Item: **06**

Reference: **11/00132/FUL**

Applicant: **Mr Gulam J Nabi**

Location: **42 Hill Street Hinckley**

Proposal: **CHANGE OF USE FROM RESIDENTIAL (C3 USE) TO DISPENSING PHARMACY (SUI GENERIS USE) AND EXTENSION TO PROPERTY**

Target Date: **19 April 2011**

Introduction:-

This application is to be considered at Planning Committee in accordance with the Scheme of Delegation, as it has been called in at the request of a local ward member.

Application Proposal

Planning Permission is for sought for the change of use from an existing dwelling (Use Class C3) to a dispensing pharmacy (Use Class Sui Generis) and extension to the property.

The pharmacy is intended to operate for a period of 100 hours over the week with opening hours from 07:30 to 23:00 Monday to Saturday and 10:00 to 16:00 on Sundays and Bank Holidays.

The alterations to the front of the premises including the removal of the existing door and window and front extension of 0.4 metres to create a new shop front canopy and entrance complete with external hand railings.

Alterations are also proposed internally to create a waiting area, private consultation room, dispensing counters and wheelchair accessible and toilet.

The Site and Surrounding Area

The application property is a mid Victorian terrace immediately adjoined to the north by No.44 and to the south by No. 48 Hill Street. A footpath can be accessed between No. 62 and 64 Hill Street which runs to the rear of the site and adjoins with Thornycroft Road.
The site is located with a predominantly residential setting with commercial properties interspersed.

The site is located to the eastern side of Hill Street and is located within the settlement boundary of Hinckley, but located outside the town centre boundary as defined by the Hinckley and Bosworth Local Plan and Hinckley Town Centre Area Action Plan.

Technical Documents submitted with application

The application is accompanied by a Design and Access Statement which states that the site is centrally located and very close to the principle shopping areas of the town centre and will have little impact on the surrounding area. It is anticipated that deliveries will make their way to the facility on foot either through the front door or via the rear door accessed along the shared access entry way.

The application is also accompanied by a footfall survey of other '100 hours' pharmacies in various types of locations across the country throughout the day to give an indication of the number of customers and times of their visits.

Following concerns raised by officers, further information has been provided in respect of staff shifts in comparison to the proposed opening hours. The applicant has confirmed that the premises would be staffed by one full time qualified pharmacist at all time when open and up to five part time staff, and that no more than two members of staff will be present at anyone time.

History:-

11/00133/ADV	Erection of non-illuminated signage	Pending consideration



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Consultations:-

No comments from:-

Director of Environment and Transport (Highways)
Head of Community Services (Land Drainage).

No objections from:-

Director of Environment and Transport (Rights of Way)
Head of Community Services (Pollution).

Site notice and Press notice were displayed and neighbours notified.

12 letters of objection including one from a ward member have been received raising the following concerns:-

a) existing pharmacies in close proximity; density of medical uses
b) vacant site available in the town centre
c) property is a mid terrace and not suitable for commercial use
d) opening hours are excessive in this location; 7 days a week and 100 hours
e) noise and disturbance on neighbours; slamming of car doors; late night opening; contrary to Policy BE1
f) lead to traffic congestion
g) limited parking; all off road parking is privately owned on Hill Street
h) unlikely that customers or staff will visit by foot or cycle at night; majority will arrive my car
i) deliveries; unsuitable location for delivery of goods; deliveries by footpath compromising security
j) no crime prevention and security risks
k) no provision for trade waste or recycling
l) layout does not comply with Part M of the Building Regulations
m) use is prevented by restrictive covenant.

At the time of writing the report comments have not been received from Ramblers Association.

Policy:-

Central Government Guidance

Planning Policy Statement 1 (PPS1): 'Delivering Sustainable Development' refers to the delivery of sustainable development through the planning system. It advises that planning policies should protect and enhance the environment, promote high quality design and reinforce local distinctiveness.

Planning Policy Statement 4 (PPS4): 'Planning for Sustainable Economic Growth'.

Policy EC10.2 stipulates the impact considerations which all applications for economic development should be assessed against:-

a) whether the proposal has been planned over its lifetime to limit carbon dioxide and minimise vulnerability to climate change
b) accessibility of the proposal by a choice of means of transport

c) whether the proposal secures a high quality and inclusive design which takes the opportunities for improving the character and quality of the area and way it functions
d) the impact on economic and physical regeneration
e) the impact on local employment.

Policy EC14.3 requires applications for main town centre uses that are not in an existing centre and not in accordance with an up-to-date development plan should be accompanied by a sequential site assessment prescribed by Policy EC15.

Policy EC15 sets out the considerations a local planning authority should have when assessing a sequential site assessment as:-

a) Ensure sites are assessed for their availability, suitability and viability
b) Ensure all in-centre options have been thoroughly assessed before less central sites are considered
c) Ensure where there are no town centre sites, preference is given to edge of centre sites which are easily accessible to the centre by pedestrian access
d) Ensure when considering sites in or on the edge of existing centres, applicants have demonstrated flexibility in terms of:-
    - Scale
    - Format
    - Car parking provision
    - The scope for disaggregation

Policy EC17 supports policies EC14.3 and EC15 by stipulating when an application for a main town centre use which is not in an existing centre and not in accordance with an up to- date development plan should be refused:-

a) Where compliance with the requirements of the sequential approach have not been demonstrated (in line with EC15) or
b) Where there is clear evidence the proposal is likely to lead to significant adverse impacts in terms of any one of the impacts set out in policy EC10.2.

Regional Policy

The decision of the Secretary of State for Communities and Local Government ("SoS") on 6 July 2010 to revoke Regional Strategies using powers in section 79 of The Local Democracy, Economic Development and Construction Act 2009 was successfully challenged in the High Court and was quashed in a judgment handed down on 10 November 2010.

Following the decision, the SoS has written to local planning authorities stating that the government will introduce the Localism Bill in November containing proposals to abolish Regional Strategies.

The government’s Chief Planning Officer has also written advising that local planning authorities should still have regard to the SoS`s letter of 27 May 2010 and that it should still be regarded as a material consideration.

Judgement was recently given in a second challenge by Cala Homes when the Court held that the SoS`s intention to reform the planning system by removing regional strategic planning from it is to be taken into account as a material consideration

In relation to the weight to be given to that intention as a material consideration the Court held that `the weight to be given to relevant provisions of Regional Strategies pending the legislative process will be for decision-makers to gauge. Until the end of that process is reached Regional Strategies will remain in place as part of the development plan.

East Midlands Regional Plan 2009

This is the Regional Spatial Strategy for the East Midlands and provides a broad development strategy for the East Midlands. The following relevant policies apply to this proposal: -

Policy 2 promotes better design including highway and parking design that improves community safety.

Policy 3 directs development towards urban areas with priority being given to making the best use of previously developed land.

Local Development Framework Core Strategy 2009

Policy 1: 'Development in Hinckley' seeks to ensure there is a range of employment opportunities within Hinckley and to allocate land for new office development within or adjoining the Hinckley Town Centre Area Action Plan boundary.

Hinckley and Bosworth Local Plan 2001

The site is within the settlement boundary of Hinckley, as defined in the adopted Hinckley and Bosworth Local Plan.

Policy BE1: 'Design and Siting of Development' seeks to ensure a high standard of design in order to secure attractive development and to safeguard and enhance the existing environment. Development should ensure adequate highway visibility for road users and adequate provision for on and off street parking for residents and visitors together with turning facilities and should not adversely affect the occupiers of neighbouring properties. Development should also have regard to the safety and security of both intervals and property.

Policy T5: 'Highway Design and Vehicle Parking Standards' refers to the application of appropriate standards for highway design and parking provision for new development.

Supplementary Planning Guidance/Documents

None relevant.

Other material policy guidance

The Hinckley Town Centre Area Action Plan (AAP) was adopted through Full Council on 21st March 2011, as such, it currently forms a formal development plan document for Hinckley Town Centre as part of the Local Development Framework. The application site stands outside of the Hinckley Town Centre Area Action Plan boundaries

Appraisal:-

The main considerations with regards to this application are the principle of development, sequential test, impact upon residential amenity and other considerations.

Principle of Development

The site is located within the settlement boundary of Hinckley as defined by the Adopted Hinckley and Bosworth Local Plan proposals map where there is a presumption in favour of development subject to all other planning matters being appropriately addressed. For the reasons discussed later in this report it is not considered that the development is in compliance with development plan policy.

Whilst the site falls within the settlement boundary of Hinckley, it is located outside of the Town Centre Boundary. For the avoidance of doubt the boundary for the town centre runs north to south along Hill Street and as such land to the west falls within the Hinckley Town Centre Boundary and land to the east falls outside the town centre. The Town Centre Boundary within the Hinckley Town Centre Area Action Plan also reflects that of the Local Plan, and as such the sites falls outside the Town Centre on both accounts.

It should be noted that there are other examples of commercial premises that exist on the eastern side of Hill Street, which by virtue of their siting on this side of the road also fall outside the Town Centre Boundary. In addition, a pharmacy exists on the opposite side of Hill Street, but as stated above this falls within the Hinckley Town Centre Boundary. Members should recall that in August 2010 planning permission was granted for a pharmacy at the Castlemead Medical Centre on the west side of Hill Street.

Policy 14 of the Area Action Plan provides guidance on retail development outside Hinckley Town Centre, however the application site is not considered to fall within either of these existing shopping centres. Policy Retail 7 is a partly saved Local Plan policy, applicable to retail development outside the Area Action Plan boundary and seeks to grant planning permission for retail development in a number of named local shopping centres. However, the application site does not fall within one of these identified local shopping centres. Policy Retail 11 is also a saved policy and seeks to grant planning permission for small local shops in settlements without existing local provision. The application site stands on the edge of the town centre boundary and within a short walking distance of both the town centre and other pharmacies and as such this policy is not considered to apply to this application.

As such, the application for a pharmacy on Hill Street does not fall within the remit of Town Centre AAP Policy 14 or Local Plan Policy Retail 11 and is contrary to partly Saved Local Plan Policy Retail 7 and is therefore not in accordance with the development plan. This particular part of Hill Street does not afford commercial designation and there is no identified policy support within either the adopted Hinckley and Bosworth Local Plan or recently adopted Hinckley Town Centre Area Action Plan.

Sequential Test

The site stands outside, but on the edge of the town centre and is considered not to be in accordance with the most up-to-date development plan, the Town Centre Area Action plan and Local Plan, as detailed above. Therefore it is considered that this

application requires a sequential site assessment in line with Policy EC14.3 and in accordance with the requirements of Policy EC15. The sequential site assessment should examine town centre sites before the selection of an edge of centre site such as the proposed scheme.

Where applications for main town centre uses that are not in an existing centre and not in accordance with an up-to-date development plan, Policy EC14.3 of PPS4 states that an application should be accompanied by a sequential site assessment. The assessment seeks to locate new retail development first and foremost within existing town centres to maintain its viability and vitality and where this is not possible or reasonable, in edge of centre locations with out of centre locations the least sequentially preferable sites. This policy provides a size threshold of 200 sqm gross floorspace for extensions to retail for the application of a sequential assessment, but no such threshold is provided for the creation of or change of use to retail.

Policy EC15 sets out the considerations a local planning authority should have when assessing a sequential site assessment as:-

a) Ensure sites are assessed for their availability, suitability and viability
b) Ensure all in-centre options have been thoroughly assessed before less central sites are considered
c) Ensure where there are no town centre sites, preference is given to edge of centre sites which are easily accessible to the centre by pedestrian access
d) Ensure when considering sites in or on the edge of existing centres, applicants have demonstrated flexibility in terms of:-

- Scale
- Format
- Car parking provision
- The scope for disaggregation

Policy EC17 supports policies EC14.3 and EC15 by stipulating when an application for a main town centre use which is not in an existing centre and not in accordance with an up to- date development plan should be refused where compliance with the requirements of the sequential approach have not been demonstrated (in line with EC15) or where there is clear evidence the proposal is likely to lead to significant adverse impacts in terms of any one of the impacts set out in policy EC10.2.

Whilst this application is accompanied by a Design and Access Statement which makes reference to the sites proximity to the primary shopping area, other nearby non-residential uses and existing medical provision the application has not been accompanied by a sequential site assessment.

A letter of objection has been received stating that there are other empty shops within town which could be used. The existence or non existence of alternatives sites is a consideration relating to the use and development of land and the extent to which it is relevant in any case will depend on all the circumstances, particularly on the degree to which the application causes harm or conflict with policy. It is only acceptable to request that a sequential test be undertaken which would then identify vacant sites which would be considered acceptable from a planning policy perspective only, and may not necessarily be in accordance with all other relevant development plan policy.

In summary, it is considered that the applicant has failed to provide a sequential site assessment and as such is considered contrary to the requirements of Policy EC14.3 and by virtue of its failure to demonstrate would also be contrary to Policy EC15 and Policy EC17 in PPS4.

Impact upon Residential Amenity

It is considered that there are terraced residential premises adjoining and in close proximity to the premises that will be impacted upon as a result of this application. The properties most immediately affected as a result of the proposal would be the two adjoining terraced dwellings located to either side of the premises.

The conversion of the premises from residential to a pharmacy would lead to an increase in general disturbance of people coming and going to and from the site. This is intended to be from walking, cycling and the starting and stopping of vehicles and the noise associated with the closure of car doors from staff members, customers and deliveries. It is also considered that the two adjoining neighbouring dwellings would experience disruption from customers, staff and delivery comings and goings from both the front and rear of the premises. It is considered that this would result in an un-acceptable amount of general disturbance to the adjoining and surrounding neighbouring properties. As such the proposal would be to the detriment of residential amenity and therefore contrary to the provisions of Saved Policy BE1 of the adopted Hinckley and Bosworth Local Plan.

Concerns have been raised by residents in respect of safety and security. Saved Policy BE1 seeks that development has regard to the safety and security of both individuals and property. It is considered that as result of some deliveries that are to be made to the rear door via a shared access entry way and/or by a footpath from Thorneycroft Road that this would compromise the security of the two properties adjoining the site and also other properties within the vicinity.

Whilst the site is located with a predominantly residential setting, it should be noted that there are commercial premises located to the eastern side of Hill Street which include:-

- 68-81 Hill Street – A social Club
- 60 Hill Street – A chiropractic clinic
- 46-48 and 50 Hill Street – Mencap Centre and shop attached
- 30 Hill Street – A Dance Academy

Both the chiropractic clinic and Mencap centre are uses which operate within the day time only. There are two examples of later opening hours within the street No's 68-81 a Social Club, however this is only immediately adjoined by one neighbour and No. 30 a Dance Academy which has consent to operate until 10pm, however this is not a terraced property and is not immediately adjoined to the east or south in the same way that the application property does.

It is therefore considered that whilst there are examples of commercial premises which fall outside the town centre boundary, the impacts upon neighbouring dwellings are not considered to be as detrimental given the hours of use and proximity to adjoining neighbouring dwellings.

In summary, accumulatively the increase in comings and goings of pedestrians, cyclists and cars, and associated starting and stopping of vehicles generally and

additional into the late hours of the night is considered detrimental to the amenities and security of the occupiers of surrounding residential properties.

It is in the opinion of the Local Planning Authority that the proposal would be to the detriment of residential amenity and therefore contrary to the provisions of Saved Policy BE1 of the adopted Hinckley and Bosworth Local Plan.

Highway Considerations

The accompanying Design and Access Statement states that there is parking on both sides of the carriageway for residential and commercial properties and a public car park on Hill Street and Thorneycroft Road, and that a large number of customers will arrive on foot as the street is close to the town centre and other transport links.

The volume of neighbour objection to this proposal is significant and issues concerning the impact of additional traffic and lack of parking. However, there is no consensus of opinion with the comments supplied by the Director of Environment and Transport (Highways) whom feels that whilst the medical centre parking is private it would not doubt be used by patients from the medical centre and therefore customers could be parked there quite legitimately when using the proposed pharmacy across the road. As such it is not considered that that the lack of parking would sustain a reason for refusal on this basis. Given the sites proximity close to the town centre it is considered that there are alternative modes of transport such as walking cycling and bus routes and as such additional traffic and impacts upon the road capacity cannot be used as a reason for refusal in this case. Accordingly, it is considered that the proposal accords with Saved Policy T5 of the adopted Hinckley and Bosworth Local Plan.

Other Considerations

Objections have been received expressing concerns about the waste generated from the use and the lack of provision for recycling and refuge facilities. The application states that the plans do not incorporate areas to store and aid the collection of waste or arrangements for the separate storage and collection of recyclable waste. There are also concerns that there may be insufficient space for access to the rear for trade bin. It is considered that this could result in waste and recycling not be properly stored and collected to the detriment of the character of the area and to the amenities of neighbouring residents. However, it is not considered that a reason for refusal could be sustained on these grounds.

One letter of objection also referred to the layout not complying with Part M of the Building Regulations. The ramp should have a maximum gradient of 1:20 and be 1.2 metres wide with the new entrance door must have 775mm clear opening at 90 degree opening and there must be visibility to the new door of between 500mm and 1500mm in the door. Given that there is a new shop front being installed there is a requirement to comply with Part M of the Building Regulations, however this will be properly assessed through the separate Building Regulations Application and does not form part of this planning application.

In respect of the covenant, this prevents alternative uses without the prior approval of planning permission. Primarily this is not a material planning consideration, however the applicant has sought to address this through the submission of this change of use application.

Conclusion

In conclusion, whilst the site is located within the settlement boundary of Hinckley where there is a presumption in favour of development it is considered the material impacts identified would be sufficient to outweigh this favour in this case. By virtue of the sites positioning outside of the Town Centre Boundary, there is a distinct lack of policy support for commercial uses in this location.

It is considered that the applicant has failed to provide a sequential site assessment and as such is considered contrary to the requirements of Policy EC14.3 and by virtue of its failure to provide this information would also be contrary to Policy EC15 and EC17 in PPS4.

On balance by way of the increase in level of general disturbance combined with late night opening hours and the potential impacts of a loss of security to both adjoining neighbours and surrounding dwellings it is considered that the change of use would have a significantly detrimental impact upon the occupiers of surrounding residential properties, contrary to Saved Local Plan Policy BE1.

RECOMMENDATION :- REFUSE, for the following reasons :-

Summary of Reasons for Recommendation and Relevant Development Plan Policies :

Reasons:-

1 In the opinion of the Local Planning Authority the site falls outside the Town Centre, as such in accordance with Planning Policy Statement 4 it is necessary for the applicant to provide a sequential site assessment. The application has not been accompanied by a sequential site assessment to demonstrate whether the application site is the most sequentially preferable as such the proposal is considered to be contrary to Policies EC14, EC15 and EC17 of Planning Policy Statement 4: Planning for Sustainable Economic Growth.

2 In the opinion of the Local Planning Authority the proposed change of use and associated late opening times would lead to a level of general disturbance that is likely to be significantly detrimental to the amenities of neighbouring residents contrary to Saved Policy BE1 of the adopted Hinckley and Bosworth Local Plan.

Contact Officer:- Ebbony Mattley Ext 5691