

PLANNING COMMITTEE – 1st October 2024

Reference Number: 24/00502/FL

Application expiry: 15/10/2024

Application Type: FULL

Proposal Description: Change the use of the existing building from its current use for B2 General Industrial to mixed use for use as cafe (Class E(b)) and as a hot food takeaway (Sui Generis).

At: Unit 10, Upper Mantle Close, Clay Cross, Chesterfield, S45 9NU

For: Ms L Bell

Third Party Reps: 3 support

Parish: Clay Cross

Ward: Clay Cross North Ward

Report Author: Steven Wigglesworth

Date of Report: 19th September 2024

MAIN RECOMMENDATION: Refuse

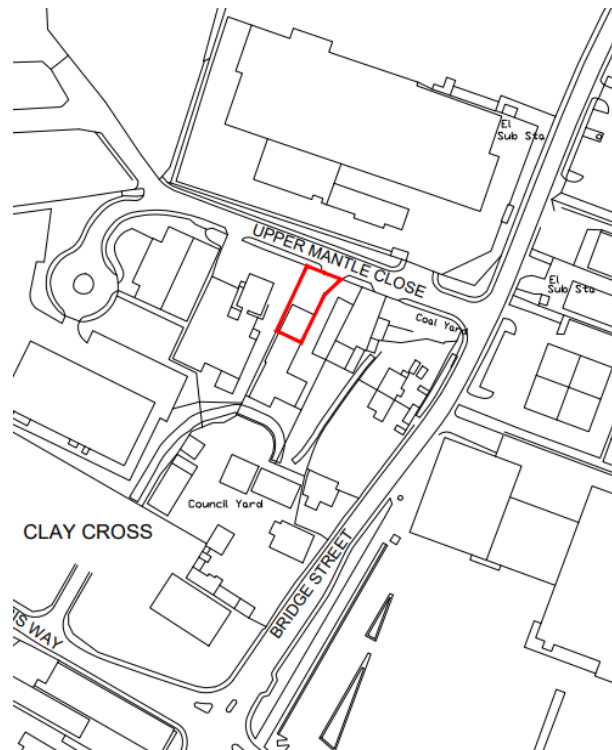


Figure 1: Location plan, with site edged in red

1.0 Reason for Report

1.1 Cllr K Rouse requested that the application be considered at committee for the following reasons:

- The application has features that make it more suited for consideration by the planning committee including that the proposal may be contrary to policy and therefore an approval may require the decision maker to consider the weight to give material considerations if these may outweigh the conflict with Local Plan Policies.
- Clay Cross continues to undergo rapid change and it has been appropriate from time to time to review and change land usage designations to keep pace with the evolving nature of my village. The land opposite the existing Lillybelles cafe, for example, was initially designated as suitable for industrial usage but was then subsequently changed to residential usage as the vision for Clay Cross changed.
- Finally, because this decision may involve deviating from existing local policies I believe that such decisions, whether for or against the application, are better considered in the public forum that is the Planning Committee rather than in private under delegated powers so that residents of Clay Cross can see what was said and why a decision was reached.
- Significant amount of local interest.
- Cllr C Cupit also requested that the application be called in to allow the Council's planning committee to fully debate and consider the planning merits of the designation of this unit in the Council's Planning Policies and the balance of the social and economic benefits this change could have to the community.

2.0 Proposal and Background

Site Description

- 2.1 The site is located in Clay Cross, outside the town centre, on a Principal Employment Site (policy WC2 – CC/02: Bridge Street/Upper Mantle Close) on Upper Mantle Close. It is surrounded by other industrial buildings. The proposed café would be created in an existing industrial unit last used for storage. The town centre boundary lies approximately 74m to the south east at the retail site with Tesco and other retailers.
- 2.2 On officers first visit the site was already being converted with a floor installed, counters and windows being installed, at which time it was advised that development was at the occupier's own risk and that the proposal was contrary to Local Plan policy WC2.
- 2.3 On officers 2nd visit on 9th August the café as proposed was almost complete and already trading from the site. At that stage it appeared all but the external extraction flues had been installed.

- 2.4 The building is a typical industrial building of portal frame construction clad with sheets which are finished dark green, the building is on a sloping part of the site. There are parking spaces in front of the building which would serve the proposed café.
- 2.5 The café shares the access with other industrial units.

Proposal

- 2.6 The proposal is to convert the building into a mixed-use comprising Café (use class E (b) with hot food takeaway (sui generis). The works have been undertaken and this application is for its retention.
- 2.7 This would include external alteration to create a ramped access, install a glazed entrance and a flue. The roller shutter doors would be retained, and when opened provide a large opening which opens up onto the seating area of the café.
- 2.8 The GIA (Gross Internal Area) floorspace of the proposed café is approximately 136m², with the seating area comprising approx. 64m².
- 2.9 The café is reported to have 10 tables (approx. 50 covers)
- 2.10 The opening hours are:
- 0730-16:30 Monday to Friday
 - 0730-12:30 Saturday
 - Closed Sunday and Bank holidays
- 2.11 6 no. parking spaces are shown with one designated as a disabled space.

Amendments

- 2.12 No amendments have been received however additional supporting material has been provided and a vacant unit study report.

3.0 Relevant Planning History (not the full site history)

02/00277/FL	CA	12.06.2002	Proposed erection of extension and erection of a 1.94m high boundary wall and sliding gate (amended title) (amended plan).
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(Officers note - the building subject of this application was permitted for storage, specifically storage of animal feed.)

15/00995/FL CA

12.06.2002

Proposed new units B1 and B2
and B8 industrial unit

(Officers note - this application was not for the unit subject of this application. It did however note on the submitted plans that the building subject of the current application was in use for bus repairs.)

4.0 Consultation Reponses

- 4.1 **NEDDC Clay Cross North Ward member** – Called into Planning committee as considered it a decision more appropriate to be taken by members. This decision may involve deviating from existing local planning policies, and this is better considered in the public forum of Planning Committee. Clay Cross continues to undergo rapid change and it has been appropriate from time to time to review and change land usage designations to keep pace with the evolving nature of the village. The land opposite the existing Lillybelles cafe, for example, was initially designated as suitable for industrial usage but was then subsequently changed to residential usage as the vision for Clay Cross changed. The value of the business as an employer is emphasized.
- 4.2 **DCC Councilor for Clay Cross North division and NEDDC Shirland Ward member** – Supports the application and also requested the application to be called in. This is the essential transfer of an already successful cafe business. Understanding that the proposal is allocated for B2 industrial use, the proposed development would still support the general planning aim of securing employment use for the site as it employs 7 staff at its current location and is looking to secure these jobs and grow the business further. The business also provides an important social and community hub. Considers the material considerations outweigh the conflict with the policies of the development plan.
- 4.3 **NEDDC Pilsley and Morton Ward Member** – Supports the application. The Lillybelles business was previously situated on Coney Green. The owners of the site gave the business notice to vacate the premises. The proposed site is designated a Principal Employment Area site (CC/02) in the Local Plan. As such it is protected for use class B2, Use Class B8 and Use Class E(g).

The proposed use of the building as a cafe and hot food takeaway, is therefore at risk of being refused unless Planning Committee conclude that material considerations indicate a decision should be made other than in accordance with the development plan. Such reasons exist including - The Local Plan (para 6.30, page 90) acknowledges the potential for there to be loss of employment land but set out to control that loss. And in doing so the Local Plan Provides for this application to be granted and so it should not be refused simply because employment land might be lost.

Further, The Local Plan explains that the purposes of this classification is to protect sites that provide an important contribution to the local and strategic portfolio of employment sites. In particular, it is designed to safeguard such sites from potential redevelopment or change of use to a non employment usage such as housing or traditional retail. Para 6.3 also recognizes that the council will support development proposals in Principal Employment Areas which are ancillary to, or support the economic viability of employment sites and the local economy. It gives an example of such ancillary development including workplace nurseries and catering facilities and other sui generis uses which create jobs. The proposal fits with these considerations and therefore the requested change of use is consistent with the purposes of the Local Plan Designation as a Principal Employment Area.

Granting permission would be consistent with other planning committee decisions in Clay Cross including permitting residential development on land opposite Jacksons Bakery at Coney Green and the more recent changes to the Biwaters Strategic Site. Also the Police Station has been approved within the boundary of the CC/02 these decisions reflect the ongoing changes to the councils vision for Clay Cross, the committee would therefore not be setting a precedent but rather it would be consistent with those recent decisions.

Also it would not prejudice the neighbouring employment activities since it would be the only café with both inhouse and takeaway facilities in that area. The application is also consistent with the Local Plans wider vision for Clay Cross within aims to maintain Clay Cross in its role as the main social and economic focus for the south of the district. The proposal, being located just outside the boundary of the town center would add to the vibrancy and the economic health of the area. It provides a social hub aswell.

- 4.4 **Parish Council** – has not commented.
- 4.5 **The Coal Authority** – No comments.
- 4.6 **DCC Highways** – No objection subject to conditions relating to the access, parking and turning facilities.
- 4.7 **Environmental Health** – No objection
- 4.8 **Planning policy and environment team (PPET)** – The site is located in a Principal Employment Area. The Local Plan's glossary defines 'ancillary uses / operations' as 'a subsidiary or secondary use or operation closely associated with the main use of a building or piece of land'. The café / takeaway use does not comply with Part 1 of Policy WC2 which protects the site for B2, B8 and E(g) uses. Given that the café / takeaway would be the sole use of the site and would not be ancillary to any other employment use it is considered that it would not also accord with Part 2.a of Policy WC2.

5.0 Representations

- 5.1 Petition with an undisclosed number of signatures (approx. 14 pages). However the petition does not raise any material planning comments it just provides support for the relocated site.
- 5.2 **Three representations** have been received in support of the application they raise the following grounds for support.
- a) The business supplies many local workers in the area with pick up and delivery service that will be lost if the application is not allowed.
 - b) The café is a hub for the older generation.
 - c) The business is taking a run down building that was just used for storage and turning it into a place for the community.
 - d) The business has been given notice to move out of its existing premises at Coney Green.
 - e) Provides employment for 7 staff.
 - f) Provides a catering service for parties etc.

6.0 Relevant Policy and Strategic Context

North East Derbyshire Local Plan 2014-2034 (LP)

- 6.1 The following policies of the LP are material to the determination of this application:

SS1	Sustainable Development
SS2	Spatial Strategy and the Distribution of Development
SS7	Development on Unallocated Land within Settlement with defined - Settlement Development Limits
WC2	Principal Employment Areas
WC4	Retail Hierarchy and Town Centre Uses
SP2	Clay Cross
SDC11	Flood Risk and Drainage
SDC12	High Quality Design and Place Making
SDC13	Environmental Quality
ID3	Sustainable Travel

The relevant parts of WC2 are provided below for reference -

Policy WC2: Principal Employment Areas

1. The following sites as shown on the Policies Map are protected for general industrial uses (Use Class B2), storage and distribution uses (Use Class B8) and office, industrial and research and development uses (Use Class E(g)):

Clay Cross/Danesmoor

- CC/01: Coney Green Industrial Estate
- CC/02: Bridge Street Industrial Estate/Upper Mantle Close
- CC/03: Pilsley Road
- SS4: Former Biwaters Site

2. Within the above areas proposals for other employment generating uses (not falling within Use Classes B2, B8 and E(g)) will only be permitted where the proposed use:

- a. Would be ancillary to the main use on site; and
- b. Would not prejudice the future functioning or viability of employment uses on the site or nearby employment sites by reason of conflicting activities, access arrangements or movements of traffic or people.

National Planning Policy Framework (NPPF)

- 6.3 The overarching aims of the National Planning Policy Framework (NPPF) have been considered in the assessment of this application.

Other Material Planning Considerations

- 6.4 Successful Places Interim Planning Guidance, adopted December 2013

7.0 Planning Issues

Principle of Development

- 7.1 The application site is situated within the defined Settlement Development Limit of Clay Cross, and forms part of the Bridge Street/Upper Mantle Close industrial estate which is designated as a Principal Employment Area under policy WC2 of the Local Plan.
- 7.2 Local Plan Policy SS7 is supportive of development proposals within Settlement Development Limits, provided that the development is appropriate in scale, design and location to the character and function of the settlement, is compatible with, and does not prejudice any intended use of adjacent sites and land uses and accords with other policies of the plan.
- 7.3 WC4 does restrict the location of town centre uses where the proposed site is within 500m of the Town Centre and where the floor space of the proposal exceeds a 280m² threshold as it places the need for impact assessment and a sequential test. This proposal is within 500m of the town centre but does not exceed the floorspace

threshold. Therefore, the provision at WC4(6) is applicable which explains small scale retail and other town centre use developments, serving the day to day needs of local communities will be permitted within settlement development limits where they are below the local thresholds for impact assessment.

- 7.4 Local Plan Policy WC2 sets out the council's approach to the protection of the Principal Employment Areas within the District. It aims to protect these areas for general industrial (Use Class B2), storage and distribution uses (Use Class B8), and office, light industrial and research and development uses (Use Class E(g)).
- 7.5 Part 2 of the Policy WC2 allows other employment generating uses (i.e. those not falling within Use Classes B2, B8 and E(g)) to be permitted where the proposed use: would be ancillary to the main use on the site; and would not prejudice the future functioning or viability of employment uses on the site or nearby employment sites by reason of conflicting activities, access arrangements or movements of traffic or people.
- 7.6 The Local Plan's glossary defines 'ancillary uses / operations' as 'a subsidiary or secondary use or operation closely associated with the main use of a building or piece of land'.
- 7.7 The café / takeaway is a mixed use comprising an E(b) / Sui Generis use and as such does not comply with Part 1 of Policy WC2 which protects the site for B2, B8 and E(g) uses. Given that the café / takeaway would be the sole use of the site and would not be ancillary to any other employment use, it also would not accord with the provisions in Part 2.a of Policy WC2 and is therefore contrary to Local Plan policy WC2.
- 7.8 The sites identified in policy WC2 are so noted due to the important contribution the sites make to the local and strategic portfolio of B Class employment and it seeks to retain them for this purpose rather than for other peripheral commercial uses not directly falling within the normal commercial and employment uses. Importantly it provides areas where such uses can operate without the risk of causing undue noise and disturbance to neighboring uses.
- 7.9 Conversely, policy WC3 General Employment Areas identifies those other employment sites where other non B-class employment generating uses (in line with our Local Plan definitions of Employment Use and Economic Development and the current NPPF definition for Economic Development) and potentially including uses such as the proposed mixed use will be acceptable (also subject to WC4). This was to allow for and strategically plan for the wider definition of economic development that was introduced with the NPPF.
- 7.10 If the site was located in a 'General Employment Area' rather than a 'Principal Employment Area' such a use may be provided for in the development plan.

However it is situated on a WC2 Principal Employment Area where such uses have been precluded for strategic reasons.

7.11 The proposal being in a WC2 Principal Employment Area is therefore contrary to the policies of the development plan and unacceptable in principle. Unless there are material considerations that outweigh this conflict with the development plan, and which could not be easily replicated, then the proposal represents significant harm to policy WC2 and should be refused.

7.12 **Amenity Considerations and environmental quality.**

7.13 Being within the heart of an industrial site it is surrounded by industrial uses. There is not considered to be any impact on the amenity or function of the surrounding business. The proposed flue will undoubtedly create some noise and odour, but given the sites location in an industrial site, this is not considered to create any significant amenity issues. The proposal insofar as it relates to amenity and noise and odour impact is considered to comply with SDC12 and SDC13.

7.14 **Flood Risk Considerations**

7.15 The proposed development is within a Flood Zone 1 (land assessed as having less than 1 in 1,000 annual probability of river flooding) and has a low risk of fluvial flooding.

7.16 However the site also carries a high risk of surface water flooding. This relates to the external parts of the site, the building itself does not show as being at risk of flooding. As the change of use, on a site less than 1 hectare and the proposal does not include a change of use to a more vulnerable use this does not require the application to be supported by a flood risk assessment. The agent has commented that as the development does not propose to increase the existing impermeable area on the site that the site will drain as it currently does.

7.17 In summary, Officers consider that as the unit is an existing building and there are no changes to the hard surfacing that it would be unlikely to increase the surface water flooding and would be acceptable from a flood risk perspective.

7.18 **Highway Safety**

7.19 There is an existing access serving the site and other industrial units on this plot and the local Highway Authority have confirmed that the existing access is suitable to serve the proposed use.

7.20 There is an under provision of parking by as much as six spaces however the local highway authority have also taken into account that Lower Mantle Close itself is low trafficked with some on street parking available and also due to the short term and local nature of the businesses customer base the parking deficit is unlikely to have a

significant or severe impact on the surrounding highway network. The local highway authority have therefore raised no objection, subject to conditions and officers consider the proposal is acceptable in highways terms, subject to imposing the suggested condition.

7.21 Other material considerations

- 7.22 As set out above officers consider that the principle of the proposal is contrary to the policies of the development plan, specifically Local Plan Policy WC2.
- 7.23 The National Planning Policy Guidance (NPPG) (para 006) explains - To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise.
- 7.24 The proposed use will provide employment for approximately 7 employees, this in comparison to its last stated use for vehicle storage may be an increase in employment and offer a more active business which interacts with surrounding businesses and suppliers, therefore better for the economy than the previous occupation of the site.
- 7.25 The applicant and representations have put forward the point that the business was previously operating from a WC2 site at the Jacksons Bakery site at Coney Green. Having considered the planning history, and discussed it with the planning agent, there was a canteen approved as part of the Jacksons Bakery permission. However officers consider the canteen permitted did not amount to an independent café (such as Lillybelles), it would have been ancillary to the commercial bakery. Therefore, officers consider that the previous site of the café at Coney Green was operating without the benefit of planning permission. As Lillybelles Café only operated at Coney Green from 2019 it had also not operated for long enough to accrue any lawfulness by passage of time.
- 7.26 The planning agent has advised that Jacksons (Bakery) also previously operated a café from the Coney Green premises (prior to Lillybelles), which was open to the public. However officers consider that Jacksons use of that part of the building as a café (even trading to the public) would have been ancillary to the commercial bakery use and operating within the parameters of the existing permission. Therefore the fact the business Lillybells Cafe operated from a WC2 site for the last 4-5 years does not add any significant weight in favour of the proposal.
- 7.27 Officers have asked the applicant whether sites within or close to the town centre of Clay Cross were considered before this location and officers within the Economic Development section have provided a list of 9 town centre premises identified as vacant. The applicant has provided a detailed analysis of these vacant premises in the town centre, ruling out all but two sites as most were not currently being marketed and finding that the remaining two were not large enough to meet their minimum operating space of 120m². There has not been a robust explanation

provided of why the applicant has a 120m² minimum floorspace requirement, which is just based on the amount of floor space they occupied at the previous site at the Jacksons Bakery site in Coney Green. Whilst this size could be considered their existing baseline requirement, the previous site operated without the benefit of planning permission.

- 7.28 In the opinion of officers, this significantly diminishes the weight that such a baseline requirement can be given. Therefore, to rule out existing premises that are available in the town centre and of similar size at 90m² does not weigh in favour of allowing the current proposal. In addition, the methodology used discounts properties that are not currently being marketed, but from a planning perspective the issue is that there are vacant premises in a location where the principle of this use would be supported. More generally, officers consider that the search for alternative premises should not be limited to town centre locations alone and should have included premises that could be suitable for the proposed use and are not located in a Principal Employment Area (WC2). The applicant has been asked to update their study on this matter, but this information so far has not been provided.
- 7.29 The applicant contends that the business is an existing successful business and local employer of approx. 7 staff. Loss of the business would result in a negative economic impact from loss of the employment but also loss of the business they provide to their suppliers aswell as the social aspect of the group of customers that frequent their business. However, Officers consider that the applicant has not provided sufficient evidence to demonstrate that the same economic benefits could not be accrued through the redevelopment of vacant sites within the town centre or other sites that are not within Principal Employment Areas.
- 7.30 Officers also asked how long the site had been vacant and this has been reported to be 2 years with the last reported use being storage of vehicles. The building was permitted in approx. 2002 for storage of animal feed. The point that the premises has been vacant for 2 years suggests to officers that demand at this present time may be low. However, the information provided by the applicant finds no vacant premises on Upper Mantle Close, which suggests to officers that that significant weight should still be given to the protection of this area for more intensive employment generating uses than the use being considered in this application. Officers have asked for evidence of marketing the property but none has been provided, which does not help their case.
- 7.31 The ward members and the agent in their statements have pointed out that the proposed use will serve the wider industrial site, in some respect providing a use that is therefore complimentary to the Principal Employment Area. The question this raises is that the site is so close to the town center that other nearby retail or food outlets such as Tesco could likely already provide the café and food outlets function.

- 7.32 In addition, the evidence from the Economic Development team suggests to officers that the café could be located in one of the vacant town centre premises, which would achieve similar benefits as well as contributing to the regeneration of central Clay Cross. Without evidence of marketing of the site for uses that would comply with policy WC2, it is considered that the harm arising from the loss of an employment generating use (as defined within the policy) outweighs the benefits arising from this scheme, which could potentially be greater in alternative and vacant premises within reasonably close proximity.
- 7.33 The ward members have mentioned a range of other planning decisions in Clay Cross suggesting that granting permission would be consistent with other planning committee decisions in Clay Cross, including permitting residential development on land opposite Jacksons Bakery at Coney Green and the more recent changes to the Biwaters Strategic Site. Also the Police Station has been approved within the boundary of the CC/02 and that these decisions reflect the ongoing changes to the councils vision for Clay Cross.
- 7.34 Officers note that the Police Station was found to be compliant with policy WC2 as an office (use class E(g)), the Biwaters Site is not a WC2 site, it is a strategic site and it has its own policy SS4 which allows for mixed use development, and the details of the Coney Green development pre-dates the current Local Plan. It is also the case that planning applications need to be determined on their own merits and whilst precedents can be set which can harm policy, officers are not aware so far of any decisions having been made which undermine the function/strength of Local Plan Policy WC2.
- 7.35 The agent has set out these following points which they wish to be considered:-
- The development procures supplies and ingredients from local businesses, i.e., local bakers, local butchers, etc.
 - The development serves other local businesses, including catering contracts for major employers in the North East Derbyshire and surrounding areas.
 - The development has a loyal customer base, including employees from surrounding local businesses, and the local community.
 - Furthermore, the proposed development will make use of a vacant building which has previously been used for equipment storage and served no employment of economic purpose. In fact, the proposed development will provide a new catering offering to the surrounding nearby employment sites, and thus contributing to the long-term viability of employment uses within the surrounding area, by attracting new customers.
- 7.36 Officers consider the material considerations put forward in support of the proposal do not outweigh the conflict with Local Plan Policy WC2, for the reasons set out

previously in this report i.e. these benefits could be achieved through the re-use of identified vacant sites within the town centre or potentially other sites that are not within a Principle Employment Area.

8.0 Summary and Conclusion

- 8.1 Having taken into account the policies of the development plan and all the material considerations, it is considered that the proposed use, on a site designated as a Principal Employment Area allocated by policy WC2, is not acceptable as it would prejudice the Council's policy on delivering commercial development on appropriate sites. Officers note that matters relating to design, amenity, highway safety and flood risk are deemed to be acceptable however overall the development would not accord with Local and National Planning Policy.

9.0 Recommendation

- 9.1 REFUSE Permission for the following reason:-

1. The application site is situated within the CC/02 Bridge Street/Upper Mantle Close Principal Employment Area.

Local Plan Policy WC2 sets out the council's approach to protecting the Principal Employment Areas within the District. The policy protects these areas for general industrial use (Use Class B2), storage and distribution uses (Use Class B8), and office, light industrial and research and development uses (Use Class E (g)).

Proposals for other employment generating uses will only be permitted in Principal Employment Areas where they would both be ancillary to the main use on the application site and would not prejudice the future of functioning or viability of employment use on the site, or nearby employment sites.

The proposal is for a change of use to a mixed use comprising a Café and Hot Food Takeaway and would be the sole use of the site and not ancillary. As such the proposals would be contrary to Policy WC2 which aims to protect these areas and would result in the loss of the unit to a mixed use.

Having considered other material considerations these do not outweigh the harm caused to the development plan and so the application is unacceptable and contrary to policy WC2 of the North East Derbyshire Local Plan.