



TOWN & COUNTRY PLANNING ACT 1990 (As Amended), Section 78 and Schedule 6

Appeal Statement

APPELLANT: Mr D Sandhu

APPEAL SITE: 39 Berkeley Avenue, Reading, RG1 6JS

APPEAL PROPOSAL: Change of use of ground floor shop F.2 (former A.1) to takeaway (sui generis) and installation of an extraction chimney.

LPA REFERENCE: 221769/FUL

24^h of June 2024

Author:

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1. Background to the Appeal

1.1 This appeal statement is concerned with the refusal of a planning application under reference 221769/FUL. The application sought permission for the change of use of ground floor shop F.2 (former A.1) to takeaway (sui generis) and installation of an extraction chimney at 39 Berkeley Avenue in Reading. The planning application was refused on 15th of March 2024 due to following reasons below in para 1.2.

1.2 Reasons for refusal:

1. The proposed development, by reason of the nature of the takeaway use, including increased vehicle movements, comings and goings, and customers congregating, together with the hours of opening, would result in an increased level of disturbance to occupiers of neighbouring dwellings with consequent harm to their residential amenity. As such the proposal is contrary to Policy CC8 of the Reading Borough Local Plan 2019 and Paragraph 135 of the NPPF (December 2023).
2. The proposal fails to demonstrate exceptional circumstances to justify the location of the proposed hot food takeaway on this site and is therefore, in principle, contrary to Policy RL2 of the Reading Borough Local Plan (2019) and paragraphs 91 and 95 of the National Planning Policy Framework (December 2023).
3. The intensification of the use of the site and the nature of the use would increase risk to public safety, including that of pedestrians and other road users, due to vehicles stopping on the carriageway and cycleway, the footway, or the paved forecourt, resulting in harm to the safety of road users including pedestrians and cyclists. In addition the proposal fails to provide adequate parking provision for staff and customers in terms of both the number of parking spaces and the inadequate space available, it also fails to demonstrate appropriate arrangements for refuse storage and collection. As such the proposal poses a public safety risk to highway users, contrary to Policies TR3 and TR5 of the Reading Borough Local Plan (2019) and paragraph 116 of the NPPF (December 2023).

1.3 There is no dispute with the LPA over the acceptability of the following matters:

- The proposed development is considered acceptable with regards to:



- Installation and impact of the extraction chimney with regards to fumes/odour and noise;
- External appearance;
- Internal layout.

1.4 In response to the reasons for refusal in conjunction with the Officer's Report, we consider the main issues to be, whether the proposed change of use to takeaway is detrimental with regards to:

- Amenity impact with regards to takeaway use;
- In principle objection to location of takeaway on the appeal site;
- Highways impact (highway safety, parking, cycles and waste).

1.5 Furthermore, this appeal statement will reveal that the proposed development would result in a positive impact upon the surrounding area, with regards to:

- streetscene appearance;
- vitality of the surrounding area;
- local economy;
- visual and functional revitalisation of the ground floor of the vacant premises at the appeal site, due to its neglected and currently poor state of repair.

2. Site Location and Description

2.1 The application site is located on Berkeley Avenue, where it is in the immediate vicinity of commercial retail unit, which occupy the ground level of the entire building, as per below photograph.

2.2 The appeal site is sited on the southern side of Berkeley Avenue, within around 0.5km from the Reading Town Centre (10min walk).

2.3 The application site includes a building, located within a group of properties of diverse use, where can be found within walking distance:

- Costcutter shop (adjacent);
- Esso patrol station with shop (opposite side – 20m);
- Car dealer/car wash (75m);



- places of worship (130m);
- commercial parade at Wensley Rd (400m - west) including grocery shop, restaurant, pharmacy.

Figure 1. Front view of the entire building at the appeal site.



- 2.4 The application site is an end-of-terrace property, but located adjacently to a retail units on the ground floor, which covers majority of the frontage. The elevation of the building is 23m wide, which includes Costcutter shop and associated parking covering 15m out of 23m wide front elevation. The 15m wide space contains entrance with a ramp and parking spaces at the front.

3. Planning History

- 3.1 920402 - Erection of domestic outbuilding – Application permitted
- 3.2 930877 - Proposed change of use of existing retail unit Class A1 to a takeaway restaurant Class A3 – Application refused
- 3.3 940618 - Change of use of existing retail unit Class A1 to a takeaway restaurant Class A3. – Application refused
- 3.4 990023 - Change of use of the premises on the ground floor only, from shop (A1) to the mixed use of A3 (Take-away) / A1 (Off licence) ground floor only – Application withdrawn



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- 3.5 010547 - New stairwell providing access to existing habitable basement rooms to front of building. – Application refused
- 3.6 020838 – Two storey pitched roof rear extension – Application permitted
- 3.7 030315 - Two storey side extension to incorporate an extension to the ground floor retail (A1 use) floor space and a one bedroom flat at first floor level. – Application refused
- 3.8 040450 (or 04/00073/FUL)- Two-storey side extension to incorporate an extension to the ground floor retail (A1 use) floor space and a one bedroom flat at first floor level – Application permitted
- 3.9 050506 – Two storey rear extension – Application permitted
- 3.10 092029 - Change of use from A1 to A5 and erection of single storey rear extension – Application withdrawn
- 3.11 101819 - Change of use from A1 (shop) to A5 (hot food takeaway); and erection of cowl on east elevation – Decline to determine

4. Legislation

- 4.1 Section 55(1) of the Town and Country Planning Act 1990 (as amended) defines development as: *“development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.*

5. Planning Policy

NPPF

- 5.1 Decision-making in favour of sustainable development is strengthened and its significant weight is confirmed in paragraph 38, which states that *“Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including*



brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible”.

- 5.2 Paragraph 85 of the ‘Building a strong, competitive economy’ - Chapter 6 of the NPPF states that *“decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development”.*
- 5.3 Furthermore, paragraph 92 highlights that *“When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.”*
- 5.4 Paragraph 96 of the ‘Promoting healthy and safe communities’ chapter in the NPPF encourages to support places which would:
- promote social interaction, including opportunities for meetings between people – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages;
 - are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of clear and legible pedestrian routes, and high quality public space, which encourage the active and continual use of public areas.
- 5.5 Paragraph 97 of the same chapter emphasises importance of social, recreational and cultural facilities and services the community needs and states that planning decisions should inter alia:
- plan positively for the provision and use of shared spaces, community facilities (such as local shops and meeting places) and other local services to enhance the sustainability of communities and residential environments;



- take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;
- ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community.

Local Development Framework

Accessibility of development

- 5.6 Number of Local Plan Policies relate to sustainable development, such as CC6 'Accessibility and the intensity of development' part, which emphasises importance of sustainable location of development – *"The scale and density of development will be related to its level of accessibility by walking, cycling and public transport to a range of services and facilities, with the densest and largest scale development taking place in the most accessible locations. Unless it can be demonstrated that the accessibility of a site is to be significantly upgraded, for example, by providing high quality pedestrian routes or providing access to good public transport services, any new development must be at a scale, density and intensity appropriate to that level of accessibility."*
- 5.7 Policy CC6 explains in paragraph 4.1.25 that *"...primary locations for new development will be those accessible by walking and cycling to a wide range of employment, services and facilities, leisure, education and health facilities, or which are accessible by walking to routes/stops of frequent public transport services that provide easy access to the aforementioned uses"*. Paragraphs 4.1.27 continues that good level of accessibility means - *"to be that within 400m of a defined centre with a good range of facilities by pedestrian routes, and within 400m by pedestrian routes of a bus stop served by a service with a frequency of better than one bus every 20 minutes in each direction within daytime hours (7.00 a.m. to 7.00 p.m.)."*
- 5.8 The general health targets, accompanying appropriately located developments, mentioned in the explanation of this policy include:
- *"increased physical activity;*
 - *decreased incidences of cardiovascular disease and obesity;*
 - *reduced levels of stress caused by traffic noise and congestion;*



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- *fewer cases of lung or heart disease associated with poor air quality;*
 - *proximity to healthcare services;*
 - *access to open space for recreation”.*

Design Quality

- 5.9 Policy CC7 states that *“All development must be of high design quality that maintains and enhances the character and appearance of the area of Reading in which it is located. The various components of development form, including:*
- *Layout: urban structure and urban grain;*
 - *Landscape;*
 - *Density and mix;*
 - *Scale: height and massing; and*
 - *Architectural detail and materials”.*
- 5.10 The above components are linked with the subsequently highlighted urban design objectives, which should be enhanced by the proposals, inter alia:
- *“Character - a place with its own identity and sense of place;*
 - *Continuity and enclosure;*
 - *Quality of the public realm and provision of green infrastructure and landscaping;*
 - *Ease of movement and permeability;*
 - *Legibility - clear image and easy to understand;*
 - *Adaptability – capable of adaptation over time;*
 - *Diversity – meets a wide range of needs”.*
- 5.11 In addition, CC7 summarizes and encourages to ensure that proposed developments:
- *“Respond positively to their local context and create or reinforce local character and distinctiveness, including protecting and enhancing the historic environment of the Borough and providing value to the public realm;*
 - *Create safe and accessible environments where crime and disorder or fear of crime does not undermine quality of life or community cohesion;*
 - *Address the needs of all in society and are accessible, usable and easy to understand by them, including providing suitable access to, into and within, its facilities, for all potential users, including disabled people, so that they can use them safely and easily;*



- *Are visually attractive as a result of good high quality built forms and spaces, the inclusion of public art and appropriate materials and landscaping.”*

Amenity

5.12 Policy CC8 ‘Safeguarding amenity’ states that the *“Development will not cause a detrimental impact on the living environment of existing residential properties or unacceptable living conditions for new residential properties, in terms of:*

- *Privacy and overlooking;*
- *Access to sunlight and daylight;*
- *Visual dominance and overbearing effects of a development;*
- *Harm to outlook;*
- *Noise and disturbance;*
- *Artificial lighting;*
- *Vibration;*
- *Dust and fumes;*
- *Smell;*
- *Crime and safety; or*
- *Wind, where the proposals involve new development of more than 8 storeys.”*

5.13 Then it continues and clarifies that *“As well as immediate impacts, other aspects to which this policy applies will include matters such as hours of operation of businesses, and effects of traffic movements (...)”*

Variety of premises

5.14 Policy EM4 ‘Maintaining variety of premises’ highlights that *“A range of types and sizes of units should be present in the Borough, and proposals should maintain or enhance this range.”*

Shopfronts

5.15 Policy OU5 ‘Shopfront and cash machines’ emphasises need of shopfronts to *“(…) respect the character of the building on which they are located and their surroundings, as well as the wider street, in terms of design, colours, materials, lighting, and location. Features that positively contribute to the character of the building and street will be retained and, where possible, restored. Safety and security will be maintained and enhanced.”*



6. Assessment

- 6.1 This appeal statement will demonstrate that the proposed development is not harmful in terms of the location and level of activity of the takeaway and it would not cause any detrimental highways impacts in relation to the existing arrangement. It will be presented that the proposal would be in compliance to relevant, abovementioned paragraphs of the NPPF, Reading Borough Council's Local Plan and Supplementary Planning Documents.

I. Reason for refusal 1 - Takeaway and the amenity impact

- 6.2 The Officer's Report brings into attention few arguments against the change of use, due to negative amenity impacts. Below paragraphs will respond to each point raised by the Council.
- 6.3 The Officer's Report concluded that the proposed takeaway/restaurant would cause unacceptable level of activity, noise, congregation of customers and it justifies such conclusions with opening hours up to 22:00 in the evening. The Case Officer however conveniently omitted fact that the Costcutter is open until 23:00. Permission ref. 040450 already approved this part of ground floor to be used until 23:00, therefore effectively the appeal proposal would reduce the opening time and this part of the building would be closed sooner by 1 hour.
- 6.4 Another omitted fact is the existing InPost Parcel Locker at the front of Costcutter, obviously available 24h a day, 7 days a week. In addition, the Esso petrol station on the opposite side of the road is also open 24/7. We strongly believe that the change of use of unit with already established longer opening hours and surrounded by facilities with 24/7 opening times, would not result in any detrimental impact upon the amenity of residents in this part of Berkeley Avenue.
- 6.5 In further paragraphs of the Officer's Report, it is stated that the proposal "*would be a marked change from the existing situation and would be harmful to the amenity of residents.*" Due to lack of convincing evidence, factual inaccuracies and omission of key facts about the appeal site and the surroundings, we strongly disagree that the appeal proposal would make a significant change in terms of amenity impact. In fact, we have



presented above that despite of a new takeaway unit in this location, it would be well fitted within already established area of various services, some of which are open non-stop (petrol station or Inpost) or are of a larger scale (Costcutter or Esso station).

6.6 Furthermore, it must be highlighted that there are numerous examples of similar use within close proximity of the town centre, some of them are listed in section V of this statement.

6.7 In conclusion, this 1st reason for refusal is considered to be very subjective, biased and based on very vague assumptions combined with ignorance of the established character of the area.

II. Reason for refusal 2 – Principle of location of the proposal

Established kitchen/retail use

6.8 The crucial aspect to be recognized is that the appeal proposal would use already existing commercial space for change of use to takeaway. Furthermore, this space according to the last planning permission (040450 or 04/00073/FUL) has been approved as kitchen. It is therefore considered that the proposed takeaway would, in principle, result in a similar type of development in this area and within the appeal property and to certain level, this has been already established in the planning history of this property.

6.9 The Officer's Report states that the situation of the proposal is unacceptable as *"The application site is not located within any designated town or district retail centre, and justification for the choice of location for this development has not been demonstrated."* We strongly believe that the Council ignored most important facts that the current permitted use is kitchen facility (similar to proposal) and that it is currently vacant (or as mentioned in the officer's report – provides no function to this (retail) use). Effectively we believe that through the proposal, this part of ground floor would be recovered and brought back to useful function, sympathetic to established commercial use of ground floor of this building.

6.10 It is considered that the originally approved kitchen area would result in similar impacts when compared to the appeal proposal, such as:



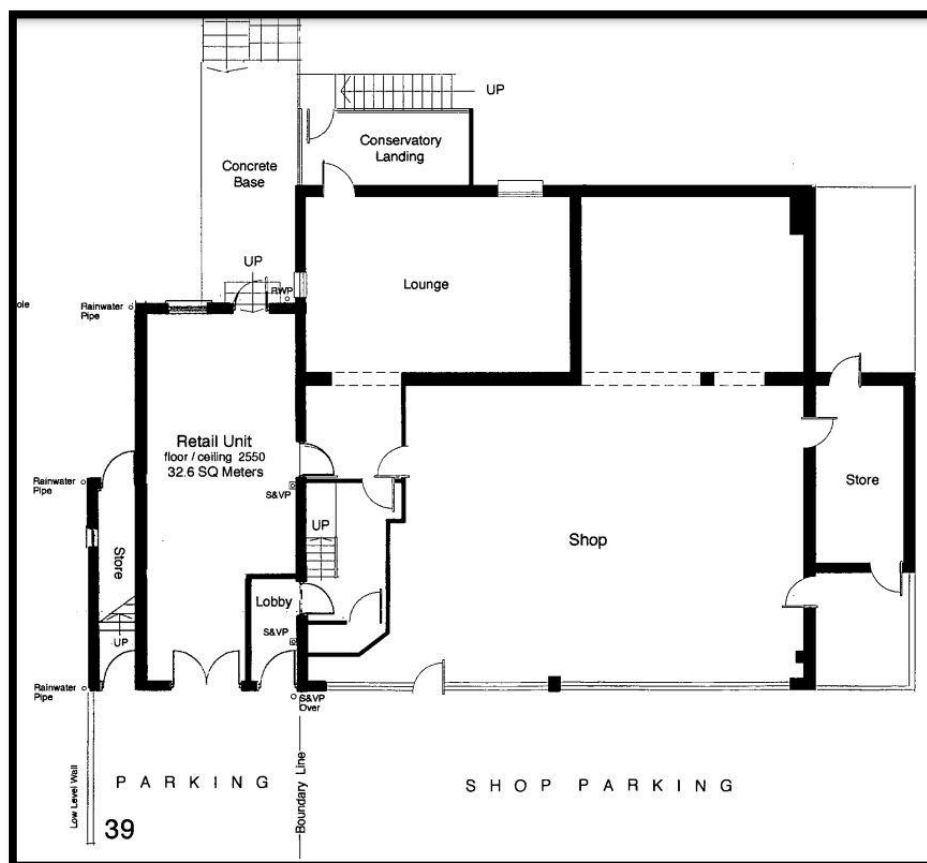
- Visually similar impact (food production, visible through the glazed double front door);
 - Additional level of activity at the property;
 - Additional workers for both kitchen/takeaway facility;
 - Additional parking required and provided at the front of the site (approved under ref. 040450);
 - Cycle and refuse storage (required and conditionally approved under ref. 040450)
 - Noise (sound insulation), odour (conditionally approved under 040450).
- 6.11 The above similarities have been already recognized in the application ref. 040450, where the proposed development has been approved with a list of conditions, which are suitable for the current appeal proposal.
- 6.12 Furthermore, application ref. 090240 (validated in February 2009, withdrawn August 2009) confirms existing ground floor plan of the appeal property, where it clearly visible is that kitchen area to the side has retained a separate front entrance, as per the approval ref. 040450 and below Figure 3.
- 6.13 It is therefore considered that the arrangement of the kitchen from approval ref. 040450 and current appeal proposal is materially the same. In addition, both proposal would respect condition 2 of the approval ref. 040450 as quoted below. It is important to note that the existing front double glazed door would serve as entrance to the approved kitchen (ref. 040450) or the current appeal scheme and the external arrangement would remain identical.

Figure 2. Condition 2 of planning permission 040450

2. The ground floor of the extension hereby approved shall only be used as additional retail floorspace to the shop hereby extended, or as a kitchen facility for the production of food products ancillary to the shop and **solely to be sold within the shop hereby extended** and at no other location. Reason: In order for the food manufacturing process to remain ancillary to the A1 retail use, in accordance with Policy HSG 4 (Non-Residential Uses in Residential Areas) of the Reading Borough Local Plan (1998).



Figure 3. Existing Ground Floor Plan at the appeal site (Feb 2009).



Community aspect

- 6.14 The Officer's Report states also that there are numerous restaurants within 1km radius and effectively the Council didn't give any special consideration to community element. We believe this is very misleading statistical approach, because within 1km radius there is a town centre area and the proposal is to provide a small restaurant and meeting place for the local community of Coley, where only 1x takeaway place exists in the western side of the neighbourhood at Wensley Rd, which does not have seating places.
- 6.15 The proposal would therefore provide a small restaurant with takeaway with seating area, which would offer meeting opportunity for the local residents. Furthermore, it is considered that the location is perfectly suitable, as to the south of Bath Road (space marked in red in below Figure 3.) there is no other similar place that would serve local community, for seating and eating/drinking. The appeal site is conveniently located, in a walking distance from every place in Coley Park.



- 6.16 Lastly, it must be noted that residents of Coley Park have very limited options with regards to choice of local restaurants/cafes etc., not only because of lack of available places, but also due to natural barriers to the west (railway) and south (Fobley Island Nature Reserve and Kennet River). The only options left are crossing Bath Road to the north (busy 3-4 lanes road) or crossing A33/A329 (another busy 4 lanes road).

Figure 4. Coley neighbourhood - area south of Bath Road with no similar existing restaurants



- 6.17 Concluding, it is believed that the 2nd reason for refusal is unreasonable, due to significantly contrasting approach to a materially similar proposal at the ground floor of no. 39 Berkeley Avenue and inaccuracies in assessment of character of the Coley Park neighbourhood from the restaurant units perspective.
- 6.18 Also, given the above, we strongly disagree with Officer's conclusions that *"The proposal is fundamentally contrary to Policy RL2 of the Reading Borough Local Plan (2019) and the Sequential Test outlined in paragraphs 90 to 95 of the NPPF (Dec 2023)."* It is considered that due to established use it is unnecessary and unreasonable to request the Sequential Test from Policy RL2, as the existing site is already permitted as

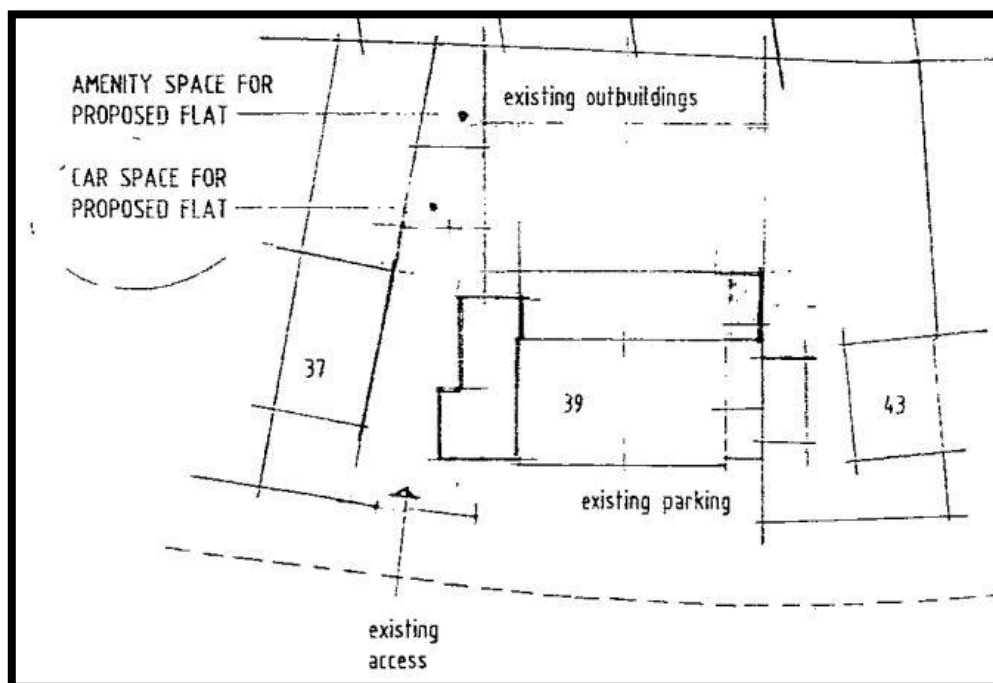
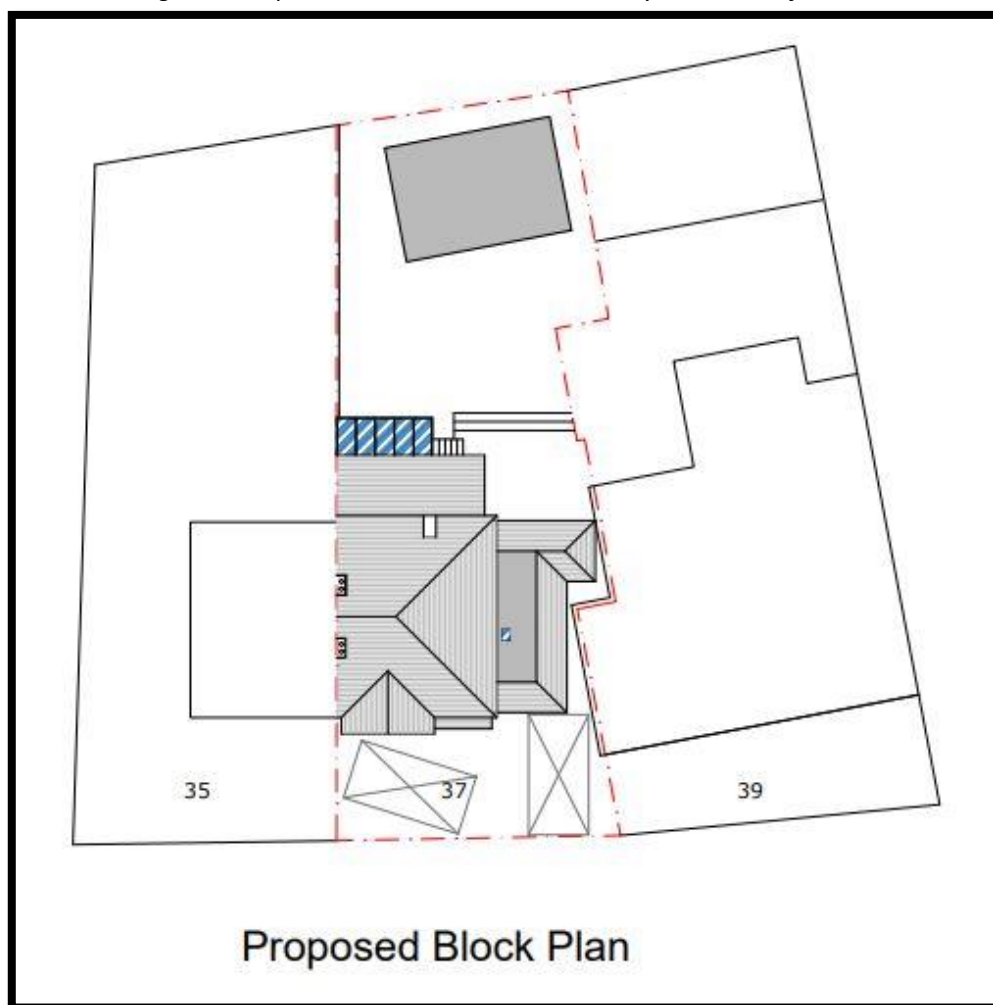


kitchen/retail. Effectively the proposal is in compliance with the Reading Borough Local Plan and the relevant paragraphs of the NPPF.

III. Reason for refusal 3 – Highways impact

- 6.19 The Council argues that *“This is considered relevant and a material consideration, as the amenity and parking space for this flat have not been provided or have been lost over time.”* This statement is however inaccurate as the existing arrangement and approval of adjacent side extension at no. 37 (221768) already removed possibility of parking at the back.
- 6.20 Furthermore, site plan from permission ref. 040450 clearly shows the entire frontage as ‘existing parking’ as per the below Figure (Site Plan from permission ref. 040450). Again, this front parking arrangement, which is relevant for the front commercial use remains unchanged and it is not reasonable by the Council to suddenly refuse it as being inadequate, because it has been existing for minimum over 26 years.
- 6.21 The rear parking for the flats above has been approved to be removed by the Council, due to approval of the single storey side extension under ref. 221768 at no. 37 Berkeley Avenue. It is presented in the below Figure of the ‘Proposed Block Plan’ at no. 37. The Council therefore contradicts its own judgement, when saying that front parking area is unacceptable for the appeal proposal.
- 6.22 The Officer’s Report and the decision notice also refers to inadequate parking provision on the appeal site for the takeaway. Nevertheless, the entire front driveway (appeal site and Costcutter) includes parking spaces, which are accessed in the same way (directly from Berkeley Avenue, through the cycle path) and they are of technically insufficient length, causing partially overhang above the footpath. Notwithstanding the above, this arrangement was established, retained and accepted by the Council and local residents/users over the years.
- 6.23 The Officer’s Report also mentions Council’s parking standards, where 1x space is required per 50m² for takeaway use. The same document requires 1x parking space per 40m² for retail use and the existing Costcutter shop does not include a single space that would meet those standards (due to insufficient length and also insufficient amount of parking spaces in relation to the floor area).



Figure 5. Proposed Site Plan at the appeal site – ref. 040450*Figure 6. Proposed Block Plan at no. 37 Berkeley Avenue – ref. 221768*

Refuse storage

- 6.24 With regards to refuse storage, the proposal retains established arrangement at the front along existing side fence, which includes shared area for minimum 4x bins for the ground floor and the first floor flat.
- 6.25 The Council argues that this arrangement “would” appear unsightly and be considered inappropriate, however the waste storage area has been existing in this location for many years (Google streetview shows at least 2009). Furthermore, the other side of the building, which serves Costcutter and flat above, also mirrors the waste storage layout. All presented in the photographs below.

Figure 7. Waste storage area on the appeal site - established since minimum 2009



Figure 8. Waste storage area - Costcutter and flats (other side of the building)



IV. Positive impact upon this part of the streetscene and character of the area

- 6.26 As the last aspect mentioned in this appeal, we would like to emphasise an importance of the regeneration of this part of frontage at 39 Berkeley Avenue, which is vacant and represents a poor and useless appearance. The proposal would bring more vital use in this neglected part of the site and it would serve for the wider neighbourhood, which is lacking of similar takeaway use in the closest proximity. Currently it is in a poor state, polluted with some rubbish or abandoned items, negatively contrasting with more liveable Costcutter and adjacent retail units on the opposite side of the street.
- 6.27 It is strongly believed that the proposed development would result in a positive impact in terms of the visual appearance or functionality of this part of Berkeley Avenue, as it would be used by more residents. The proposed change of use of this space would positively contribute towards stronger sense of place for community, introducing new facility to socialize and benefit from needed takeaway use at the appeal site.

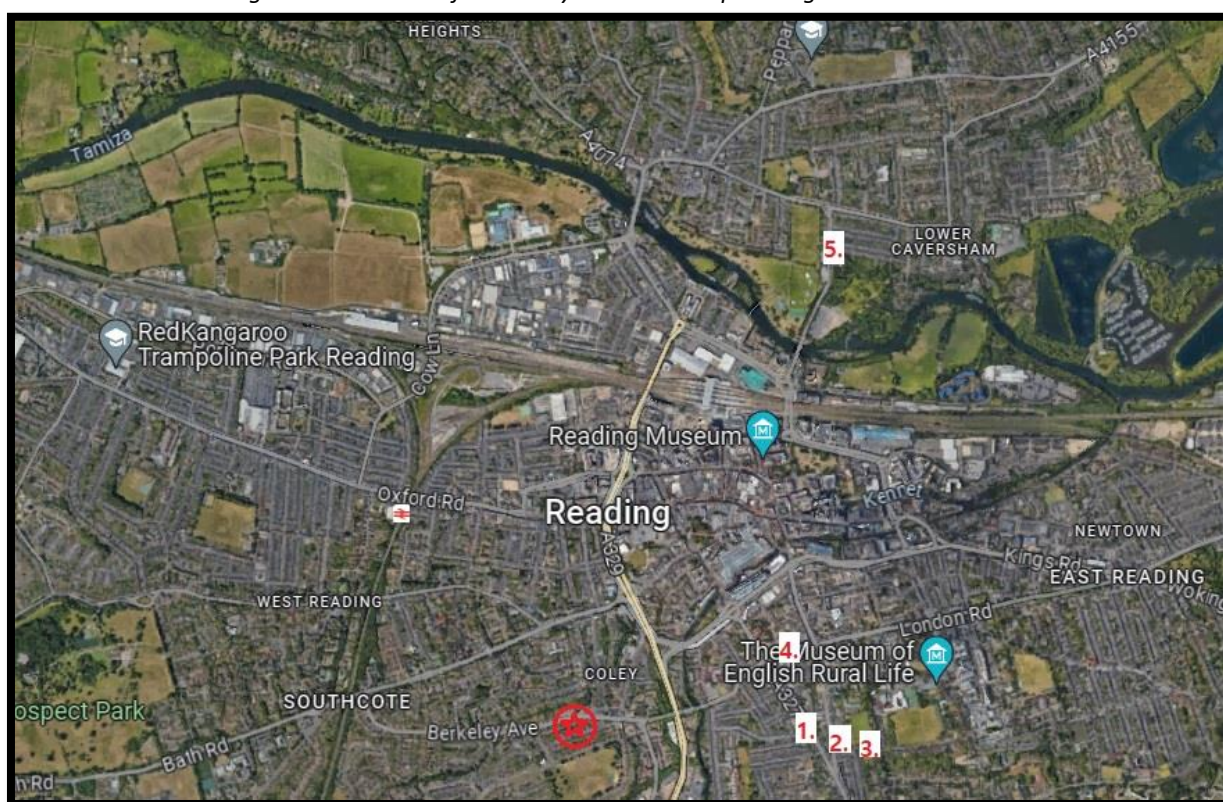


v. Other takeaways/restaurants with similar circumstances

6.28 Below is a list of units (takeaways/restaurants), which present similar circumstances in terms of distance from residential properties, parking and overall location (outside of town centre or parades of retail/services, but within sustainable walking distance).

1. Pizza 2 Night (155-157 Southampton Street);
2. Pau Brasil (89 Mount Pleasant, Reading RG1 2TF);
3. Home Cooking (2 Highgrove St, Reading RG1 5EN);
4. Seaspray Fish and Chips (53 Crown St, Reading RG1 2SN);
5. Good Old Days Hong Kong Cuisine – former Burger Revolution (66 George St, Reading RG4 8DH).

Figure 9. Locations of takeaways with similar planning circumstances









7. Conclusion

- 7.1 As set out in this statement and based on the plans and information submitted, it has been demonstrated, that the refusal reasons contained within the decision notice reference 221769 are inaccurate, unreasonable, not justified and inconsistent with the approach to established arrangement and other similar units with similar planning circumstances. It is therefore respectfully requested that the appeal is allowed.

8. List of Appendices

- 8.1 No appendices.



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