

DELEGATED DECISION

- Please select each of the categories that enables this application to be determined under delegated powers
 - Criteria 1 to 5 or criteria 7 to 9 must be addressed for all categories of application, except for applications for Certificates of Lawfulness, etc.

APPROVAL RECOMMENDED: GENERAL

Select Option

- | | |
|--|--------------------------|
| 1. No valid planning application objection in the form of a petition of 20 or more signatures, has been received | ☐ |
| 2. Application complies with all relevant planning policies and is acceptable on planning grounds | ☐ |
| 3. There is no Committee resolution for the enforcement action | ☐ |
| 4. There is no effect on listed buildings or their settings | ☐ |
| 5. The site is not in the Green Belt (but see 11 below) | ☐ |

REFUSAL RECOMMENDED: GENERAL

- | | |
|--|--------------------------|
| 6. Application is contrary to relevant planning policies/standards | ☐ |
| 7. No petition of 20 or more signatures has been received | ☐ |
| 8. Application has not been supported independently by a person/s | ☐ |
| 9. The site is not in Green Belt (but see 11 below) | ☐ |

RESIDENTIAL DEVELOPMENT

- | | |
|--|--------------------------|
| 10. Single dwelling or less than 10 dwelling units and/or a site of less than 0.5 ha | ☐ |
| 11. Householder application in the Green Belt | ☐ |

COMMERCIAL, INDUSTRIAL AND RETAIL DEVELOPMENT

- | | |
|--|--------------------------|
| 12. Change of use of retail units on site less than 1 ha or with less than 1000 sq m other than a change involving a loss of A1 uses | ☐ |
| 13. Refusal of change of use from retail class A1 to any other use | ☐ |
| 14. Change of use of industrial units on site less than 1 ha or with less than 1000sq.m. of floor space other than to a retail use. | ☐ |

CERTIFICATE OF LAWFULNESS

- | | |
|---|--------------------------|
| 15. Certificate of Lawfulness (for proposed use or Development) | ☐ |
| 16. Certificate of Lawfulness (for existing use or Development) | ☐ |
| 17. Certificate of Appropriate Alternative Development | ☐ |

CERTIFICATE OF LAWFULNESS

- | | |
|---|--------------------------|
| 18. ADVERTISEMENT CONSENT (excluding Hoardings) | ☐ |
| 19. PRIOR APPROVAL APPLICATION | ☐ |
| 20. OUT-OF-BOROUGH OBSERVATIONS | ☐ |
| 21. CIRCULAR 18/84 APPLICATION | ☐ |
| 22. CORPSEWOOD COVENANT APPLICATION | ☐ |
| 23. APPROVAL OF DETAILS | ☐ |
| 24. ANCILLARY PLANNING AGREEMENT (S.106 or S.278) where Heads of Terms have already received Committee approval | ☐ |
| 25. WORKS TO TREES | ☐ |
| 26. OTHER (please specify) | ☐ |

The delegation powers schedule has been checked. Director of Residents Services can determine this application.

Case Officer

Signature:

Date:

A delegated decision is appropriate and the recommendation, conditions/reasons for refusal and informatives are satisfactory.

Team Manager:

Signature:

Date:

The decision notice for this application can be issued.

Director / Member of Senior Management Team:

Signature:

Date:

NONE OF THE ABOVE DATES SHOULD BE USED IN THE PS2 RETURNS TO THE ODPM

Report of the Head of Planning, Transportation and Regeneration

Address FORMER FRANKIE & BENNY'S UNIT 5 OLD DAIRY LANE RUISLIP

Development: To confirm whether the host site falls within Use Class E and that the proposed tanning salon can lawfully occupy the unit (Certificate of Lawful Development for a Proposed Use).

LBH Ref Nos: 72422/APP/2021/3867

Drawing Nos: EFE-01
LP-01
Covering Letter

Date Plans Received: 15/10/2021 **Date(s) of Amendment(s):**

Date Application Valid: 18/10/2021

1. RECOMMENDATIONS

1.1 Recommendations

That a certificate of lawful use or development be **REFUSED** for the proposed development described above in respect of the land edged red on the attached plans for the following reasons:

The proposal involves a change of use from restaurant (use class E as detailed in The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020) to tanning salon. Insufficient evidence has been submitted by the applicant to demonstrate that a tanning salon would fall within use class E of the Order. Therefore the Local Planning Authority considers that a tanning salon would fall within the sui generis use class. As such, the proposal is considered to constitute development as defined by Section 55 of the Town and Country Planning Act 1990 (as amended) and the proposed change of use is not one which is permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Furthermore, the proposal would result in the subdivision of a planning unit that would be considered to constitute development under Section 55 of the Town and Country Planning Act 1990 (as amended). The proposal therefore requires full planning permission.

This determination is based on your submitted plans. All measurements are taken from existing ground level.

INFORMATIVES

2.0 Planning Considerations

Application Site:

The subject unit forms part of a wider redevelopment site that provides a foodstore with ancillary cafe and ancillary petrol filling station, cinema, 5 x restaurant units and residential units, together with vehicle and pedestrian accesses, car parking, servicing areas, landscaping arrangements, and other associated works.

The host unit is considered to have a lawful restaurant use. The uses were previously

under Class A3.

The site is within a critical drainage zone with the area to the front within a surface water flood zone.

Planning History:

73596/APP/2021/2058 - Alterations to shopfront to include the introduction of an additional set of doors and two new signage areas - Approved 13/08/2021

66819/APP/2021/1206 - Non-material amendment to planning consent 66819/APP/2015/3653 dated 09-02-16 for the Redevelopment of the site to provide a foodstore with ancillary cafe (Class A1) and ancillary petrol filling station, cinema (Class D2), 5 x restaurant units (Class A3), and residential development consisting of 132 units, together with new vehicle and pedestrian accesses, car parking, servicing areas, landscaping arrangements, and other associated works. The amendments to the planning consent comprise of the sub division of Unit 5 to create 2 units and associated external shopfront alterations - Refused 07/05/2021 for the following reasons:

1. The proposed works constitute development under Sec 55 of the Act and require an application for full planning permission. The proposed subdivision of unit 5 to create an additional commercial unit and the associated works does not constitute a non-material amendment under section 96A TCPA 1990. The potential impacts therefore need to be considered against development plan policies.

66819/APP/2015/3653 - S73 application seeking variation of conditions 2 (approved plans) and 3 (approved documents) of planning permission ref. 66819/APP/2014/1600 dated 24th December 2014 for: Redevelopment of the site to provide a foodstore with ancillary cafe (Class A1) and ancillary petrol filling station, cinema (Class D2), 5 x restaurant units (Class A3), and residential development consisting of 132 units, together with new vehicle and pedestrian accesses, car parking, servicing areas, landscaping arrangements, and other associated works.

Changes sought:

- 1) Increase of total units on the site from 132 to 163 and associated design/ elevation changes.
- 2) Changes to the approved Energy Strategy.

Applicants Case:

The Applicant has provided the following case to support their submission:

1. Covering Letter
2. Appeal Decision (APP/A4520/W/20/3263803) - Tanfastic, Ellison Street, Jarrow NE32 3UH

An application for a certificate of lawfulness (proposed used) has been submitted to confirm that the host site is within the new use Class E and that the proposed use of a Tanning Salon can lawfully occupy part of unit 5 - 'no.5A' without the need to change the use. The submitted covering letter considers that the subject unit falls within Class E despite acknowledging that tanning salons were previously held to be sui generis use class.

The applicant considers that the 'Tanning salons commonly occupy retail and secondary

retail areas, alongside commercial, business and service uses. They are clearly appropriate to such locations and, as such, will not fall within Use Class E. Accordingly, the current and proposed use of Unit 5 now fall within Class E.'

Under Class E, the applicant quotes the following in reaching the decision that the proposed/intended use of a tanning salon would fit within the following criteria:

"(c) for the provision of the following kinds of service principally to visiting members of the public -

(iii) any other services which it is appropriate to provide in a commercial, business or service locality"

An appeal decision (APP/A4520/W/20/3263803) - Tanfastic, Ellison Street, Jarrow NE32 3UH was submitted during the course of the application. This was decided on 12/04/2021 and within the timeframe of when the use class orders was amended, namely Class E of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (UCO).

It is evident that the existing tanning salon and hand car wash was the use of the particular appeal site. Under paragraph 3 of the appeal decision, South Tyneside Council were of the view that the existing uses fell within Class E. However, this is the view of this particular council and the appeal decision was not to determine the use class of the subject site and was purely regarding the imposition of condition 5 of the attached permission to that particular site. In the decision, whilst appreciating the content of paragraph 3, the Inspector does not discuss or query the existing and proposed use of that particular site. As such, the decision is not weighted highly during the consideration of this application.

The onus is on the applicant to robustly demonstrate that the proposed tanning salon would fit within the criteria of Class E. As mentioned by the applicant, the proposed use was previously under sui generis use. Officers consider that the proposed and intended use of part of the host unit would not fall within use class E and would require planning permission for the change of the use. Satisfactory evidence has not been put forward to demonstrate that the functioning and operation of the proposed/intended use would fit within the criteria of Class E. In any event, officers do consider that the proposed/intended use would fall within sui generis use.

Furthermore, it would appear that the proposal would result in the subdivision of a planning unit, whereby the LPA has previously advised in its decision on application 66819/APP/2021/1206 that the subdivision and associated physical alterations would constitute development under S55 of the Town and Country Planning Act and would require planning permission. A subsequent planning application relating to shop front alterations did not include a change or use/subdivision and it is noted the 'red line' on the relevant location plan related only to the shop front.

Recommendation: The application for a Lawful Development Certificate (Proposed Use) is refused.

3.0 Relevant Planning History

Contact Officer: Jimill Patel

Telephone No: 01895 250230