

GLOUCESTER CITY COUNCIL

COMMITTEE : **PLANNING**

DATE : **3RD NOVEMBER 2015**

ADDRESS/LOCATION : **27 WELLINGTON STREET GLOUCESTER.**

APPLICATION NO. & WARD : **15/00707/COU
WESTGATE**

APPLICANT : **MR YUSUF KHOLWADIA**

PROPOSAL : **CHANGE OF USE FROM A1 (RETAIL) TO A5
(HOT FOOD TAKEAWAY) WITH
INSTALLATION OF FLUE TO REAR
ELEVATION.**

REPORT BY : **BOB RISTIC**

**NO. OF APPENDICES/
OBJECTIONS** : **1 SITE LOCATION PLAN**

1.0 SITE DESCRIPTION AND PROPOSAL

- 1.1 The application site comprises a three storey, red brick end of terrace property fronting onto Wellington Street and flanking onto Cromwell Street and is located within the Eastgate & St Michael's Conservation Area. To the rear, the property has a rendered 2 storey wing and a small yard and store accessed from Cromwell Street.
- 1.2 The application relates to the ground floor of the property which was formerly occupied as a news agent store, which has since re-located to the former Wellington Arms building on the opposite side of Wellington Street. The application unit is presently vacant.
- 1.3 The upper floors of the building provide residential accommodation, which benefits from its own separate access from Cromwell Street.
- 1.4 The application seeks planning permission for the change of use of the property from Use Class A1 (retail) to Class A5 for use as a hot food takeaway, which the supporting information indicates will be used as a fish and chip shop.
- 1.5 The application also includes details of an extraction system and flue which would be sited to the rear elevation of the building, and will extend approximately 1 metre above eaves level.

- 1.6 The proposed opening hours would be 11am to 2pm and 5pm to 10pm Monday to Saturday and 5pm to 9pm on Sunday and Bank holidays.
- 1.7 This application is brought before the Planning Committee as the application relates to a change of use to a hot food takeaway, to which objections has been received and can not therefore be determined under 'delegated powers'.

2.0 RELEVANT PLANNING HISTORY

- 2.1 While the site has been subject to numerous planning applications over the years. None are considered pertinent to the consideration of this application.

3.0 PLANNING POLICIES

- 3.1 The statutory development plan for Gloucester remains the 1983 City of Gloucester Local Plan. Regard is also had to the policies contained within the 2002 Revised Deposit Draft Local Plan which was subject to two comprehensive periods of public consultation and adopted by the Council for development control purposes. The National Planning Policy Framework has been published and is also a material consideration.
- 3.2 For the purposes of making decisions, the National Planning Policy Framework sets out that, policies in a Local Plan should not be considered out of date where they were adopted prior to the publication of the National Planning Policy Framework. In these circumstances due weight should be given to relevant policies in existing plans according to their degree of consistency with the National Planning Policy Framework.
- 3.3 The NPPF does not alter the requirement for applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

In assessing and determining applications, Authorities should apply the presumption in favour of sustainable development.

For decision-making, this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent, or relevant policies are out of date, granting planning permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole; or
 - specific policies in the NPPF indicate development should be restricted.

Authorities should look for solutions rather than problems and decision-takers should seek to approve applications for sustainable development where possible.

3.3 The policies within the 2002 Local Plan remain therefore a material consideration where they are consistent with the National Planning Policy Framework.

3.4 From the Second Stage Deposit Plan the following policies are relevant:

Policy ST.1 – Sustainable Development
Policy BE21 – Safeguarding of Amenity
Policy BE.29 – Development Within Conservation Areas
Policy TR31 – Road Safety
Policy FRP.10 – Noise
Policy FRP.11 – Pollution
Policy S.15 – Shopping parades and Single Shops

3.5 In terms of the emerging Local Plan, the Council has prepared a Joint Core Strategy with Cheltenham and Tewkesbury Councils which was submitted to the Planning Inspectorate on 20th November 2014. Policies in the Submission Joint Core Strategy have been prepared in the context of the NPPF and are a material consideration. The weight to be attached to them is limited by the fact that the Plan has not yet been the subject of independent scrutiny and do not have development plan status. In addition to the Joint Core Strategy, the Council is preparing its Local City Plan which is taking forward the policy framework contained within the City Council's Local Development Framework Documents which reached Preferred Options stage in 2006.

3.6 On adoption, the Joint Core Strategy and City Plan will provide a revised planning policy framework for the Council. In the interim period, weight can be attached to relevant policies in the emerging plans according to

- The stage of preparation of the emerging plan
- The extent to which there are unresolved objections to relevant policies; and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the National Planning Policy Framework

3.7 All policies can be viewed at the relevant website address:- Gloucester Local Plan policies – www.gloucester.gov.uk/planning; Gloucestershire Structure Plan policies – www.gloucestershire.gov.uk/index.cfm?articleid=2112 and Department of Community and Local Government planning policies - www.communities.gov.uk/planningandbuilding/planning/.

4.0 PUBLICITY AND REPRESENTATIONS

4.1 The occupiers of 70 neighbouring properties were notified of the application by letter and a site notice and press notice was also posted.

4.2 In response to the consultation the council has received 3 individual letters of objections from members of the public.

4.3 The comments raised are summarised below:

- Predominantly residential area,
- Greater need for rental premises
- May affect on property values in the immediate area
- There are 20-30 food outlets within a 5 minute walk,
- Associated noise and litter
- Detrimental to the community.
- Noise increase within the street especially at night time.
- Street already has problems with late night noise with people going to and from the city centre, the weekends especially.
- Police have been called to deal with people who are intoxicated and being unruly
- Damage to property and to the surrounding environment.
- Over summer numerous violent assaults took place in and around Wellington Street
- The addition of a hot food takeaway would significantly increase this problem
- The street in question has a litter problem
- People already dispose of unwanted items in Wellington Street, which has become a minor dumping ground with in the centre.
- The parking situation with in Wellington Street is critical.
- Parking on the street has increased beyond capacity
- Traffic increase from take-away will have adverse effects on parking,
- After six o'clock all spaces are full.
- Allowing a hot food takeaway to open in the street would not be a positive move for the street or the city in general.
- Already some problems in the evenings with cars parking dangerously
- Have problems with people begging, anti-social behaviour and litter,
- There are 10 hot food takeaway shops in Eastgate St. between the traffic lights at Clarence St. and Barton St. There are also cafes and many mini markets that keep late hours.
- There is already a hot food takeaway at no. 8 Wellington St. which is closed and up for sale, so this building is already available for anyone who wishes to start up a takeaway business in Wellington St.
- Would be better to return the shop to housing as it was originally
- There is a greater need for housing than hot food takeaways in this area.

4.5 City Council Environmental Health Officer – No objections subject to conditions.

4.6 Gloucestershire Highways Officer – No objections

4.7 City Conservation Officer – No objections

4.8 Civic Trust - Acceptable

4.9 The full content of all correspondence on this application can be inspected on the city council website or via the link below:

<http://planningdocs.gloucester.gov.uk/default.aspx?custref=15/00707/COU>

5.0 OFFICER OPINION

5.1 As a result of the consultations, several objections have been received from residents which relate principally to late night disturbance, anti-social behaviour, lack of parking and the requirement for further hot use facilities.

5.2 It is considered that the principal planning considerations in this instance are:

- Neighbouring amenities
- Highway impact
- Impact Upon the Conservation Area and Other Matters

Neighbouring Amenities

5.3 The application site is located mid-way along Wellington Street, which has a varied character along its length and includes car parks, small shop units and a vacant takeaway unit to its northern end, a convenience store opposite the application site (to the mid part of the street) and a milk delivery supplier business at Cromwell Street opposite the side elevation of the application property. The area to the south of the application site is more uniform and residential in character and leads to the City Park.

5.4 The proposed opening hours are 11am to 2pm and 5pm to 10pm Monday to Saturday and 5pm to 9pm on Sunday and Bank Holidays

5.5 Although it is likely that that a significant proportion of the business would occur in the evening, it is considered that these hours are reasonable for a use of this type in order for it to be economically viable and are during the earlier hours of the evening.

5.6 It is considered that the proposed hours of operation are appropriate and suitably restrained given the character of the area and would not result in demonstrable harm to the living conditions of the occupiers of adjoining residential properties in terms of late night noise.

5.7 It is noted that the property presently has no restrictions to hours of operation and could continue trading as A1 retail without requiring planning permission. This fall back is a material consideration particularly as the unit could be occupied as a convenience store or off-licence which would be able to trade earlier in the mornings and later at night. This type of use from the property could in itself result in a significant volume of pedestrian and vehicular movements and would remain outside of the council's control.

- 5.8 While there may be existing issues with anti-social behaviour in the area, presumably as a result of the proximity of Eastgate Street and associated late night venues, the application property would be closed by the time the majority of the night clubs and bars end trading and as a result would not in itself result in additional foot fall beyond the latest opening time of 10pm.
- 5.9 The application has been accompanied by details of the ventilation system which would be installed to remove cooking odours and fumes. The submitted information has been reviewed by the City Council Environmental Health officer who has raised no objections to the proposed use subject to the equipment being installed and maintained for the duration of the use.
- 5.10 Subject to compliance with the relevant conditions, the occupiers of neighbouring properties would not be unduly affected by cooking smells from the proposed use.
- 5.11 The application includes details of an extraction flue to disperse cooking smells, which would be located to the rear of the property. While the flue would be visible in part it is relatively discrete in its siting and subject to a condition requiring it to be painted to match the brick colour of the rear elevation of the property, it would on balance preserve the character and appearance of the conservation area.
- 5.12 Concerns have been raised with regards to litter. I consider it prudent to require a waste bin to be provided for customers by condition.
- 5.13 A condition requiring the approval of noise insulation to the party wall with no. 29 Wellington Street and the ceiling of the unit would ensure that the occupiers of adjacent properties are not adversely affected by noise from the proposed use.

Highway Impacts

- 5.14 The National Planning Policy Framework is explicit at Paragraph 32 that '...development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe'.
- 5.15 The application has been assessed by the County Council Highways officer who has raised no objection.
- 5.16 Wellington Street is a Class 4 highway with Footways and Street Lighting. The accident history has been reviewed by the county highways officer who has advised that there are no records of incidents in the vicinity of this development in the last 5 years. The proposed change of use will not see a detrimental increase in the risk from accidents given the comparable trip generation of the proposed use to that of a convenience store.
- 5.17 There are parking restrictions - single yellow lines outside the building itself, (no stopping Mon-Sat 8am to 6.30pm) but within a few metres there are on

street parking bays (restricted to residents only/pay and display Mon to Saturday 8am to 6pm). It is therefore considered that there is sufficient on street parking available to serve the proposed use at peak hours.

- 5.18 The potential vehicular movements to and from the proposed establishment have been assessed using the TRICS data which confirms that the trip generation will be very similar to the existing retail use. The newsagents would have generated a typical peak time trip rate between 18:00 and 19:00 of 15 vehicle movements. In comparison, the Take Away use would generate 14 vehicle movements between 18:00 and 19:00.
- 5.19 It is considered that the proposed use would result in similar parking behaviour as to what could occur if the property were to be occupied as a retail unit. Accordingly the adjacent highway will not see intensive vehicle movements serious enough to cause significant delay to other road users. In addition, parking related to the takeaway use would be short in duration and therefore cause minimal impacts to the highway.

Impact on the Conservation Area and Other Matters

- 5.20 With the exception of the external flue to the rear of the building the application proposes no other alterations to the building. Accordingly the proposed change of use would not adversely affect the appearance of the building and would preserve the character and appearance of the Conservation Area. The proposal would therefore accord with the requirements of Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 5.21 The unit falls outside of the City Centre or Local Centre designation. Policy S.15 is relevant and advises that changes of use of shops outside of designated centres should be permitted where the property has been unsuccessfully marketed or would form a new dwelling or would enhance the role of a shopping parade.
- 5.22 The applicant has advised that the unit has remained vacant since June 2014 but has not been formally marketed. It is considered that the location of the site, opposite an existing convenience store and within walking distance of city centre shops and services, is likely to hinder the timely occupation of this unit by a retailer.
- 5.23 Regard has also been given to the requirements of the NPPF which seeks to encourage regeneration and economic development. The application proposal would allow for the building to be brought back into a beneficial use and would also create 1 full time and 3 part time jobs. In addition it would result in the visual improvement of the property which has deteriorated significantly since it has become vacant. I consider these benefits sufficient to outweigh the requirements of criteria 1 of policy S.15 for the building to have been marketed and bringing the unit back into use would enhance the area in accordance with criteria 3.

5.24 It is considered that the imposition of conditions restricting the hours of operation, the provision of noise attenuation to the party wall and ceiling of the unit, the provision and maintenance of an air filtration/extraction system and provision of a waste bin would ensure that the living conditions of the occupiers of neighbouring properties are suitably maintained.

6.0 **CONCLUSIONS**

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that where regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

6.2 The application would bring back into use a vacant unit. It is considered that subject to compliance with conditions the proposal would not result in demonstrable harm to the living conditions of the occupiers of adjoining residential properties or adversely impact highways safety. For these reasons the proposal would comply with Policies FRP.10, FRP.11, BE.21 and TR.31 of the Second Deposit City of Gloucester Local Plan (2002).

7.0 **RECOMMENDATIONS OF THE HEAD OF PLANNING**

7.1 That planning permission is granted with the following conditions to be applied:

Condition 1

The use hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason

To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Condition 2

The development hereby permitted shall be carried out in accordance with the submitted application form, supporting information and approved drawing nos. 1B and 2A received by the Local Planning Authority on 6th August 2015 as well as any other conditions attached to this permission.

Reason

To ensure that the development is carried out in accordance with the approved plans and in accordance with policies contained within Second Deposit City of Gloucester Local Plan (2002).

Condition 3

No works during the construction/conversion phase shall take place before 08:00hrs on weekdays and 08:30hrs Saturdays nor after 18:00hrs on

weekdays and 13:00hrs on Saturdays, nor at any time on Sundays, Bank or Public Holidays.

Reason

To safeguard the amenity of the area in accordance with policy BE.21 of the Second Deposit City of Gloucester Local Plan (2002).

Condition 4

No materials or substances shall be burnt within the application site during the construction phase.

Reason

To safeguard residential amenity and prevent pollution in accordance with policy BE.21 of the Second Deposit City of Gloucester Local Plan (2002).

PRIOR TO OCCUPATION

Condition 5

Prior to the commencement of the conversion works, a scheme of sound-proofing to the party wall with no.29 Wellington Street and the ceiling of the shop unit shall be submitted to and approved in writing by the Local Planning Authority. The noise attenuation measures shall be installed in accordance with the approved details prior to the commencement of the takeaway use hereby permitted.

Reason

These details are required in order to ensure that the occupiers of adjoining residential units are not adversely impacted by noise associated with the proposed use in accordance with Policies FRP.10 and BE.21 of the Second Deposit City of Gloucester Local Plan (2002).

Condition 6

The air filtration and extraction system which shall include odour neutraliser and electrostatic precipitator as detailed in the supporting statement shall be installed and be in full working order to the satisfaction of the Local Planning Authority prior to the hot food takeaway use commencing and shall be effectively operated for as long as the use of the building as a hot food shop continues.

Reason

To ensure that unacceptable cooking odours outside the premises are minimized in the interests of the amenity of occupiers of nearby properties and in accordance with Policies FRP.10, FRP.11 and BE.21 of the Second Deposit City of Gloucester Local Plan (2002).

Condition 7

Prior to the first occupation of the building, the external flue shall be painted so as to match the colour of the external brickwork to the rear elevation of the property and shall be similarly maintained thereafter.

Reason

To preserve the visual amenities of the area and in accordance with policy BE.21 of the Second Deposit City of Gloucester Local Plan (2002).

POST OCCUPATION

Condition 8

The premises shall only be open to the public between the hours of 11am to 10pm Monday to Saturday and 5pm to 9pm on Sunday and Bank Holidays.

Reasons

To define the terms of this permission and to protect the living conditions of the occupiers of neighbouring properties in accordance with policies FRP.11 and BE.21 of the Second Deposit City of Gloucester Local Plan (2002).

Condition 9

The extraction equipment installed in pursuance of Condition 6 shall be regularly maintained in accordance with the manufacturers specifications to ensure its continued satisfactory operation and the cooking process shall cease to operate if at any time the extraction equipment ceases to function to the satisfaction of the Local Planning Authority.

Reason

To ensure that the use does not result in unacceptable cooking odours outside the premises and that the amenity of occupiers of nearby properties is protected in accordance with Policies FRP.10, FRP.11 and BE.21 of the Second Deposit City of Gloucester Local Plan (2002).

Condition 10

All windows and doors to the property shall be fitted with self-closing mechanisms and shall be retained in the closed position save for the purpose of access and egress.

Reason

To ensure that doors not left open in order to contain noise and cooking odours within the property and to comply with Policies FRP.10, FRP.11 and BE.21 of the Second Deposit City of Gloucester Local Plan (2002).

Condition 11

Prior to the commencement of the use hereby permitted, precise details of the design and siting of a waste bin to serve customers, shall be submitted to and approved in writing by the local planning authority. The bin shall be installed in accordance with the approved details prior to the use commencing and shall be retained for the duration of the use.

Reason

To provide a suitable receptacle for customer waste and in accordance with Policy BE.21 of the Second Deposit City of Gloucester Local Plan (2002).

Note 1

Your attention is drawn to the requirements of the Building Regulations, which must be obtained as a separate consent to this planning decision. You are advised to contact the Gloucester City Council Building Control Team on 01452 396771 for further information.

Note 2

For the avoidance of doubt, this permission does not authorise the display of any external advertisements at the site (including any shown on the plans accompanying the application) or the installation of a replacement shop front. These works may require the approval of Gloucester City Council prior to undertaking such works.

Statement of Positive and Proactive Engagement

In accordance with the requirements of the NPPF the Local Planning Authority has sought to determine the application in a positive and proactive manner by offering pre-application advice, publishing guidance to assist the applicant, and publishing to the council's website relevant information received during the consideration of the application thus enabling the applicant to be kept informed as to how the case was proceeding.

Decision:

Notes:

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Person to contact: Bob Ristic (Tel: 396822)

15/00707/COU

27 Wellington Street
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GL1 1RD

Planning Committee 03.11.2015



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