

Application Recommended for APPROVAL
Coal Clough with Deerplay

COU/2021/0010

Town and Country Planning Act 1990
Full Planning Application

Applicant Name: Mrs Yasemin Yildiz

Change of use from shop to hot food takeaway (Sui-Generis). Re-submission of
COU/2020/0081
327 Manchester Road, Burnley, Lancashire, BB11 4HD

This application is brought before Development Control Committee as objections have been received.

Background:

This application relates to an end terrace property sited on the western side of Manchester Road. The site forms a gable property of a small row of shops set back from the Highway. The application property is currently vacant but was previously used as a bakery / retail shop known as Eddie's Bakery.

The attached property No. 325 is a formal are shop which is currently vacant. To the rear is a back street serving the row of shops and beyond are the garden areas for properties on Calderbrook Avenue. To the east is No. 329, a semi-detached property which sits circa 6m from the gable of the application property. A bank of semi mature hedgerow separates the application property and the aforesaid property. On the opposite side of the road is a traditional row of terraced properties. A bus stop is located directly outside of the application site which then runs into zig zag lines for a pelican crossing.





Proposal:

Planning permission is sought for the change of use of the property from a shop to hot food takeaway (A5). Re-submission of COU/2020/0081. No external alterations to the front elevation are proposed.

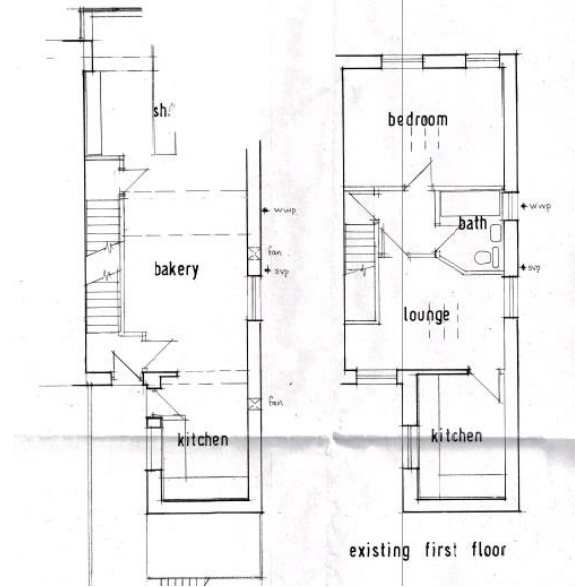
On the 1st September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force, amending the Town and Country Planning (Use Classes) Order 1987. Due to this, current A1 retail uses fall under the new use class, Class E. A takeaway falls under the use class Sui Generis. Therefore, permission is sought to change the property for a retail shop (Use Class E) to a Takeaway (Use Class Sui Generis).

This is a re-submission of the previously refused application COU/2020/0081. The application was refused on highway safety concerns arising from the lack of parking, position of the bus stop and the properties close relationship with access to No. 325 Manchester Road. As well as the proposed hours of opening resulting in an adverse impact upon residential amenity by virtue of the noise disturbances and cooking odours associated with a takeaway. The application was appealed under appeal reference APP/Z2315/W/20/3254208 and dismissed accordingly.

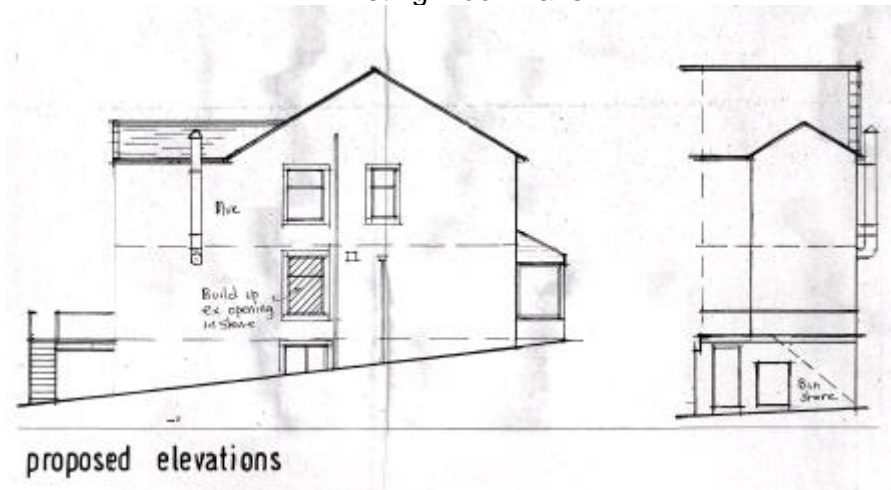
This application relates solely to change the ground floor of the premises to a hot food takeaway, with operating hours for 16:00 – 22:00 Monday to Saturday and 16:00 to 21:00 on a Sunday and Bank Holidays. The takeaway will only be open to visiting members of the public until 20:30, with trade beyond this time being delivery only. The application also includes the installation of an external flue on the rear of the property. The ground floor will comprise of a kitchen, a counter and a customer waiting area. The cellar will comprise of store room, a cold store room and a bin store with access to the rear alleyway.



Existing Side and Rear Elevations

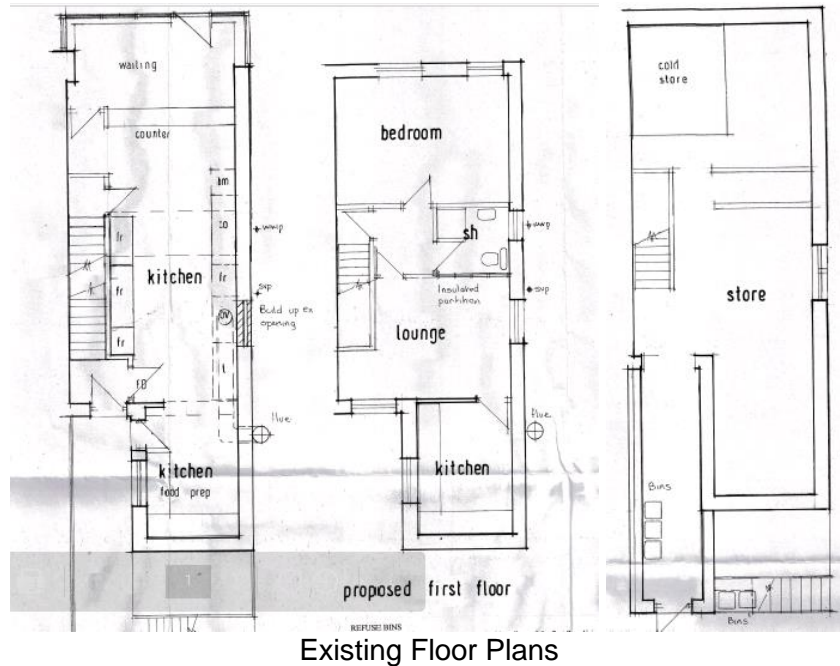


Existing Floor Plans



proposed elevations

Proposed Side and Rear Elevations



Existing Floor Plans

Relevant Policies:

Burnley Local Plan Policies:

- SP1: Achieving Sustainable Development
- SP4: Development Strategy
- SP5: Development Quality and Sustainability
- EMP3: Supporting Employment Development
- TC7: Hot Food Takeaways
- NE5: Environmental Protection
- IC1: Sustainable Travel
- IC3: Car Parking Standards
- Appendix 9: Car Parking Standards

National Planning Policy Framework (NPPF)

Site History:

COU/2020/0081 – Change of use from shop/bakery to hot food take-away (A5) – REFUSED
APP/Z2315/W/20/3254208 – Appeal against refusal of planning application COU/2020/0081
 – DISMISSED

Consultation Responses:

Highways: With respect to the proposed application we would wish to raise an OBJECTION to the development. This is a resubmission of an earlier application COU/2020/0081 which was subject to an appeal. The inspector found in favour of the applicant with regards to the highway issues and states that “with consider parking ... there is a low risk of obstruction to an existing garage” and “there would be adequate opportunity for visitors to the appeal site to park safely and considerately ... within reasonable walking distance of the site”

It is also noted that the current application states that there will only be delivery service after 8.30pm. It is expected that the take-away will operate as described in the application form.

Environmental Health: I would reiterate the comments of my predecessor, NO OBJECTION subject to the attachment of the following conditions:

1. *No process shall be carried on nor machinery installed which could not be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.*

Reason: To safeguard the amenities of the nearby residential area, in accordance with policy SP5 Burnley's Local Plan 2018

- 2. The use hereby approved, including the operation of external plant and machinery, shall not operate outside the hours of 0700 and 2300.*

Reason: To protect the amenities of nearby residents, in accordance with policies NE5 and SP5 of the Burnley's adopted Local Plan 2018

- 3. The use hereby approved shall not start until a detailed scheme for the collection and dispersal of cooking odours has been submitted to and approved in writing by the local planning authority. Such scheme as may be approved shall be implemented before the use starts and thereafter maintained in good working order at all times.*

Reason: To protect the surrounding environment, including occupiers of nearby premises, from nuisance from cooking odours, in accordance with Policy TC7 of the Burnley's adopted Local Plan 2018

- 4. Before the external ventilation flue is used on the premises, it shall be enclosed with sound insulating material and/or mounted in a way that will minimise transmission of noise (including vibration) in accordance with a scheme to be approved in writing by the Local Planning Authority, and be thereafter maintained.*

Reason: To protect the character and amenities of neighbouring areas by ensuring that measures are implemented to avoid any noise nuisance, in accordance with Policy TC7 of the Burnley's adopted Local Plan 2018

Health & Safety: No comments received

Architectural Liaison: No comments received

Neighbour Responses: 8 letters of representation have been received, 1 which offers support for the application and 7 which object to the proposal on the following grounds:

- Lack of / No parking provision for the site;
- Exacerbate Highways safety concerns
- Increase in litter
- Increase in rat problems
- Odour nuisance from the flue will affect neighbouring properties amenity
- Increase in noise and disturbances in the area
- Works have already commenced
- Other takeaways are already present within a mile of the application site.

Planning and Environmental Considerations:

When assessing this application there are a number of important material considerations that need to be taken into account. They are as follows:

- Principle of Development;
- Visual Impact / Design;
- Residential Amenity; and
- Highways;

Principle of Development:

Local Plan Policy SP1 sets out a presumption in favour of sustainable development and makes clear that development proposals that are sustainable will be welcomed and approved without delay. In order to be sustainable, development must accord with national and local policy and have regard to, amongst others, the priority afforded to accommodating growth within the development boundary through the efficient use of land and buildings; and

the need to develop sites that are well located in relation to services and accessible by public transport, walking and cycling.

Policy SP4 states that development will be focussed on Burnley and Padiham with development of an appropriate scale.

The application site is located within the development boundary for the urban area of Burnley, as defined in Burnley's Local Plan. It would therefore, be considered to be located within a sustainable location.

Policy EMP3 of the Local Plan relates to supporting employment development. For new and improved sites and premises any expansion, upgrading or establishment of a new business premises within the Development Boundaries will be supported where they comply with other relevant policies in the Plan and where:

- a) They do not by reason of the nature of their operation or vehicle access arrangements, have an unacceptably negative impact on surrounding uses, residential amenity or the environment; and
- b) They do not (either individually or cumulatively) through their form and design have an unacceptable impact on the landscape or townscape.

It is considered that the proposed development meets the requirements of Policy EMP3 as the proposed development will help support an existing business, an in-depth consideration of the aforesaid issues will be addressed later in this report.

Policy TC7 of the Local Plan relates to the provision of Hot Food Takeaways. The supporting text of this policy states that hot food takeaways represent a popular service for local communities and an important complementary use in Town and District Centres. They can offer important economic development and employment opportunities. Nevertheless, it is recognised that hot food takeaways have a greater potential than retail uses to create disturbance and detract from residential amenity and environmental quality.

Policy TC7 supports the provision of hot food takeaways subject to relevant criteria being met as set out within this policy:

Location

- 1) **Proposed for hot food takeaway will only be permitted in the following areas:**
 - a. **Within the areas of Secondary Frontage or Burnley Primary Shopping Area;**
 - b. **Within Padiham Town Centre; or**
 - c. **Within a defined District Centre**

The application property is not located within one of the aforesaid areas.

- 2) **Outside of these areas hot food takeaways will normally only be permitted where the property does not physically adjoin residential properties or other sensitive uses outside of the applicant's control.**

The application is sited in a row of commercial premises, some of these properties benefit flats above at first floor. It is unknown if these are occupied or vacant at the time of this application. The nearest known residential property to the application site is No 329 Manchester Road which is set back further from the main highway due to this the principle elevation of No. 329 has an offset distance of circa 6m from the rear corner of the application site. Taking into consideration the boundary treatment

separating the two properties it is considered there is sufficient distance to minimise harm to an acceptable level.

3) Proposals for hot food takeaways will only be permitted in the locations set out above where they satisfy other relevant policies of the Plan and the following criteria:

The application is compliant with criterion 2 as stated above and therefore, must be assessed against the following:

Clustering

a) The proposal will not create an unacceptable concentration of similar uses in Burnley Secondary Frontage or Padiham Town Centre

The application property is part of a commercial terrace none of which are hot food takeaways. It is, therefore, considered that the introduction of a hot food takeaway in this location would not create an unacceptable cluster or create an unacceptable concentration.

Amenity

b) The proposal will cause detriment to the free flow of traffic or residential amenity

The proposal has been assessed by the County Highways Officer who has offered an objection to the scheme on highway grounds. However, the officer does note that the appeal decision did not consider that the proposal would lead to adverse highway impacts or safety. Consideration must be given to the inspectors comments, therefore, it is considered that the proposal would not cause detriment to free flow of traffic or residential amenity. A more detailed assessment of this issue will be addressed in a later section of this report.

Accessibility and Parking

c) The location of the proposal is accessible by walking, cycling and public transport;

d) They provide or are served by adequate parking spaces;

The location is accessible by walking, cycling and public transport. However, no off-street parking spaces are to be provided; the proposed use would rely solely on on-street parking.

Extraction of Odours

e) They provide for appropriate extraction systems to effectively disperse odours. Such systems must:

- I. Have minimal impact on visual amenity, including location and external finish;**
- II. Be acoustically attenuated; and**
- III. Not have an unacceptable impact on the amenity of neighbouring occupiers**

An extraction flue is proposed on the rear elevation of the property, it will project 900mm above the ridge height of the outrigger and the eaves height of the main building but set down lower than the main ridge height of the property. Thus, it would only be visible when viewed from the rear of the property.

The extraction system to be installed is an Estoc Powerbox fan provided by Flakt Woods. It has a fan speed of 1355 rpm, with a sound level of 34 dba. The equipment

will consists of a 500mm diameter galvanised steel flue pipe with Plasma Clean carbon bag filter units, the fan as detailed above and a jet cowl.

Further to this, the existing extraction system vents directly out from the rear wall with no flue. The proposed extraction system is considered a significant improvement.

The Environmental Health Officer has assessed the proposal and has confirmed that the proposal raises no concerns.

Waste

- f) Their waste provision is appropriate to the scale and type of premises; and**
Refuse and recycling bins would be stored to the rear of the property in the lower yard area.
- g) They provide appropriately sited bins for customers to use;**
The applicant is proposing to provide bins on the forecourt for customer use.

Hours of Opening

- h) When determining the appropriate hours of opening, regard will be had to:**
 - I. the likely impacts on residential amenity;**
 - II. the existence of an established late-night economy in the area; and**
 - III. the character and function of the immediate area, including existing levels of background activity and noise.**

The established use of the property as a bakery / shop is not restricted by opening hours. The opening hours proposed are 16:00 to 22:00 Monday to Saturday and 16:00 to 21:00 Sundays and Bank Holidays. The takeaway will be open to visiting members of the public until 20:30, with trade beyond this time being delivery only.

Located within the small row of properties the application site is part of is a Spar (retail shop), which remains open until 22:00. It is therefore, considered that there is an established night economy present within the area

It is considered that the proposed takeaway would have no greater an impact on the area than the users of the nearby retail shop in regards to activity and noise. A more in-depth assessment regarding amenity impacts of the proposal will be addressed later in this report.

- 4) Where appropriate, restriction will be placed on opening hours; however, this would not overcome the reason for refusal.**

The hours of opening will be conditioned as per the hours set out in the application form:

- 16:00 to 22:00 Monday to Saturday; and
- 16:00 to 21:00 Sundays and Bank Holidays

Taking into account the above, it is considered that the proposed development meets the requirements of Policy TC7 of the Local Plan.

Therefore, the principle of the development is accepted, in accordance with the NPPF's presumption in favour of sustainable development and Policy SP1 of the Burnley Local Plan which reiterates this stance, which should proceed without delay, unless impacts which

significantly and demonstrably outweigh the benefits of a proposal are identified; subject to assessment of the following matters:

Visual Impact / Design:

Paragraph 124 of the NPPF states the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. This is reiterated by Local Plan Policy SP5 which seeks high standards of design that positively address local context and characteristics.

No external alterations are proposed to the front façade of the application property. The alterations proposed to the rear are the installation of the extraction equipment.

The proposed extraction equipment will be screened from the principal elevation and Manchester Road by the application property. The equipment would be sited to the rear of the property and set down below the ridge line of the property. It would only be visible when viewed from the rear alleyway which runs along the rear of the small terrace row of properties the application site is part of.

Taking this into consideration, it is considered that the proposal would not result in an adverse impact upon the visual appearance of the application property or surrounding area. The development, therefore, accords with Policy SP5 of the Local Plan and the NPPF.

Residential Amenity:

Policy SP5 of the adopted Local Plan seeks to ensure that there is no unacceptable adverse impact on the amenity of neighbouring occupants or adjacent land users, including by reason of overlooking.

The previously refused application COU/2020/0081 identified issues with the submitted information and refused the application on the following grounds:

'The proposed opening hours would lead to conditions detrimental to residential amenity due to noise disturbance and cooking odours. This would be contrary to Policies TC7, SP5 and NE5 of the Burnley's adopted Local Plan 2018'

The Council's Environmental Health officer has not objected to the scheme but rather suggested a number of conditions to be included should the application be approved.

Previously, the application site was a bakery and associated shop. The bakery commenced operations around 04:00 and the shop closed around 18:00. The convenience store located at 317 Manchester Road, currently closes at 22:00.

The proposed opening hours will restrict visitor trade to between 16:00 and 20:30 operating delivery trade only from 20:30 onwards till closing at either 22:00 Monday to Saturday or 21:00 on Sundays. The hours within which the takeaway will attract customers to the premises is similar to that of the convenience store, albeit, the takeaway will close earlier than the convenience store.

One of the supporting arguments put forward by the agent is that under the new Use Class E the property could operate as a café or restaurant with a flue, with no hours of restriction without the need for planning permission. This is considered to be a fallback position and must be considered as a material consideration in the determination of this application.

In terms of extraction, the proposed extraction system is an improvement on that of the existing. It is a modern system which will ensure that the impact of neighbouring properties from noise and cooking odours is minimised to an acceptable level. The conditions proposed by the Environmental Health officer will ensure that the proposed use does not adversely impact upon neighbouring amenity.

It is therefore, considered that the proposed use of the premises as a takeaway subject to the attachment of a condition restricting hours of opening would not result in a development which impacts on any neighbouring dwellings any more than the use of the property as a bakery. The proposed development will not result in any more noise disturbance than that which is currently experienced by neighbouring residential properties.

Further to this, this permission allows the Council a level of restriction, ensuring that the development does not adversely impact upon residential amenity. The change of use of the property to a café / restaurant under permitted development within the Use Class E would have a greater adverse impact upon neighbouring amenity as no restrictions can be applied by the council to ensure the proposed use does not adversely impact residential amenity.

The proposed first floor of the property is currently used as a flat and was present at the time when the bakery/shop was in operation. In terms of soundproofing, all external walls and the party wall with No. 325 Manchester Road will be fitted with 50mm Gyproc acoustic roll and lined with gypsum soundbloc board and skin. Further soundproofing works to the existing first floor/ground floor ceiling will include under-drawing the existing floor with an independent suspended ceiling comprising 2 layers of 15mm Gyproc Soundbloc board and skin, and the provision of 100mm Gyproc Isowool quilt insulation between the ceiling and the underside of the existing floor. It is considered that subject to the installation of the proposed soundproofing prior to the commencement of the proposed takeaway use the development would not adversely impact the amenity of the occupiers of the first floor flat.

It is considered that the development accords with Policies TC7, SP5 and NE5 of the Local Plan.

Highways:

Policy IC1 seeks to ensure sustainable travel, highway safety and a safe and convenient means of access for all users. Policy IC3 requires the adequate provision of car parking for developments in accordance with specific parking standards set out in Appendix 9. In applying the parking standards Appendix 9 allows for local circumstances to be taken into account which includes the accessibility of the site by public transport, walking and cycling; the availability of existing public parking provision or on-street parking nearby; and whether any under-provision might cause or exacerbate congestion, highway safety issues or on street parking problems.

The County Highways Officer has objected to the proposal on highway grounds reiterating the comments submitted at the time of the previously refused application. The planning inspector who assessed the appeal of the previously refused application did not agree with these concerns and concluded that the proposal would not significantly increase on-street parking levels or be harmful to access or highway safety.

This vacant ground floor bakers shop and premises is located at one end of a parade of commercial properties. Fronting onto the busy Manchester Road, the site is accessible by foot, bicycle, public transport and motor vehicle. The submitted evidence confirms that it attracted employees and customers, deliveries and servicing from the early morning to late afternoon.

A wedge shaped forecourt area is located between the public footpath and the parade. Not all of the residential and commercial properties surrounding the site benefits from on-site car parking and on-street parking is evident within the area. A layby in Calderbrooke Avenue, is considered large enough to accommodate up to 3 averaged size vehicles, which is within easy reach of the appeal site via the public footpath network.

In terms of visitors, the proposal would attract custom, servicing and deliveries later in the day, extending late into the evening. Bearing in mind the nature of the existing surrounding commercial and educational uses, the proposed opening hours would serve to even out visitors to the locality and therefore demand for parking, in comparison with the former use. Consequently, the proposed use would not significantly increase vehicular and pedestrian movements throughout the course of the day. Although such number would be increase on an evening.

In terms of access and parking, the more limited with and presence of a bus shelter and fixed litter bin would restrict the use of the forecourt for such purposes outside the application site. Current road makings restrict on-street parking in the vicinity of the bus stop, pedestrian crossing and access to the driveway of No. 329 Manchester Road.

The proposed use could lead to vehicles to park or drive along the side/rear alleyway that bounds the rear and side of the application site. However, visibility from either of its junctions is adequate to not raise serious highway safety concerns. With considerate parking, given its with and construction, there is low risk of an obstruction to an existing garage or the remaining properties in the terrace row. Furthermore, there is no evidence to substantiate why the visitors of the proposed takeaway could not use the on-street parking present in the existing layby on Calderbrooke Avenue.

The existing layout of the local road network and presence of legitimate parking provision within the immediate vicinity which could be used by visitors to the site would be unlikely to increase the risk of unsafe vehicular movements or lead to an adverse harm to highway safety for its users. Therefore, it is considered that the proposed development would accords with Policies TC7, SP5 and IC1 of the Local Plan.

Conclusion:

The proposed use, which is considered to be an acceptable use in such a location, and therefore, is considered to make a positive controbution to the diversity of uses on offer in the area. Further to this it would bring a vacant premises back into use and has the potential to help enhance the vitality of the area. The proposed use has the potential to make a positive impact to early evening economy of the area too.

The proposeed use is not considered to have a detrimental impact on the character of the area and would not result in a cluster of takeway ises, but rather woud have the potential to enhance the vitalit and viability of a main arterial route into and out of Burnley Town Centre.

It is, therefore, considered that the proposed development does not raise any significant concerns in terms of impact upon amenity and is considered acceptable in relation to highway safety, extraction of odours and waste provision. Accordingly, the proposed development is considered to comply with the requirements of the Local Plan.

Recommendation: APPROVAL subject to the following conditions:

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

REASON: Required to be imposed by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development shall be carried out in accordance with the approved plans listed on this notice below.

REASON: To ensure the development is implemented in accordance with the approved plans and to avoid ambiguity

3. The extraction equipment as proposed shown on 'Proposed change of use of No. 327 Manchester Road Burnley – Existing and Proposed Plans – REV A' shall be installed prior to commencement of the hereby approved use, maintained to minimise noise and odour emissions and retained for the duration of the approved use.

REASON: To prevent loss of amenity to nearby residential premises arising from cooking odours and / or extraction system noise in accordance with Policy SP5 of the Local Plan.

4. No process shall be carried on nor machinery installed which could not be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Reason: To safeguard the amenities of the nearby residential area, in accordance with policy SP5 Burnley's Local Plan 2018

5. The use hereby approved, including the operation of external plant and machinery, shall not operate outside the hours of 0700 and 2300.

Reason: To protect the amenities of nearby residents, in accordance with policies NE5 and SP5 of the Burnley's adopted Local Plan 2018

6. The use hereby approved shall not start until a detailed scheme for the collection and dispersal of cooking odours has been submitted to and approved in writing by the local planning authority. Such scheme as may be approved shall be implemented before the use starts and thereafter maintained in good working order at all times.

Reason: To protect the surrounding environment, including occupiers of nearby premises, from nuisance from cooking odours, in accordance with Policy TC7 of the Burnley's adopted Local Plan 2018

7. Before the external ventilation flue is used on the premises, it shall be enclosed with sound insulating material and/or mounted in a way that will minimise transmission of noise (including vibration) in accordance with a scheme to be approved in writing by the Local Planning Authority, and be thereafter maintained.

Reason: To protect the character and amenities of neighbouring areas by ensuring that measures are implemented to avoid any noise nuisance, in accordance with Policy TC7 of the Burnley's adopted Local Plan 2018

8. The approved use shall be restricted to the following times:

- 16:00 to 22:00 Monday to Saturday; and
- 16:00 to 21:00 Sundays and Bank Holidays

REASON: To safeguard the amenities of the adjoining premises and the area generally; in accordance with Policy SP5 of the Local Plan.

- 9 Unless otherwise agreed in writing with the Local Planning Authority, and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any equivalent Order following the revocation and re-enactment thereof (with or without modification), shall be used as a Hot Food Takeaway (Use Class Sui Generis) and for no other use within these use classes as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended).

REASON: To ensure that the property is used solely as its intended use as any other use within use class may not be considered acceptable in the interest of amenity of the area and the area generally in accordance with Policies SP1, SP4, SP5 and TC7 of the Local Plan.

RH
Planning and Compliance Officer