaviour in the area in comparison to that which already occurs which is a further concern of the objectors. It is also considered that within areas with retail units there is a general level of activity that is greater than that in solely residential areas and residents residing in such areas accept that this is a consequence of living in such a location. Further, it is also noted that following consultation, no adverse comments were received from the Councils Public Health and Protection Division in this respect.

Consequently, whilst it is acknowledged that there will inevitably be a degree of impact from the additional A3 use, on balance, it is not considered that the proposed operation of the unit under Class A3 would result in the amenity of the occupiers of the surrounding properties being materially affected to a degree that would warrant refusal of the application. It is however considered a condition should be added to any consent to restrict the opening hours to that suggested by the applicant to ensure this is the case. The application is therefore considered acceptable in this regard and compliant with Policies AW5 and AW10 of the Rhondda Cynon Taf Local Development Plan subject to the condition detailed below.

### **Highway Safety**

Following consultation, the Council's Transportation Section commented that there is concern that A3 hot food takeaways generate indiscriminate on-street car parking for short durations of time as close to the property as possible which would potentially be opposite on the double yellow lines impacting on the free flow of traffic. However, taking into account the proposed and existing uses have similar car parking requirements in accordance with SPG and both would generate a degree of short term on street car parking with space for vehicular movement if parking takes place on both sides, on-balance, the proposed is acceptable.

It is also anticipated that a number of trips to and from the A3 takeaway would be undertaken on foot with a number of residential dwellings within easy walking distance of the proposed. Therefore, whilst no off-street parking is proposed, the scheme is acceptable in this respect.

It is therefore considered that the development would not have any undue impact upon pedestrian or highway safety in the vicinity of the site and no highway objections have been raised or conditions suggested. In light of these comments, the application is considered to comply with the requirements of Policy AW5 of the Rhondda Cynon Taf Local Development Plan and the highways concerns raised by the objectors have been addressed.

### **Public Health**

Given the proposed use, the Council's Public Health and Protection Division have noted that there is a potential for issues to arise in respect of noise, smell and waste disturbances however, limited details have been submitted with the application in this respect. It is advised however that these issues can be overcome through the installation of specialist extraction equipment and therefore no objections have been raised subject to conditions to be added to any consent to control odour and food waste. It is therefore considered that the application would comply with Policies AW5 and AW10 of the Rhondda Cynon Taf Local Development Plan.

### **Other Issues**

The issues raised by objectors of the need for the takeaway and the impact upon the existing takeaway are not material considerations that can be taken into account in this instance and each case must be dealt with on its own merits.

Similarly, the concern that the change of use will de-value nearby properties is also not a material planning consideration that can be taken into account.

Two objectors query whether the premises will be properly insured to cover the application property itself and the adjoining properties should anything happen i.e. a fire. It is the responsibility of the property owner to ensure that it has appropriate insurance cover, and this concern is neither a material planning consideration.

### **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 not CIL liable under the CIL Regulations 2010 (as amended).

### **Conclusion**

The application represents an appropriate change of use of an existing commercial premise. It is not considered the proposed use would have such an impact upon the amenity of the surrounding properties or upon highway safety in the vicinity of the property that would warrant refusal of the application. As such, the application is considered to comply with the relevant policies of the Local Development Plan.

**RECOMMENDATION: GRANT SUBJECT TO THE CONDITIONS BELOW**

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 plans: hdw/ph/ss.01, hdw/ph/ss.02, hdw/ph/ss.03, hdw/ph/ss.04, and documents received by the Local Planning Authority on 18/05/2022 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. Prior to commencement of any development on site, a scheme of odour/effluvia/fume control shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the beneficial operation of the business and shall remain in perpetuity unless otherwise agreed in writing by the Local Planning Authority. If there are inhabited premises in close proximity to the intended discharge point of the 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.

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

4. Prior to commencement of any development on site, details of a system to prevent waste cooking oil, fats and grease and solid waste from entering the foul drainage system shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the beneficial operation of the business and shall remain in perpetuity unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the integrity of the foul drainage system in accordance with Policies AW5 and AW10 of the Rhondda Cynon Taf Local Development Plan.

5. The A3 unit hereby approved shall only be open to the public between the following hours:

(i) Monday to Sunday: 12:00 midday – 21:00 hours.

Reason: To protect the amenities of occupiers of surrounding properties in accordance with Policy AW5 of the Rhondda Cynon Taf Local Development Plan.

