

To: planning.enquiries@wokingham.gov.uk

Cc: (Neil Allen, Head of Legal Services)

(Andrew Moulton, Assistant Director of Governance (Monitoring Officer))

Subject: URGENT: Statutory EIR 2004 Information Request & Formal Objection - Planning Ref: 260463 (95b Bean Oak Road) - CC: Head of Legal Services

Application Reference: 260463

Site Address: 95b Bean Oak Road

Proposal: Full application for Change of Use from Cafe with takeaway to a Sui Generis mixed use café and takeaway (Retrospective)

Objector Details: Ian Harris - 84 Charwood Road, Wokingham RG40 1RY

Submission Type: Formal Objection (Updated Comments in Response to Officer Recommendation)

Dear Planning Officer,

I am writing to update my formal objection to the above application. I note that the cover letter description has been amended to a "café with takeaway" and that the planning department is minded to recommend this use class on the application. However, I strongly contest this recommendation. The Council's assessment fails to properly apply the legal test of "fact and degree," leaving the local planning authority vulnerable to a material change of use by stealth that cannot be effectively monitored or enforced.

As this is a retrospective application, the Council cannot rely on promises of a benign "mixed use café with takeaway"; it must assess the actual, ongoing operational reality which tilts heavily toward a dominant, Sui Generis takeaway use. The submitted layout features a dominant, prominent takeaway section at the front of the unit through which all sit-down customers must pass. By recommending approval without securing precise operational data, the Council is failing to establish the legal baseline required to ensure the takeaway element remains strictly secondary.

1. Legal Flaws in the "Fact and Degree" Assessment

To legally justify classifying this site as a primary café rather than a dominant hot food takeaway, the Council must have regard to the following material omissions, which the current application overlooks:

- **Spatial Dominance:** The layout plan shows a front-loaded takeaway counter. Without a strict condition securing a prominent floorspace split - such as 70:30 predominantly allocated to sit-down dining covers (excluding kitchens, preparation areas, and toilets) - the physical layout, with its front-loaded takeaway counter, inherently favours high-turnover takeaway dominance.
- **Operational Infrastructure as Use Indicators:** The application completely omits specifications for food production equipment. The presence of high-volume commercial fryers, griddles, gyros, or conveyor ovens in an open-plan kitchen is a primary material indicator of a takeaway use class, and therefore details of any of these appliances should be included in the assessment.
- **Service Mechanics and Character of Use:** The applicant has provided no details regarding the service model of the takeaway element. An over-the-counter "order and pay upfront" model using disposable packaging, overhead fast-food menu lightboxes, and heated street-facing holding cabinets creates a "dash and go" environment. This alters the character of the use to a dominant Sui Generis takeaway, severely harming local amenity through litter and transient noise.
- **Uncontrolled Delivery App Activity:** The recommendation fails to address the impact of third-party delivery aggregators (e.g., Deliveroo, Just Eat). Delivery operations generate external impacts (scooter noise and delivery courier congestion at the entrance) completely distinct from a local cafe. Without restricting delivery services, the takeaway element will inevitably become the dominant economic driver of the site.

2. Enforceable Conditions: Requirements to Prevent Precedent

The current retrospective application is entirely unacceptable and must be refused because the ongoing breach is causing severe impacts on local amenity. However, if the Council ignores these impacts and resolves to approve the application, it would be a further error of law to do so without, at a bare minimum, the following strict, enforceable conditions:

- Strict Floor Layout Restriction: A condition tying the permission explicitly to an approved internal layout plan that permanently restricts the takeaway counter size to a small till (to avoid a "serve and wrap" operation) and limits the overall customer space dedicated to takeaway to no more than 30% of the public floor zone.

- Restriction on Delivery Operations: A condition prohibiting the use of the site by third-party motorised delivery couriers (such as mopeds, scooters, and cars) outside of standard daytime cafe hours (e.g., restricted strictly to between 08:00 and 18:00 hours), and requiring a formal Courier Management Plan to prevent congestion at the entrance. This ensures that high-volume evening delivery operations do not overwhelm the primary daytime character of the unit or cause unacceptable transient noise to neighboring residents.

- Operational Fabric Controls: A condition prohibiting the installation of overhead illuminated fast-food menus, street-facing heated holding cabinets, and the use of high-volume takeaway production equipment.

- Active Frontage and Amenity Protection: A condition ensuring that the ground floor glazing remains completely transparent and unobstructed by internal signage, storage, or equipment, thereby maintaining a vibrant, daytime active shopping parade.

- Plant and Extraction: Given the retrospective nature of the breach, a condition requiring full acoustic and odour filtration specifications for any extraction system associated with the takeaway area to be approved in writing prior to any determination of this application, rather than via a post-decision suspensive condition.

3. Status of Previous Comments

For the avoidance of doubt, all of my previous objections regarding noise, highway safety, parking conflicts, public health, and localised disturbance remain fully active. The change in the wording of the description does not alter the physical reality of how this site could operate, nor its severe, ongoing impact on neighboring properties and residents.

The Council cannot legally or thoroughly assess the true "fact and degree" of this operation based on the blank-cheque application currently before it. I urge the planning department to reconsider its recommendation and refuse the application, or at a minimum, defer it until the enforceable controls listed above are fully integrated into the proposal.

4. Formal Statutory Request for Information and Disclosure (Environmental Information Regulations 2004)

I note from the applicant's public submissions on the planning portal that they state the Planning Officer has explicitly directed or recommended the change in the development description to a "Sui Generis mixed use café and takeaway" use class. Because a formal officer report has not yet been published, this public statement indicates that substantive, non-public determinations regarding the "fact and degree" of this use have already occurred between the Council and the applicant.

Crucially, this site has an active, recorded history of planning enforcement complaints. Council records contain documented evidence of an unauthorised operational reality that fundamentally conflicts with the current application profile.

To ensure the Local Planning Authority is acting transparently and in accordance with its public law duties, I hereby formally request under the Environmental Information Regulations 2004 (EIR) the immediate disclosure of all background information relating to these discussions. Because this information directly relates to emissions, noise, odours, and land-use impacts, it falls squarely under the definition of environmental information under Regulation 2(1) of the EIR, which carries a strong presumption in favour of disclosure.

This request specifically includes, but is not limited to:

- Pre-application and Ongoing Correspondence: All emails, letters, meeting minutes, and notes of telephone calls/virtual meetings between the Case Officer (or any Council representative) and the applicant, their agent, or legal representatives where the description of development, use class classification, or potential planning conditions were discussed.
- Reconciliation of the Planning Enforcement Record: All internal memos, site visit dates, emails, or file notes detailing how and when the Case Officer accessed, evaluated, and weighed the recorded planning breaches and history against their current intention to recommend approval under an amended description.
- Internal Consultation Notes: All internal memos, emails, or communications between the Planning Department, the Enforcement Team, Environmental Health, and Highways regarding whether the site operates fundamentally as a primary cafe or a dominant takeaway.

- The Council's Preliminary Assessment: Any file notes or temporary assessments detailing the evidentiary basis upon which the officer advised the applicant to amend the application wording, and how this differs from the findings of the Council's own prior investigations.

Please treat this as a formal statutory request under the EIR 2004. As the applicant has made these private discussions a matter of public record on the portal, urgent disclosure is required so that the public can meaningfully scrutinise the legal basis of this advice before a final decision is determined.

Request for Deferral Based on Procedural Fairness and the Duty of Inquiry

The public cannot be expected to provide an intelligent response to the revised 'mixed use cafe with takeaway' description while the Council actively withholds the historical enforcement data and internal Environmental Health consultations that prove the true nature of the site's impact.

While the EIR 2004 runs on an independent timeline, the requested information directly contains the evidentiary basis for the Council's "fact and degree" assessment. Determining this application before disclosing these records would be legally unsafe for two reasons:

1. The Duty of Sufficient Inquiry (Tameside Principle): A local authority is legally required to take reasonable steps to gather all material facts before making a decision. Because the applicant claims the Case Officer privately directed the changes to the description, these background records hold the only evidence of how the Council evaluated the site's active enforcement history and local impacts. Proceeding to determine the application while actively withholding the historical empirical data of environmental breaches requested under the EIR would represent a conscious breach of this duty.

2. Procedural Unfairness (The Gunning Principles): For a consultation to be lawful, the public must have sufficient information to give an intelligent response. By withholding the underlying operational history, environmental health inputs, and officer correspondence while privately restructuring the description, the Council is suppressing material facts. Proceeding without disclosing this evidence deprives neighbours of their right to a fair consultation, rendering any subsequent decision legally flawed.

Consequently, I formally request that the Council exercises its discretion to defer determination of this application and extend the consultation period until this EIR request is fulfilled and the data is made public. Proceeding prematurely will render any subsequent approval irrational and highly vulnerable to a Judicial Review challenge.

Given the serious public law implications, the clear potential for a material breach of the Tameside and Gunning principles, and the distinct transparency concerns raised by the applicant's public statements regarding private planning directions, a copy of this formal representation is being brought directly to the attention of the Council's Monitoring Officer (Assistant Director of Governance). This is to ensure that the Local Planning Authority's statutory duties are strictly adhered to, and that a potentially unlawful or challengeable determination is avoided.

Yours faithfully,

Ian Harris