

REPORT OUTLINE FOR AREA PLANNING COMMITTEES**Report No.**

Date of Meeting	1 st June 2023
Application Number	PL/2023/00563
Site Address	Unit 4, 53 The Borough, Downton, SP5 3LX
Proposal	Change of use of Unit 4. 53, The Borough from The Foot Unit D1 to a Takeaway food establishment
Applicant	Mr R Altinok
Town/Parish Council	Downton Parish Council
Electoral Division	Downton & Ebble Vale
Grid Ref	
Type of application	Householder Application
Case Officer	Amy Houldsworth

Reason for the application being considered by Committee

The application has been called-in by Cllr Clewer due to the significant level of local interest both for and against this proposal, highway impacts, and the relationship and impact on adjacent dwellings.

1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be approved for the reason(s) set out below.

2. Report Summary

The issues in this case are:

- Principle of development
- Design, scale and impact on the amenity of the Conservation area/listed buildings
- Highway safety/parking provision
- Drainage
- Other matters

The application has received a total of 27 of objection from members of the public, and 288 responses of support/other comments. The Downton Civic Society also support the proposal but highlight that any alterations to signage should comply with Policy, high levels of traffic are a known issue in the area, and opening times should reflect other local establishments. Downton Parish Council also support the application subject to conditions. The of details of the objections received from the members of the public are set out in Section 7 (Summary of consultation responses).

3. Site Description

The site forms part of a small row of commercial properties along the Borough, which include

a hair salon and florists. The application site is single storey Unit 4, 53 The Borough and is currently a foot clinic and flat 53a is above. There are also dwellings to the immediate east, and north of the site. There is an area of parking in front of the unit.

4. Planning History

16/08594/FUL - Change of use from A1 to D1 to facilitate a foot care/chiropractic practice - Approved, with conditions.

S/2006/0907 - CHANGE OF USE TO BEAUTY SALON (SUI GENERIS) – Approved, with conditions.

S/1991/0650 - CHANGE OF USE FROM A LAUNDERETTE TO A SHOP FOR THE SALE OF SECOND HAND ITEMS – Approved, with conditions.

5. The Proposal

The proposal seeks approval to change the current D1 foot clinic use to Sui Generis use as a food take away establishment including the erection of an extraction flue.

6. Local Planning Policy

National Planning Policy Framework

Section 2 Achieving Sustainable Development

Section 12 Achieving Well Designed Places

Section 15 Conserving and enhancing the natural environment

Wiltshire Core Strategy

Core Policy 1 Settlement Strategy

Core Policy 2 Delivery Strategy

Core Policy 23 Southern Wiltshire Community Area

Core Policy 35 Existing employment sites

Core Policy 36 Economic Regeneration

Core Policy 38 Retail policy

Core Policy 49 Rural communities and facilities

Core Policy 57 Ensuring high quality design and place shaping

Core Policy 58 Ensuring the conservation of the historic environment

Core Policy 61 Transport and New Development

Wiltshire Local Transport Plan 2015-2026:

Car Parking Strategy

7. Summary of consultation responses

Downton Parish Council – Support subject to:

1. Approval (and any conditions applied) by Public Protection Officers
2. Approval (and any conditions applied) by Highways
3. Addressing the following concerns by applying the requested restriction:-
 - a. Litter: 2xbins at the front of the property to be maintained by the Kebab Takeaway
 - b. No outside bright flood lights
 - c. Opening times restricted until 9pm (8pm Sundays)

- d. All deliveries and collections to take place outside school opening hours (due to manoeuvrability of such vehicles when there will be children entering/exiting the School from Gravel Close)
 - a. Planning Permission granted for the owner of the Kebab House only (no prospect of changing hands and/or alternative food-type takeaways such as a Chip Shop/Indian/fast food burger chains)
 - b. The extractor system is silent (per application) and maintained as per the manufacturer's recommendation
 - c. A smell extractor system is installed (per application) and maintained as per the manufacturers recommendation

WC Highways – No objection (see below)

WC Drainage – No objection - See below.

WC Conservation – No objection, subject to the external flue being Matt Grey/black in colour

WC Public Protection – No objection, subject to conditions limiting opening hours and the extract/flue being completed and maintained as per the submitted details.

8. Publicity

Downton Civic Society – No objection, However, any signage should adhere to policy requirements and highlights increase in local traffic and opening hours should be respectable.

Third parties - 27 responses objecting, summarised as the following:

- Bad Odours
- Noise and anti-social behaviour
- Lack of parking
- Highways safety
- Litter
- Drainage
- Excessive opening hours
- Lead to believe no food establishments allowed within this location

288 responses supporting the proposal, summarised as:

- Takeaway would be asset to the village
- Welcomed community facility
- Unlikely to cause parking or highway issue
- Unlikely to cause nuisance
- Existing takeaway in Redlynch is well run

9. Planning Considerations

9.1 Principle of development and policy

The site known as Unit 4, 53 The Borough is a retail unit located in the centre of Downton. Core Policy 23 of the Wiltshire Core Strategy defines Downton as a local service centre. Local Service Centres are defined as smaller towns and larger villages which serve a surrounding

rural hinterland and possess a level of facilities and services that, together with improved local employment, provide the best opportunities outside the Market Towns for greater self containment. The unit is sited within the Downton Conservation Area and in close proximity to the River Avon.

The unit already exists and is surrounded by a mix of other commercial uses and residential uses, as is typical of such a location. WCS policy CP38 (Retail & Leisure) recognises the importance of local service centres for the local community, with the supporting text for the latter confirming that *'In addition to retail development, it is also important that other services and facilities are retained in the central areas of the Market Towns, in order to maintain the vitality and viability of the town centres'*. Other Council policies regards the economy are also relevant. It is considered that the continued business use of this site accords with the aims of the Council employment and economic policies.

Policy CP49 relates to the provision, retention and enhancement of local facilities and services and is relevant here. It is considered that the reuse of this retail unit meets the aims of CP49, and given the number of positive responses from third parties, there appears to be some local demand/community benefits from the proposal.

Core Policy 57 of the WCS requires that development should ensure the impact on the amenities of existing occupants is acceptable, and ensuring that appropriate levels of amenity are achievable within the development itself, and the NPPF (paragraph 130f) states that planning decisions should *'create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.'*

This principle acceptability is however subject to the detail and in this case the implications for the character of the area/conservation area; neighbouring amenities; and highway safety are all considered to be relevant.

9.2 Design, scale, and impact on the amenity of the Conservation Area/listed buildings

The existing unit is situated in the centre of this local service centre, surrounded by other commercial uses (at least at ground floor); is within the conservation area; and in the vicinity of a number of listed buildings, including The Goat on the opposite side of The Borough. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires 'special regard' to be given to the desirability of preserving a listed building or its setting. While Section 72 of the Act states that in the exercise of any functions, with respect to any buildings or other land in a conservation area, under or by virtue of any of the provisions mentioned in this Section, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. In having 'special regard' and/or in paying 'special attention' the NPPF requires specific assessment to be undertaken as to whether the proposal causes 'substantial harm', 'less than substantial harm' or no harm to the asset. The applicants have submitted a heritage statement with the application.

Externally, minimal external alterations are proposed to the unit itself. However, as with most food units, an extract flue system is required. The plans illustrate the proposed external flue being positioned running along the flat roof of the existing unit and exiting vertically to the rear of the site. Whilst it is considered that the flue would be likely to be somewhat visible from the front and side of the site, and also from adjacent dwellings and gardens to the rear, the flue design has been welcomed by the Councils Conservation Officer as it would be less prominent than a flue simply exiting vertically from the main roof of the building. The Conservation officer also advised that the finished colour should be Matt Grey/black, which has been accepted by

the applicant and could be conditioned upon any approval. Therefore, the Conservation Officer is satisfied and is not of the opinion that the proposed flue would pose any visual harm upon the overall character and appearance of the Conservation Area or negatively affect the setting of any of the nearby Listed Buildings.

Whilst it is therefore likely that the flue would be visible from the Conservation Area and adjacent dwellings, the proposal is therefore considered to accord with the aims of CP58 of the WCS, and a refusal based on the impact of the works on the heritage assets would be difficult to justify at appeal.

9.3 Impact on amenity

The applicants submitted supporting statement explains the proposal thus (extract):

During our 19 years trading at Morgans Vale, we have never had a food hygiene or food quality complaint, or a noise complaint. Our filtered air extraction system removes the smell and odour of cooking and we have never had any complaints. We have a good working relationship with the Local Authority and have high hygiene standards.

I would like you to consider my Change of Use application for Unit 4, 53 The Borough, as the relocation of an established existing business 1.6 miles along the B3080 to a new location, as opposed to the creation and establishment of a 'new' takeaway business.

Two thirds of our customers pre-order, their food is freshly cooked and ready within 15 minutes. The customer then arrives to pick up and pay. Most customers are in and out of the shop in a few minutes.

Our other customers prefer to come to the shop, order and wait while we cook for them. For many customers this is a time they enjoy chatting and is an opportunity to get out and interact with a few other people.

During Covid lockdown we were able to remain open and provide an essential food service for many of our existing customers and some new ones. We followed Government guidelines, customers telephoned their orders through, we then took the cooked food orders outside when ready, with the customers waiting outside the shop. This worked very well for the customers and ourselves, keeping safe and enabling us to keep working through Covid without Furlough payments.

We generally don't have more than three customers at any one time, two of whom are likely to be pick up and pay customers. Unit 4 has two customer parking spaces, so the business is unlikely to cause an additional impact on local parking.

Deliveries to the shop will be made to the rear of Unit 4, where there is an existing delivery vehicle parking bay, off the highway. Our recycling bin and waste bin will be kept securely at the rear of the property on private land. I have waste and recycle contracts (licensed waste contractors).

As stated a number of concerns and objections have been received. Officers have consulted with and discussed at length this proposal with the Council's Public Protection officer.

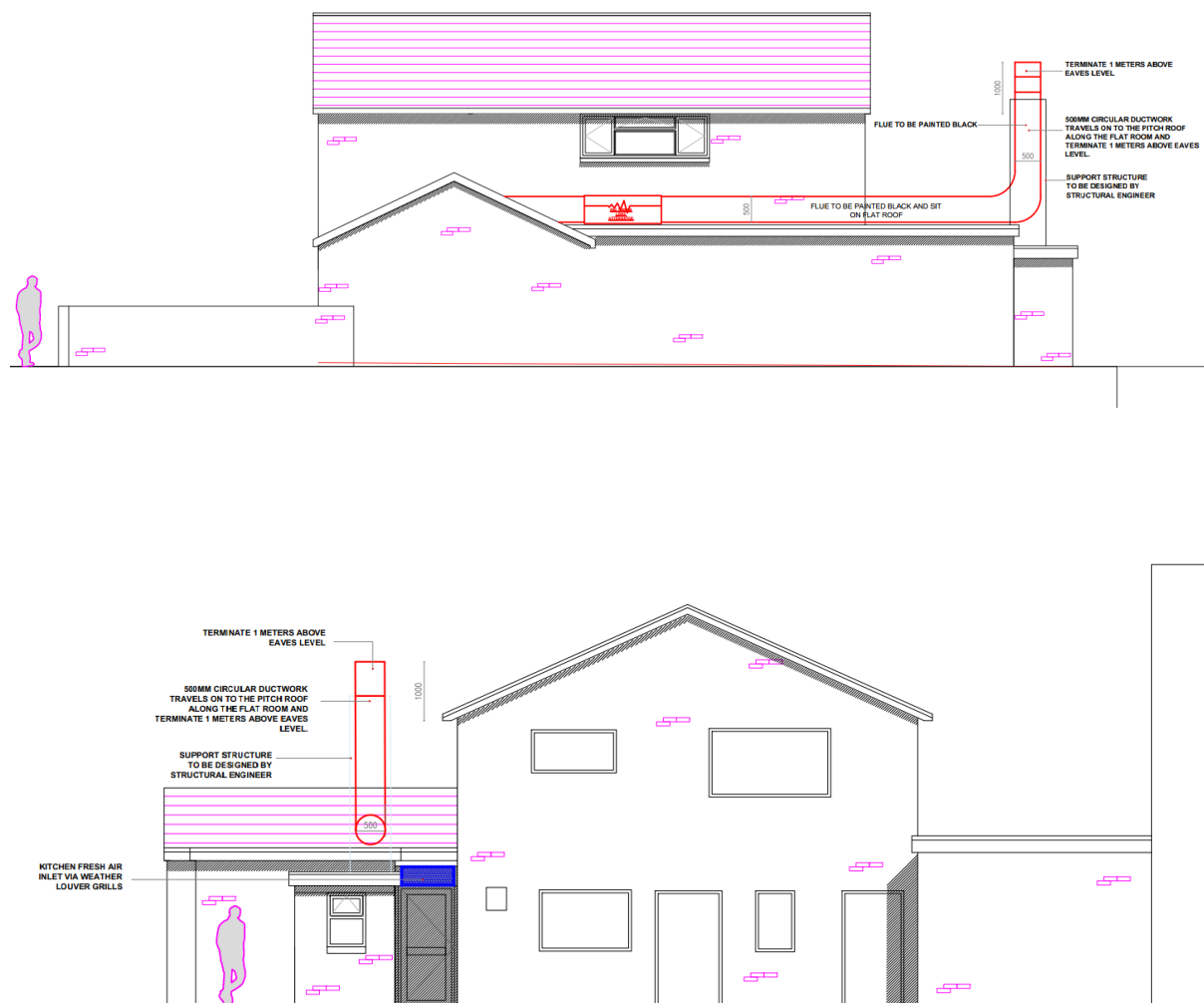
Following the concerns raised in regard to the proposed opening hours the applicant reduced the hours from 1300-2200 Monday to Saturday down to 1300-2130 Monday- Saturday and 1330-2000 Sundays & Bank Holidays.

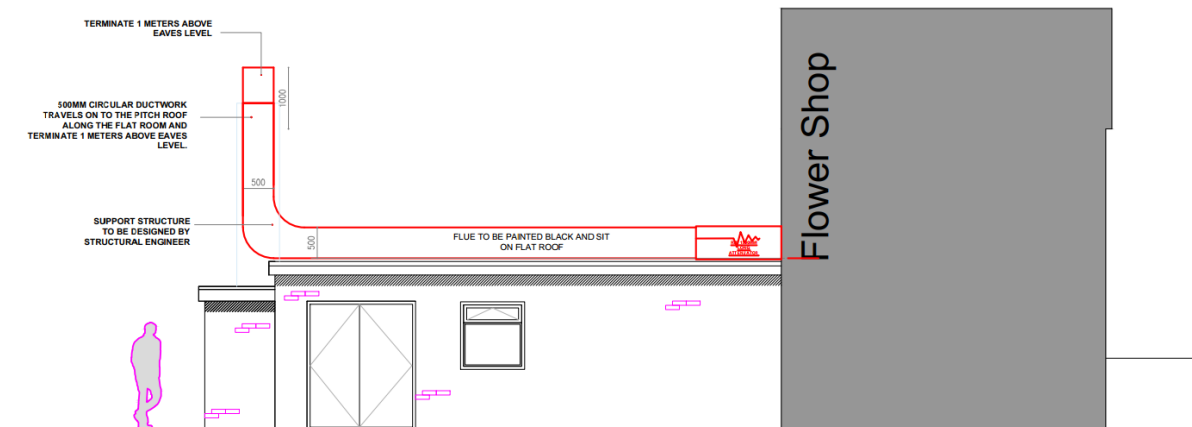
This reduction is welcomed, and the times proposed are not considered to be excessive. It is noted that the site is directly opposite the Co-op which remains open until 2200 and the Goat Pub next door to the Co-op closes at 2300. Therefore, the takeaway's proposed hours are not considered to be anti-social and there is no justification/evidence that such a use during these proposed hours, which are less than the nearby facilities which also serve alcohol, would result in any additional members of the public loitering or causing any nuisance to nearby residents.

The Public Protection Team have raised no objections to the hours of business in relation to the neighbouring residential properties.

The unit has several residential properties within close proximity. These include in particular number 53a (the flat above the unit) and number 55 which is the direct next-door property to the east. There is also the dwellings and gardens to the north, and those dwellings to the west of the site. Initially, Public Protection raised concerns regarding the flue/extract system and its potential impact upon these properties in terms of odour and noise output.

Revised plans were submitted to demonstrate the position and design of the proposed flue (as below) which would be positioned to the rear of the site and included detailed manufacturing specifications of the ventilation/extraction and filtration system.





The flue/extract has now been designed to ensure the output pipe is above the existing eaves height of the neighbouring properties and the system now incorporates advanced filtration systems within it to ensure the neighbouring residents and units are not detrimentally affected by any smells or noise. The applicants submitted noise assessment concludes that:

- 6.2 An environmental noise survey has been undertaken to determine the existing background noise levels representative of nearby residential properties.
- 6.3 Calculations have been undertaken, based on manufacturer's noise data, to determine the plant noise levels at the nearest noise sensitive windows.
- 6.4 The assessment demonstrates that noise from proposed new plant at the most affected noise sensitive windows will be comfortably below the existing background noise levels and hence acceptable under BS 4142: 2014.

Due to the nature of the proposal and local concern the Councils Public Protection officer was re-consulted on the revised Flue/extract details and Noise Assessment and provided the following comments:

I write regarding the above application for change of use to a take away food establishment. The site is located in very close proximity to residential properties and without robust control of odours and noise from the proposed business use, it could result in complaint.

I have therefore carefully considered the content of the following updated documents submitted in support of this application, and I am now satisfied that it demonstrates both odour and noise will be adequately controlled so as not to impact on the amenity of nearby residents:

Odour Control Assessment Report (revised on 2nd May 2023)

Installation Report (revised on 2nd May 2023)

Noise Assessment report (revised on 2nd May 2023)

I also note that the applicant has agreed to close at a slightly earlier time in response to comments submitted to this application. I therefore, raise no objection to the proposal, subject to conditions.

As a result of the above, a refusal of the scheme based on the likely impact of the works in terms of noise/fumes/nuisance would be difficult to defend at appeal.

Further to the comments received from the Parish Council and local residents in relation to potential increase in litter, the applicant has confirmed that the proposal would be served by two litter bins, (which would be maintained by Unit 4). This could be conditioned upon any approval.

Notwithstanding, it is appreciated that it would be clearly visible from windows serving the closest dwellings to the site. However, in officers opinion, the separation distance and narrow nature of the structure would not result in such significant harm to overall amenity as to warrant refusal. As a result, the proposal is considered to comply with the aims of policy CP57 of the WCS.

9.4 Highways

The Borough is a well used, busy highway system, and the area around the site is used for parking and turning associated with the various businesses in the area, including the existing shops on the application site, as well as the pub and retail store and café opposite.

Third party comments received in relation to lack of parking provision and highway safety have been considered

Due to the concerns raised in regard to the change of use upon the existing parking provision available and highway safety, the Councils Highways Officer was consulted and provided the following comments:

The above-mentioned planning application is for a new takeaway food establishment to be located in an existing small commercial unit on The Borough, Downton. The forecourt to the front of the unit provides two parking spaces / delivery bay. Directly opposite the site is the Co-op food store, The Goat pub and The Borough café all served by a reasonable sized car park to the rear, there is also a row of parking spaces perpendicular to the carriageway for general use. Whilst parking on the public highway is not restricted in the vicinity of the site, in reality there are few places to park on-street close to the site due to the presence of the zebra crossing zig-zags and dropped kerb driveways and accesses. Given the number of parking spaces available there appears to be plenty of opportunity to park off the public highway.

The site is located in the central area of Downton and is well served by a network of footways. It is considered that the majority of customers will be local and will have the option to walk or cycle to collect from the takeaway.

On balance, I do not wish to raise a highway objection to the proposed takeaway food establishment in this location.

In addition, the applicant has confirmed that all deliveries and collections will take place outside school opening hours (due to manoeuvrability of such vehicles when there will be children entering/exiting the School from Gravel Close) in response to the Parish Councils request. This can also be conditioned upon any approval.

Immediately to the front of the row of commercial units, including Unit 4, there are individual car parking spaces for the units.

Across the road, there are further parking spaces, which presumably are currently used by the customers of all the units along with the café and co-op opposite, as there does not appear to be any restrictions upon them.

As the proposal is for take away only it would be envisaged that anyone visiting the establishment would be there for only a short period of time collecting their food order to then travel home again, which can be considered to be comparable with customers to the adjacent retail store.

Consequently, given that WC Highways do not raise objection to this proposal, it is considered that a refusal on the grounds of highway safety and parking issues would be difficult to justify at appeal. As a result, it is considered that the proposal would accord with the aims of CP61 of the WCS.

9.5 Drainage

Third party responses have referred to poor drainage and it have suggested that the current drainage system serving the units are struggling. The applicant has confirmed that due to the objections received regarding potential drainage issues, an inspection has been undertaken in April of 2023 and states that '*Unit 4 drain exit point is further downstream than the other Units and the drains were clear*'.

The Councils Drainage Officer was consulted on this point and stated the following:

The Borough does have a history of flooding. As its already a commercial property the only additions that the applicant must install are grease traps, these are Wessex Water recommendations. The foul drainage is susceptible and ground water, therefore, the applicant should have consent from Wessex Water as supply and foul must be available 24/7.

The units are already served by drainage. Whilst there may be issues, it is essential a private matter for the business occupying those units to resolve with the relevant utility provider, and is not a Planning matter. As a result, it is considered that the proposal accords with the general aims of CP57 in so far as they relate to other impacts resulting from the development.

9.6 Other matters

The Parish Council requested that any permission granted be subject to a number of conditions. Many of these are possible as suggested below, but the PC also stipulated that the permission would be made personal to the applicant only. This is considered unreasonable in this instance given that permission would be given for a food takeaway use, not a personal business. The Council's public protection officer has not stipulated that a permission personal to the applicant is required, and has considered the proposal acceptable on the basis of a generic takeaway business with the associated flue system. Furthermore, the PC comment regards tying the use to only a single type of takeaway reflecting the applicants operation is noted. However, in Planning terms, there is no difference between one type of food takeaway operation and another, and in any event such a condition would be difficult to enforce, and thus it is not possible to impose such a condition that achieves such an outcome.

Officers are aware of comments being received regarding the application site potentially having a covenant or other restriction upon it relating to the acceptable uses of the building. Officers are not aware that there is any historic planning or other restriction on this unit

regards its use, but even if such a restriction existed, that would not prevent this planning application for a change of use being considered on its merits by the Council and would be considered a separate civil matter.

10. Conclusion and Planning Balance

The proposal would retain a commercial and community use within the settlement, and accord with the aims of the CP49 of the WCS and other employment and economic policies, and there appears to be some level of support for this type of use in the settlement. The concerns of third parties close to the site are understood and have been fully considered. However, WC Public Protection now raise no objection to the proposal and are satisfied that the proposed filtration system and flue now alleviates concerns in relation to potential noise and odour outputs to ensure the residential amenities are upheld by the occupiers of the neighbouring residential properties. The proposal is therefore considered to comply with aims of Core Policy 57 of the WCS. Furthermore, WC Highways raise no objection to parking provision or highways safety, and consequently, the proposal accords with the aims of CP61 of the WCS. WC Conservation officer has confirmed they raise no objection in terms of visual impact upon the character and appearance of the Conservation Area or setting of any nearby Listed Buildings. Thus the proposal conforms with aims of CP58 of the WCS and the similar aims of the NPPF.

As a result of the above, the application is therefore considered to be acceptable, subject to restrictive conditions.

11 RECOMMENDATION: Approve, subject to the following conditions:

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

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

02 Unit 4, 53 The Borough Proposed Elevations Rev B submitted 22nd May 2023

01-Unit 4, 53 The Borough – Proposed HVAC Plan Rev B dated 2nd May 2023

405-02-002 Existing floor plan and roof plan dated 25th January 2023

405-02-005 B Proposed Roof plan submitted 22ND May 2023

405-02-001 Existing site plan dated 25th January 2023

405-02-003 Existing Elevations dated 25th January 2023

Odour Control Assessment Report (revised on 2nd May 2023)

Installation Report (revised on 2nd May 2023)

Noise Assessment report (revised on 2nd May 2023)

REASON: For the avoidance of doubt and in the interests of proper planning.

3. The use hereby permitted shall only take place between the hours of 1330-2130 from Mondays to Saturdays and 1330-2000 on Sundays and Bank or Public Holidays.

REASON: To ensure the retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

4. The site shall be used solely for purposes of a food takeaway use within the Sui Generis Class(es) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended by the Town and Country Planning (Use Classes) (Amendment)(England) Order 2020 (or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification).

REASON: For the avoidance of doubt

5. Prior to the first use the Kitchen extract system, together with the specified noise attenuation to be fully installed in accordance with documentation submitted (Noise Impact Assessment, Odour Control Assessment, Installation Report all dated 2nd May 2023 and drawing: Fan Rescue 1) and maintained strictly in accordance with the cleaning and maintenance schedule at all times thereafter.

REASON: In the interest of residential amenity.

6. Plant associated with the kitchen extract system shall only operate during hours of opening: 1330hrs – 2130hrs Monday to Saturday and 1330hrs – 2000hrs Sundays and Bank/ Public Holidays.

REASON: In the interest of residential amenity

7. Notwithstanding the approved details no supply deliveries shall be made to, or supply collections made from the development hereby approved except between the hours of: 0930hrs – 1800hrs (excluding normal school drop off/ collection times).

REASON: In the interest of public and highways safety.

8. Before the takeaway use first opens for business, the external flue shall be finished in a dark Matt Grey/black colour, or other alternative colour agreed in writing by the Local Planning Authority.

REASON: In the interest of visual amenity.

9. Before the takeaway use hereby permitted first opens for business, at least two litter bin receptacles shall be provided on site for use by customers of the takeaway use. The bins shall be privately operated and maintained by the business occupying Unit 4 (the application site).

REASON: In the interests of amenity

INFORMATIVE:

1. The applicant is advised that separate approvals may need to be applied for and granted from Wessex Water. Please note that prior to the first use of the takeaway it appears that grease traps are required to be installed to comply with Wessex Water recommendations for food businesses. [Trade effluent | Wessex Water](#)

2. The applicant is advised that planning permission does not supersede any private covenants or legal bindings the premises may have.

3. The applicant is advised that any proposed alterations to any signage may need Advertisement Consent from the Local Planning Authority.