

REPORT TO THE AREA PLANNING COMMITTEE

Date of Meeting	14th June 2017
Application Number	17/00870/FUL
Site Address	60 Redland, Chippenham, Wiltshire SN14 0JB
Proposal	Change of Use for A5 Hot Food Catering
Applicant	Mr Shofi Mahmud
Town/Parish Council	Chippenham
Division	Cepen Park & Redlands Councillor Andy Phillips
Grid Ref	390675 173893
Type of application	Full Planning
Case Officer	Lee Burman

Reason for the application being considered by Committee

The Application was called in for Committee determination by Councillor Andy Phillips to consider the impact of the proposed use on the residential amenities of neighbouring residents.

1. Purpose of Report

To consider the proposed development in the context of the development plan, national planning policy and site circumstances and recommend that planning permission be granted subject to the conditions identified in this report.

2. Report Summary

1797 Objections received including 2 petitions 1 x 983 signatories; 1 x 797 signatories. 0 letters of support.

Chippenham Town Council objects to the proposal.

3. Site Description

The application site is an existing retail unit with a small rank of retail units within the existing defined settlement of Chippenham. The rank of shops is not defined as a shopping centre for policy purposes and is not subject to any site specific constraints. The building within which the shop and adjacent shops are located is a 3 storey modern structure with residential flats located on the two floors above the ground floor retail units. The building is freestanding surrounded by residential accesses rounds and the residential distributor road known as Redlands. To the rear of the buildings is a court yard arrangement of residential properties with rear parking court accessed from the residential road separating the buildings. To the adjacent sides are residential properties separated by residential access road and informal open space/landscape areas. Immediately to the front of the application site is a pedestrian area, pavement parking spaces and the Redlands road. Opposite and across Redlands are further residential properties.

4. Planning History

N/01/01050/COU	Change Of Use Of Ground Floor For Body Piercing And Tattooing With Ancillary Retail Sales Approval
N/07/03300/COU	Change Of Use Of Ground Floor Unit From Tattoo Studio To Shop, Financial, Professional Services, Office Or Community Use Approve with Conditions
16/11661/PREAPP	Change Of Use To A5 Hot Food

5. The Proposal

The proposal is for the change of use of the retail unit to a Hot Food Take Away. This proposal would be a change of use for the permitted mixed use (use classes A2, B1, D1) to an A5 use. The proposals would include and ancillary development to include the installation ventilation and extraction plant.

6. Planning Policy

National Planning Policy Framework Paras 2, 7, 11, 14, 17, 19, 21, 23, 26, 34, 56, 70, 120, 122, 123, 187, 196, 197 & 203

Wiltshire Core Strategy (Jan 2015) CP1, CP10, CP57, CP61

Saved Policies of the North Wiltshire Local Plan 2011 NE18

7. Consultations

Highways

No Objection.

Public Protection (Environmental Health)

Initial consultation resulted in a request for further information in respect of Noise and Odour impacts and measures to provide for controls in this respect.

The applicant has provided additional information submission and details. These have been assessed and considered by the Public Protection Team. No objection is raised subject to conditions.

Full consultation response and consideration of this matter are addressed in full in the body of the report below.

Chippenham Town Council

Full consultation response:-

The Town Council objects to this application. It has grave concerns which include the fact that a previous application had been rejected. It has received a petition (which will be

forwarded to the Case Officer), heard the views of the public and notes that the Local Member will be calling it in subject to the Officer's decision.

Officer comment:- the site application history is referenced in full above this does not identify a previous application refusal of this proposal at this site.

8. Publicity

The application was advertised by site notice, neighbour notification letters to 14 properties, notification to the Town Council, publication of the Council's weekly list of applications to its website and publication of the application details to the Council's website.

1797 representations of objections have been received including 2 petitions 1 x 983 signatories; 1 x 797 signatories. 0 letters of support have been received. The two petitions are overlapping versions of the same petition with one forward to the Town Council who submitted it for consideration as such the actual level of representation of objection is 1000. The petition sets out the reason for objection as follows:-

"There are too many fast food takeaways and we do not need another one".

Other matters of objection raised by representations can be summarised as follows:-

- Harm to residential amenities due to noise from delivery vans & customers;
- Late opening hours resulting in disturbance and harm to residential amenities
- Increased littering;
- Chippenham market for food businesses is saturated, additional takeaway will damage existing businesses;
- National Economic climate is uncertain and additional competition between restaurants is harmful;
- Inadequate parking provision;
- Concern as to impact of repositioned staircase and erection of extraction flues on fabric of property and rights of access for tenants;
- Additional traffic;
- Odour pollution and consequent harm to/loss of residential amenity
- Conflict for pedestrian accessibility and safety resulting from unauthorised parking on pavements, pedestrian areas and private drives

It should be noted that several of the separate objections are standard letters signed by existing takeaway operators.

9. Planning Considerations

Principle of Development

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

The application site/property is an existing retail unit and benefits from a mixed consent including a type of retail – A2 Financial and professional. There are various types of retail classifications within the retail section of the Use Classes Order. Policies invariably seek to protect and retain the A1 type use and the most valuable and desirable in terms of community requirements. The A1 type covers things such as :-

- (a) for the retail sale of goods other than hot food,
- (b) as a post office,
- (c) for the sale of tickets or as a travel agency,
- (d) for the sale of sandwiches or other cold food for consumption off the premises,
- (e) for hairdressing,
- (f) for the direction of funerals,
- (g) for the display of goods for sale,
- (h) for the hiring out of domestic or personal goods or articles,
- (i) for the reception of goods to be washed, cleaned or repaired, where the sale, display or service is to visiting members of the public.

Additionally these types of retail planning policies seeking to retail such uses are related to defined retail centres and frontages i.e. town centres – primary and secondary frontages. In secondary frontage areas greater flexibility as to the types of retail and other town centres uses I usually adopted and invariably those are considered appropriate locations for A2 and A3 – A5 uses.

However the application site is not a defined retail centre, it is a small local parade of shops serving the residential area immediately adjacent. The mix of uses reflects this position. It is also of material relevance that the unit itself benefits from permission for a mix of uses including retail outside of the A1 uses class. As such higher value retail uses would not be lost to the proposed development to change the use to hot food takeaway (A5). As such there are no adopted development plan policies related to retail that would indicate that the proposed change of use is inappropriate in principle. The proposal falls to be considered against CP57 which is the general development management related policy dealing with a range of matters relevant to all development reflecting the core planning principles set out in Para 17 of the NPPF. Of particular relevance here is the assessment of impact on existing residential amenities and this is addressed further below. Subject to meeting and not significantly conflicting with the criteria in CP57 the proposed use is considered to be acceptable in principle.

In this context a large number of the objections submitted are on the basis of the need for the proposed use asserting that adequate provision for hot food takeaways is already made. It is a principle of the planning system established through guidance and case law that the system does not exist to prohibit competition between providers/developers of services. As such it is not material to consider whether or not here is a need for the use. Planning guidance does require Local Planning authorities to assess large scale retail proposals in out of centre locations for their impact on the vitality and viability of town centres. The Council's policy in this respect is to require that assessment for proposal of 200sq m or above. The current application relates to a unit of a mix of 77 sq m and so is below that threshold and does not require assessment of impact. It is also material that this property benefits from a retail use consent already and is existing in a small parade of shops within the existing residential area of Chippenham.

On balance it is not considered that there is an in principle objection to the scheme proposals.

Residential Amenity

The application proposals and indeed a significant number of objections raise issues concerned with the impact of the proposed development upon existing neighbouring residential amenities. In particular in terms of noise and smell from the operation of the unit relating to food preparation but also noise and disturbance from customers including vehicular access and parking. The latter point is addressed further under separate heading below.

With respect to noise and odour disturbance and pollution full consultation has been undertaken with the Council's public Protection Team. Initial advice from the team was that a full assessment of these matters was required and additional information in that respect was sought from the applicant. A noise and odour assessment and report has been undertaken and submitted and this has been fully considered and assessed by the Public Protection Team. The consultation response of the Public Protection Team is herein reproduced in full:-

Noise

Whilst we would 'routinely' seek to achieve the -5dB criterion for any new plant in most situations, if in these circumstances, the flue is so close to the nearest window, then a predicted level of LAeq39dB should not cause any adverse impact, in my opinion.

The predicted level of 39dB should benefit from approximately -13dB attenuation for an open window, which would result in an internal level of 26dB. This would be 4dB below the 30dB level for the night-time BS8233 desirable level for sleep and the flue should only be operating into the late evening with a switch off time of 22:30.

Officers believe consideration should be given to the expectations of residents who live in areas of mixed development, as we simply cannot deliver the concept of inaudibility here as this is symptomatic of any bank of shops with flats above, across the County and Country.

In order to provide sufficient protection to the flats above the premises it is recommended that the following condition is attached to the permission:

The Air extraction unit shall not exceed an LAeq39dB and an NR 35 (to ensure that the flue does not have any intrusive tonal component) at 1.5m from the termination point of the flue.

Officers also believe it maybe pertinent to condition the hours of the operation of the flue and recommend a condition that restricts the flue to only be operated between the hours of 16:30 and 22:30 Monday through to Sunday.

Odour control

In order to protect the amenity of the neighbouring properties a condition is required and should be added to any permission you grant. It should ensure that the applicant installs the Odour control system (carbon filters and grease filters) that is detailed in the application and can be found in the document titled "Specification of Extraction System" which was submitted with this application. The condition should also include the time period for cleaning and maintenance of the system.

Grease traps

To ensure that fat and grease is prevented from entering into the public sewer a grease trap shall be fitted. This will collect and filter waste water prior to it entering the drain and collect all grease and fat. This shall be emptied and maintained in line with manufacturer's recommendations.

Informative:

Food Business Registration: Under Article 6 of EC Regulation 852/2004 all businesses who prepare, store, transport or sell food must register their food business with the local authority. Food businesses must register with their local authority at least 28 days before they begin to operate. Food business operators in Wiltshire can register their food businesses free of charge through the following web page:

<http://www.wiltshire.gov.uk/communityandliving/publicprotection/foodsafety/foodsafetyinformationforbusinesses/foodbusinessregistration.htm>

On this basis it is not considered that there is a sound and defensible objection to the scheme proposals. The recommended conditions and informative are included below.

It should be noted that many of the objections raised relate to the impact on residential amenities of the existing hot food takeaway at this rank of shops. It would not provide a sound and defensible basis to refuse the proposal on the grounds of harms caused by an existing operator in the assumption that the new proposal will operate and impact in the same way. The current proposed use includes significant proposals for the extraction and ventilation of cooking smells from the property and the control of related noise from the operation of that plant. Conditions are proposed that will adequately mitigate the impact of the proposed plant particularly in relation to hours of operation and noise controls from the plant.

With respect to the noise and disturbance from customers and the related vehicular parking this is considered to be adequately addressed as far as is reasonable and possible under the planning system by the use of hours of operation / opening conditions. The parking provision at the site is considered adequate and the issues identified in objections again relate to an existing issue associated with the existing uses within this parade of shops. It must be noted that this is an existing retail/mixed use unit that does generate/has the potential to generate a similar/significant number of vehicular traffic movements and parking requirements. It would not be reasonable and defensible to refuse the current proposal on the grounds of inadequate parking provision given site circumstances and the permitted uses at the site. As to the behaviour of some customers this is a civil matter and outside of the control of the planning system, it is not reasonable to hold business operators responsible for the actions and behaviour of the clientele and refuse development on this basis. Such an objection would have the potential to frustrate a large amount of otherwise acceptable and necessary development. In addition it would not be reasonable to assume that customers will behave in a harmful and negative way and determine on that basis. In relation to littering it is also considered that the type of operation proposed is less likely to generate littering than some other operators given the nature of the food sold. This is more likely to be consumed at home than immediately upon leaving the premises as would be the case with burger bars for example.

On balance it is not considered that the scheme proposals will result in such significant harm to existing residential amenities over and above the existing site circumstances given the scheme proposals and use of conditions such that consent ought to be refused.

Highways & Parking

There exists off highway parking available at this locality. The property benefits from consent for a mix of uses including retail already. Additional parking provision over and above that required for the existing consented uses is not considered necessary under the council's adopted policies. The Highways Officer has raised no objection to the scheme proposals and does not identify a "severe" cumulative harmful impact to the existing highways conditions. On this basis it is not considered that there is a sound and defensible reasons for refusal on highways/parking grounds.

Again it should. Also be noted that many of the objections submitted are based on the impact of the existing operator in this parade of shops. Developers / applicants cannot be required under national guidance and case law to address existing problems and indeed many of the objections raised are matters of highways and parking enforcement or civil matters and not within the control of the planning system.

Other matters

In relation to design character and appearance it is acknowledged that the proposed ventilation extraction equipment is significant in scale and will be visible in the immediate locality. However this is to the rear elevation of the property and is not unusual in respect of this type of retail facility i.e. small parade of shops within an existing urban area. The submitted plans indicate that requirements to screen the plant through use of appropriate materials would be acceptable and a condition requiring the submission and approval of details in this respect is proposed. On balance it is not considered that the extraction plant is so significantly harmful to the character and appearance of the locality and the property as to warrant refusal.

The submitted plans indicate a requirement to reposition existing stairs to the properties above the retail unit. A condition requiring the submission and approval of details in this respect is proposed. Objections and concerns have been submitted in this respect but it is not considered that the proposals are so significantly harmful as to warrant and justify refusal on this basis, the condition will require the submission and approval of details prior to the commencement of development and until satisfactory arrangements are details development would not proceed.

Objection and concerns have been raised as to rights of access and consents for and impacts to the fabric of the property. The building is not a designated or undesignated heritage asset not subject to any protections and safeguarding in that respect. As such the matters raised are property/civil considerations between the interested parties and not material planning considerations providing a basis for determination. An informative identify that planning permission as recommended/granted does not override property owners' interests or grant rights of access to the property. Similarly and informative is included I respect of building regulations identifying that any requirements brought about by approvals in that respect may result in a requirement for revised planning permission.

It should be noted that the volume/number of representations received to any particular application in and of itself is not a determinative factor.

10. Conclusion

The principle of development is considered to be acceptable given site circumstances and the provisions of national and local planning policies. In this respect the proposal is considered to accord with the provisions of the development plan. It is not considered that the site specific impacts if the development proposals are so significantly harmful as to warrant refusal given the proposals and the proposed use of conditions which are

considered to adequately and appropriately mitigate the impact of development. Again in this respect the proposed development is considered to accord with the provision of the development plan and national planning policy.

RECOMMENDATION

Approval 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. No development shall commence on site until details of the following matters (in respect of which approval is expressly reserved) have been submitted to, and approved in writing by, the Local Planning Authority:

- (a) Materials and finishes to the extraction and ventilation plant
- (b) The position, layout and scale of the access stairs to the rear property..

The development shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of the character and appearance of the area [and neighbouring amenities].

3. The development hereby permitted shall be carried out in accordance with and incorporate all proposals a requirements for the Odour control system (carbon filters and grease filters) identified within the "*Specification of Extraction System*" Received 03/02/2017.

REASON: In the interests if the residential amenities of neighbouring residential properties.

4. Prior to the commencement of the use hereby permitted a grease trap shall be fitted. This will collect and filter waste water prior to it entering the drain and collect all grease and fat. This shall be emptied and maintained in line with manufacturer's recommendations.

REASON: To ensure that fat and grease is prevented from entering into the public sewer.

5. The Air extraction unit hereby permitted shall not exceed an LAeq39dB and an NR 35 (to ensure that the flue does not have any intrusive tonal component) at 1.5m from the termination point of the flue.

REASON: In the interests if the residential amenities of neighbouring residential properties.

6. The use and the related operation of the ventilation equipment hereby permitted shall only take place between the hours of 4.30pm in the evening and 10.30pm in the evening) from Mondays Sundays and Bank / Public Holidays.

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

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

Ground floor plans; rear elevation; side elevation received 03/02/2017.

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

INFORMATIVES:

1. Food Business Registration: Under Article 6 of EC Regulation 852/2004 all businesses who prepare, store, transport or sell food must register their food business with the local authority. Food businesses must register with their local authority at least 28 days before they begin to operate. Food business operators in Wiltshire can register their food businesses free of charge through the following web page:

<http://www.wiltshire.gov.uk/communityandliving/publicprotection/foodsafety/foodsafetyinformationforbusinesses/foodbusinessregistration.htm>

2. Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

3. The applicant is advised that this permission authorises a change of use and does not authorise any works or alterations that may require planning permission in respect of the shop front.

4. This permission does not permit the display of any advertisements which require consent under the Town and Country Planning (Control of Advertisements) (England) Regulations, 2007 or under any Regulation revoking and re-enacting or amending those Regulations, including any such advertisements shown on the submitted plans.

5. The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

6. The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

7. Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

Background Documents Used in the Preparation of this Report:

Wiltshire Core Strategy Jan 2015

NPPF

Planning Practice Guidance

Application documentation