

No.6	APPLICATION NO.	2021/0444/FUL
	LOCATION	3 And 3A Moor Street Ormskirk Lancashire
	PROPOSAL	Change of use from retail (Class E) to drinking establishment (Sui Generis).
	APPLICANT	Rockhouse Investments
	WARD	Knowsley
	PARISH	Unparished - Ormskirk
	TARGET DATE	2nd June 2021

1.0 REFERRAL

- 1.1 This application was to be determined under the Council's delegation scheme, however, Councillor Dowling has requested it be referred to Committee to consider the impacts upon the town centre, local amenity, character of the town and the Conservation Area.

2.0 SUMMARY

- 2.1 The change of use of the units to Sui Generis drinking establishment is considered acceptable. The unit has been vacant for in excess of 6 months and has been marketed to appropriate town centre uses. The proposal provides a complementary town centre use which would contribute to the vitality and viability of the town centre in accordance with Policy IF1 and GN4 of the Local Plan. The proposal would not result in significant disturbance to neighbouring properties (subject to conditions) and as such accords with Policy GN3 of the Local Plan. On this basis I am satisfied that the proposal is in accordance with Policy IF1, GN4 and GN3 of the Local Plan and should be recommended for approval.

3.0 RECOMMENDATION: APPROVE with conditions

4.0 THE SITE

- 4.1 The site comprises of a double commercial unit located to the northern side of Moor Street close to the Market Cross. The unit was previously in use as the retail shop Dorothy Perkins (ground floor, 151sqm) and stock room, staff room and office (first floor 59sqm). The unit is currently vacant.
- 4.2 The site lies within the Ormskirk town centre, primary shopping area (PSA) and Conservation Area.

5.0 THE PROPOSAL

- 5.1 Planning permission is sought for a change of use from retail (Class E) to drinking establishment (Sui Generis).
- 5.2 Internal works are proposed to create a bar, seating area and customer toilets on the ground floor with office, stockroom and staff facilities on the first floor.
- 5.3 The proposed opening hours would be 10:00 – 02:00, 7 days a week including Public and Bank Holidays.
- 5.4 The capacity of the unit would be 250 customers.

- 5.5 It is envisaged that it would employ 20 members of staff.
- 5.6 Alterations are also proposed to the shop frontage and signage. These elements have been dealt with under other applications and do not form part of the assessment of this application.

6.0 PREVIOUS RELEVANT DECISIONS

- 6.1 2021/0460/ADV - New face lit fascia signage on existing signage band. New back lit panelling above shopfront to replace existing worn hanging tiles. New projecting sign to replace existing. PART APPROVED/PART REFUSED
- 6.2 2021/0459/FUL – Facade works to 3 and 3A Moor Street Ormskirk (double retail unit). Removal of existing shopfront glazing and double doors to be replaced with glazed bi-fold doors across full width of unit at ground floor level. Removal of high level tiles at first floor level to be replaced with back lit powder coated aluminium panels and logos. – REFUSED
- 6.3 2004/1257 - Retention of externally illuminated fascia and projecting sign. – ADVERTISEMENT CONSENT GRANTED
- 6.4 2004/0566 - Installation of new air conditioning unit on roof. – GRANTED
- 6.5 2003/0977 - Single storey extension to rear including new roof over new staircase; new shop front. – GRANTED
- 6.6 1998/0482 - Illuminated projecting sign. – ADVERTISEMENT CONSENT GRANTED
- 6.7 1994/0809 - Display of one non- illuminated projecting sign and illuminated fascia sign. ADVERTISEMENT CONSENT GRANTED

7.0 CONSULTEE RESPONSES

- 7.1 Environmental Protection – 22.06.2021
No objections in principle
Conditions recommended

8.0 OTHER REPRESENTATIONS

- 8.1 None.

9.0 SUPPORTING INFORMATION

- 9.1 **Planning statement** – Smith & Love Planning Consultants. Received by the Local Planning Authority on 9th April 2021.
- 9.2 Supporting letter from agent in regard to marketing. Received by the Local Planning Authority on 11th August 2021.
- 9.3 Marketing particulars – Hitchcock & Wright partners. Received by the Local Planning Authority on 11th August 2021.
- 9.4 Supporting letter from agent. Received by the Local Planning Authority on 13th August 2021.

10.0 RELEVANT PLANNING POLICIES

- 10.1 National Planning Policy Framework (NPPF) and the West Lancashire Local Plan 2012-2027 Development Plan Document provide the policy framework against which the development proposals will be assessed.
- 10.2 The application site is located within the Primary Shopping Area (PSA) of Ormskirk and the Town Centre Conservation Area as designated within the West Lancashire Local Plan 2012-2027.
- 10.3 **National Planning Policy Framework**
Ensuring the vitality of town centres
Achieving well designed places
Conserving and enhancing the historic environment
- 10.4 **West Lancashire Local Plan (2012-2027) DPD**
Policy SP1 – A sustainable development framework for West Lancashire
Policy GN1 – Settlement Boundaries
Policy GN3 – Criteria for Sustainable Development
Policy GN4 – Demonstrating Viability
Policy IF1 – Maintaining Vibrant Town and Local Centres
Policy IF2 – Enhancing Sustainable Transport Choices
Policy EN4 – Preserving and Enhancing West Lancashire's Cultural and Heritage Assets
- 10.5 **Supplementary Planning Document, Design Guide (Jan 2008)**

11.0 OBSERVATIONS OF CORPORATE DIRECTOR OF PLACE AND COMMUNITY

- 11.1 The main considerations for this application are:

Principle of development
Impact on residential amenity

Principle of Development

- 11.2 The application site lies on Moor Street, within Ormskirk Town Centre and occupies a site area of about 200sqm. It is currently vacant but was formally in retail use.
- 11.3 The Use Classes order underwent significant change in September 2020. Prior to that date, the previous use of the building (retail) fell under Class A1. Retail uses now fall within Class E. Class E covers a number of uses including commercial, business and services.
- 11.4 Policy IF1 requires that proposals for the change of use from retail (i.e. formally Class A1 of the Use Classes Order but now part of Use Class E) to other uses meet the following criteria:
- (1) The proposal, when taken cumulatively with other existing or consented non-retail uses, does not have a detrimental effect upon the vitality and viability of the centre;
 - (2) The proposal retains a pedestrian-level shop front with windows and display;
 - (3) Any proposed non-A1 use should, wherever possible, have operational hours that include at least a part of traditional opening times (i.e. 9am – 5pm). Uses that involve operational hours in the evening or night should not create inappropriate disturbance to residents or other users of the town centre and surrounding areas;
 - (4) There is evidence that the unit has been marketed as a retail unit in accordance with Policy GN4.

- 11.5 In addition, the policy also indicates that at least 70% of pedestrian level units within the primary shopping area of Ormskirk should remain in Class A1 retail use. However, this percentage requirement can no longer be reasonably be applied given the previously mentioned change to the Use Class Order.
- 11.6 Bullet point 2 requests that a pedestrian level shop with windows and display should be retained as part of any change of use. Application reference 2021/0459/FUL which relates to works and alterations to the shop front has been determined. It was found that the alterations to the shop front impacted detrimentally upon the character and appearance of the Conservation Area and as such the proposal to create a full bi-fold door frontage was refused. However I am satisfied that a revised scheme could be brought forward which is acceptable in design terms.
- 11.7 The proposed opening hours of the unit would be 10:00 – 02:00, 7 days a week. This would include the traditional opening hours as required by bullet point 3. The Environmental Health team have assessed the proposal and raise no objections to it in principle. They are satisfied that the use is appropriate in the town centre where there are similar later night premises and that disturbance to neighbours can be controlled via the Licensing regime. I am therefore satisfied that bullet point 3 is met.
- 11.8 Given the retention of an active frontage at pedestrian level, the proposed premises opening times and that the proposal would entail a main town centre use, as defined by Annex 2: Glossary of the NPPF, I consider that bullet point 1 would also be satisfied.
- 11.9 Bullet point 4 requires evidence that the property has been marketed as a retail unit in accordance with WLLP Policy GN4: Demonstrating Viability. Due to the changes to the Use Classes Order it is appropriate to consider evidence of marketing more widely within Use Class E (Commercial, Business and service) but with reference to particular uses within that Class e.g. retail, café and restaurants etc.
- 11.10 Policy
GN4 indicates that the Council will seek to retain certain uses, including retail, unless one of criteria a), b) or c) has been met; the latter is relevant in this instance. Criterion c) (marketing of the land / property indicates that a change of use may be acceptable if the applicant can demonstrate that marketing of the property indicates that there is no demand for the current use. The applicant is required to demonstrate that:
- The marketing has been undertaken by an appropriate agent at a realistic price;
The marketing has taken place for an appropriate length of time (6 months for former retail uses);
The premises have been regularly advertised and targeted at an appropriate audience.
- 11.11 In relation to i) marketing has been undertaken by Hitchcock Wright and Partners Chartered Surveyors at a rent of £55,000 per annum. The agent's letter indicates that 17 organisations made enquiries or were targeted in relation to the premises. This comprises a range of businesses includes retail, drinking establishments, dentist and café. The agent subsequently confirmed that no parties were willing to proceed to lease at an acceptable level of rent except for the proposed tenant. I am satisfied that criterion i) is satisfied.
- 11.12 The property has been marketed since the end of November 2020 (since Dorothy Perkins ceased trading). I am satisfied that the length of the marketing period is acceptable.
- 11.13 In relation to criterion iii) the premises have been advertised on at least 2 property / estates websites and the agent's website. As indicated above, there has also been

targeted contact with a range of potential occupiers as well as other agents. Although a "to let" board was not placed on the property; the agent has indicated that this was not possible because the Arcadia Group (which includes the former occupier of the premises, Dorothy Perkins) was in administration. On balance, I consider that criterion iii) is also satisfied.

- 11.14 Policy IF1, Maintaining Vibrant Town and Local Centres contains 8 further bullet points indicating other factors to take into account, where relevant, when assessing the change of use of A1 floor space upon the vitality and viability of a PSA. Of those, bullet point 5 restates the 70% target for Use Class A1 uses in the PSA which as indicated above, can no longer be required due to changes in the Use Classes Order.
- 11.15 I am satisfied that there would be no adverse effects from the proposal upon the vitality and viability of the PSA in relation to bullet points 1-3. Furthermore I am satisfied that the proposed use would not impact upon the character of the immediate area or result in any significant highways /traffic issues. The proposal would typically be expected in a town centre and would contribute towards economic activity and vitality and viability. I am therefore satisfied that bullet points 4, 6 and 7 are met.
- 11.16 In regard to bullet point 8, the applicant has indicated that Dorothy Perkins ceased trading from the property at the end of November 2020. Therefore, the premises has been vacant for in excess of 6 months and, in my opinion, the benefits from bringing inactive floor space back into use would outweigh any negative impacts from the loss of E Class (formally Use Class A1) floor space.
- 11.17 In addition to the above the application has been supported by a planning statement provided by the agent. This statement outlines that the agent considers that the weight that can be afforded to Policy IF1 is reduced noting the change to the Use Class Order and noting the available fall-back scenario which Class E introduces. The agent points out that the refusal of permission would not necessarily result in a retail use resuming, given that Class E covers a wide variety of uses.
- 11.18 In relation to the NPPF, paragraph 85a states that decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Whilst referring specifically to planning policies (rather than decision making) the paragraph goes on to indicate that town centres should be allowed to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries and a suitable mix of uses should be allowed. Clearly the Covid-19 pandemic brings into focus the need to respond to rapid change and diversify in such a way that supports the vitality of Ormskirk town centre and this is a consideration in determining the application.
- 11.19 I therefore consider that the proposed change of use from retail to Sui Generis drinking establishment is acceptable and in accordance with Policy IF1 and GN4 of the Local Plan.

Impact on residential amenity

- 11.20 Paragraph 180 of the NPPF states that planning decisions should aim to mitigate potential impacts resulting from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life. Policy GN3 of the Local Plan states that developments should 'retain reasonable levels of privacy and amenity for occupiers of the neighbouring and proposed properties.'

- 11.21 The premises have applied for opening hours of 10:00 – 02:00 7 days a week. The supporting statement outlines that this is consistent with other licensed bars in the town centre although it is unlikely that late night opening will operate every day of the week.
- 11.22 As part of the application process the Environmental Health team have been consulted, they raise no objection to the proposal in principle noting that such uses are appropriate within the town centre. They note that Licensed premises invariably bring noise from patrons. Late at night such noise becomes more of an issue as it can disturb sleep for residents in the locality. However, these matters for the most part can be controlled by the Licensing regime.
- 11.23 Within the locality there are a number of uses with similar opening hours to those proposed. There are neighbouring residential flats nearby however there is to be no access for customers to the rear of the premises, thereby protecting the nearest residential property at 4 Burscough Street. To add greater protection to the occupants of neighbouring residential units a number of conditions have been suggested. It is recommended that a scheme be submitted for the control of noise and details of any mechanical ventilation/extraction, odour filtration systems or refrigeration equipment be submitted the Council prior to installation. It is also recommended that waste collections only take place between the hours of 08:00 and 19:00 Monday to Saturday. These matters can be controlled by suitably worded planning conditions.
- 11.24 I am satisfied that the use of the premises, subject to appropriate safeguarding conditions, would not result in significant noise/odour impacts to neighbouring properties and thereby complies with the requirements of Policy GN3 of the Local Plan.

Summary

- 11.25 On balance, I consider that the change of use to a drinking establishment which is considered in the NPPF as a complimentary town centre use would comply with Policies IF2 and GN4 of the Local Plan which seek to ensure the vitality and viability of the town centre. Subject to appropriate conditions, I am also satisfied that the proposal would not impact upon the residential amenity of neighbouring properties.

12.0 RECOMMENDATION

- 12.1 That planning permission be GRANTED subject to the following conditions and reasons:

Conditions

1. The development must be begun not later than the expiration of three years beginning with the date of this permission.
Reason: To comply with the requirements of 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 hereby approved shall be carried out in accordance with details shown on the following plans:
Plan reference "Site Location Plan" received by the Local Planning Authority on 7th April 2021.
Reason: For the avoidance of doubt and to ensure compliance with the provisions of Policy GN3 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.
3. The use hereby permitted shall only take place between the hours of 10:00 and 02:00 hours.

Reason: To safeguard the amenities of nearby residents and to comply with Policy GN3 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.

4. Deliveries of goods/ services and collections of waste from the premises shall only take place between the hours of 08:00 and 19:00 Monday to Saturday and at no time on Sunday and Bank Holidays.

Reason: To safeguard local residents from noise and disturbance, and to comply with Policy GN3 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

5. Before the use hereby permitted commences a scheme to control the transmission of noise from any fixed plant including mechanical ventilation, extraction equipment and/or refrigeration units shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the equipment shall be properly maintained and operated in accordance with the approved scheme.

Reason: To safeguard local residents from noise and disturbance, and to comply with Policy GN3 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

6. Before the use hereby permitted commences a scheme shall be agreed with the Local Planning Authority which specifies the provisions to be made for the control of noise emanating from the evening use of the premises. These provisions could include physical and/or administrative measures and should consider noise from both amplified music and voices. The approved details shall be implemented prior to trading and shall thereafter be kept in operational order and used at all times when amplified music/voices are played. Any replacement equipment shall be subject to the above.

Reason: To safeguard local residents from noise and disturbance, and to comply with Policy GN3 in the West Lancashire Local Plan 2012-2027 Development Plan Document.

Reason for Approval

1. The Local Planning Authority has considered the proposed development in the context of the Development Plan including, in particular, the following Policy/Policies in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document:

Policy SP1 - A sustainable development framework for West Lancashire

Policy GN1 - Settlement Boundaries

Policy GN3 - Criteria for Sustainable Development

Policy GN4 - Demonstrating Viability

Policy IF1 - Maintaining Vibrant Town and Local Centres

Policy IF2 - Enhancing Sustainable Transport Choices

Policy EN4 - Preserving and Enhancing West Lancashire's Cultural and Heritage Assets

together with Supplementary Planning Guidance and all relevant material considerations. The Local Planning Authority considers that the proposal complies with the relevant Policy criteria and is acceptable in the context of all relevant material considerations as set out in the Officer's Report. This report can be viewed or a copy provided on request to the Local Planning Authority.