

# PLANNING APPLICATION NUMBER:P06/2388

Type of approval sought	Full Planning Permission
Ward	Brierley Hill
Applicant	Mrs Mahmood
Location:	<b>48B, HIGH STREET, BRIERLEY HILL, WEST MIDLANDS</b>
Proposal	<b>CHANGE OF USE FROM A1 TO A3 WITH SINGLE STOREY SIDE EXTENSION (RESUBMISSION OF REFUSED APPLICATION P06/2022)</b>
Recommendation Summary:	<b>APPROVE SUBJECT TO CONDITIONS</b>

## SITE AND SURROUNDINGS

1. The application site is a vacant A1 unit located within a designated District Shopping Centre. Surrounding properties are in commercial use, with residential accommodation at first floor.

## PROPOSAL

2. Permission is sought to use the premises as a restaurant ( A3 ). A single storey side/rear extension is proposed within which refuse and ventilation equipment will be housed.

## HISTORY

3. Application P05/2073 for change of use of the premises to A5 ( hot food takeaway ) was refused in November 2005 for the following reasons:

1. The proposed use would adversely affect the free flow and safe movement of traffic on the High Street and pedestrians crossing the carriageway, contrary to Policy CR12 and PGN 28.
  2. The proposed use would adversely impact upon the amenity of the adjacent residents at no.50 High Street by way of the odours and noise that would be emitted from the site. The development would therefore be contrary to Policy DD4 ( Development in Residential Areas ) and PGN 28.
4. Application P06/2022 for change of use from A1 to A3 and creation of 2no. flats at first floor was refused in December 2006 for the following reason:

‘The proposed use of the ground floor of the site as a restaurant would have a detrimental impact on the amenities of both the occupants of first floor flats at adjacent premises and the occupants of the proposed flats above the restaurant, by virtue of noise disturbance and odour. The application is therefore contrary to Policy CR11 of the UDP and Planning Guidance Note 28 relating to hot food takeaways, restaurants and cafes’.

## **PUBLIC CONSULTATION.**

5. The occupant of no.50a High Street objects to the proposal on the grounds of increased disturbance, parking problems, smell and litter.
6. The Chairman of the Brierley Hill Traders Association objects to the proposal on the following grounds:
  - the increasing number of takeaways in Brierley Hill is adversely affecting its character as a shopping centre;
  - approval of the application will lead to an imbalance of A3 uses in the shopping centre which could have an adverse effect on the environment;
  - the proposed use will lead to additional on-street parking, to the detriment of highway safety on the High Street;
  - parking on the pedestrian crossing in front of the site will increase;

- the use will exacerbate existing problems suffered by residents of High Street from noise and disturbance late at night;
- increased litter.

Members should note that the above objections refer to the use of the premises as a takeaway. The application is for a restaurant only and Members should be mindful of this when assessing the level of weight to be given to the objections of the Traders Association when determining the application.

## OTHER CONSULTATION

7. The Group Engineer – Development objects to the proposal on the grounds that as there is insufficient parking provision available along the High Street the proposed use of the building may lead to on-street parking in the vicinity of the site, in particular parking near the pedestrian crossing facility.
8. The comments of the Head of Environmental Protection are summarised in the Assessment section below.

## RELEVANT PLANNING POLICY

9. Policy CR11 of the UDP and PGN28 ( Hot Food Takeaway Shops ).

## ASSESSMENT

10. PGN 28 seeks to safeguard the character and commercial viability of shopping centres by ensuring that there is not a proliferation of non-retail uses within such centres. In October 2005 approximately 57% of units within the centre's protected frontage were in retail use, whilst the figure for A3 uses was a relatively low 13%. Based on these figures it is considered that the development would not have an adverse effect on the centre's vitality and viability.

11. Policy CR11 states that permission for restaurants in local centres will normally be granted unless there would be an adverse impact on environmental quality, residential amenity, or public or highway safety. With regard to the latter, application P05/2073 was refused on the grounds that customers of the proposed takeaway would be likely to park on the zig zag markings of the pedestrian crossing outside the site, to the detriment of safe pedestrian movements on the crossing and the free flow and safe movement of traffic along the High Street. In this case however customers of a restaurant would be far less likely to park in this area given that they would be spending a greater amount of time at the premises and would park along other, less hazardous, parts of the High Street. Therefore a reason for refusal based on similar highway safety reasons to application P05/2073 would not be sustainable in this case.
12. With regard to the impact of the development on residential amenity, this application partly addresses the reason for refusal of application P06/2022 by not proposing any residential accommodation at first floor. In addition, the Head of Environmental Protection has no objection to the proposal subject to the imposition of conditions ( set out in Section 14 below ).

## CONCLUSION

13. The proposal does not contravene Policy CR11 or PGN28 which seek to ensure that proposals for new restaurant uses do not detrimentally impact on the vitality and viability of shopping areas, environmental quality, residential amenity or highway safety.

## RECOMMENDATION

14. It is recommended that planning permission is granted subject to the following conditions:

Reason for Approval

The proposal does not contravene Policy CR11 or PGN28 which seek to ensure that proposals for new restaurant uses do not detrimentally impact on the vitality and viability of shopping areas, environmental quality, residential amenity or highway safety.

Conditions and/or reasons:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The use hereby permitted shall not begin until a scheme for the treatment of fumes to reduce smell and for their extraction has been submitted to and approved by the local planning authority and all works which form part of the scheme have been completed. Such facilities shall be retained for the duration of the use.
3. All plant, machinery and equipment to be installed or operated shall not cause background noise levels to be increased by more than 5dB(A) at any noise sensitive premises.
4. Before any plant or machinery is used on the premises it shall be enclosed with sound insulating material in accordance with a scheme to be agreed with the local planning authority.
5. The use hereby approved shall only take place between the hours of 11.00 – 23.30.
6. The extension hereby approved shall be constructed so as to provide sound attenuation against internally generated noise of not less than 30dB over the frequency range 100 to 3150hz.



