

**GLOUCESTER CITY COUNCIL**

**COMMITTEE** : **PLANNING**

**DATE** : **12<sup>th</sup> JANUARY 2016**

**ADDRESS/LOCATION** : **183 LINDEN ROAD,**

**APPLICATION NO. & WARD** : **15/01450/FUL, MORELAND**

**EXPIRY DATE** : **1<sup>ST</sup> JANUARY 2016 (TIME EXTENSION  
AGREED TO 15<sup>TH</sup> JANUARY 2016)**

**APPLICANT** : **KATHRYN MINCHEW**

**PROPOSAL** : **CHANGE OF USE OF ANCILLARY  
BUILDING (C3) TO RESTAURANT (A3)**

**REPORT BY** : **CARLY HOLDER**

**NO. OF APPENDICES/  
OBJECTION** : **SITE LOCATION PLAN**

**1.0 SITE DESCRIPTION AND PROPOSAL**

- 1.1 The application site comprises an outbuilding within the rear garden of number 183 Linden Road, which itself comprises the facing right hand, two storey dwellinghouse in a pair of semi-detached properties. The rear garden of this property measures approximately 19 metres at its shortest length, and backs on to properties at Tweenbrook Avenue. The outbuilding is currently restricted to be used for ancillary purposes only, as stipulated by Condition 2 of planning permission reference 15/00288/FUL (see section 2.0 of this report).
- 1.1 The application seeks planning permission for the change of use of the outbuilding, from an ancillary use (C3) to a restaurant (A3), to be used in conjunction with the applicant's food journalism business. The Planning and Justification Statement submitted in support of this application states that the proposed number of sessions per annum would be limited to 30, with not normally any more than 5 sessions in any one month, and that the hours of use would be between midday and 11:30pm only; each session would comprise a maximum of 6 people.
- 1.3 This application has been referred to the planning committee for determination by Councillor Terry Pullen (ward councillor). The reason given relates to the potential impact upon the neighbouring amenity and local environment.

**2.0 RELEVANT PLANNING HISTORY**

- 2.1 The previously approved application reference 15/00288/FUL was for the retention of the outbuilding. This was required as the height of the outbuilding was greater than 2.5 metres in height and was located within 2 metres of the boundary. This therefore exceeded the limits of permitted development and as such, required a 'Householder' planning application to be submitted to the council for consideration.
- 2.2 That application was made following approaches by colleagues in Planning Enforcement. Through the application process, the use of the outbuilding was discussed (and indeed was referred to within the delegated report), however the use was not being assessed, nor had a change of use been applied for. It had been confirmed by the applicant at the time that the use of the outbuilding as a restaurant (at a smaller scale than that of the pending application) was due to cease after the 30<sup>th</sup> June 2015, and that until that date there would be no more than 2 bookings per month. The council did not request any further application for the change of use of the outbuilding to be submitted on the basis that the applicant had confirmed that the non-ancillary use would be ceasing. Whilst the use of the outbuilding was discussed within the delegated report as a result of the neighbour comments, it was the erection (retention) of the outbuilding which was the subject of the application.
- 2.3 The application was therefore solely assessed, and the recommendation for approval was made, based on the limited impacts the ancillary outbuilding would have upon the surrounding amenity. The attachment of Condition 2, stating that "After the 30<sup>th</sup> June, the outbuilding hereby permitted shall be used solely for purposes incidental to the enjoyment of the dwellinghouse as such and not for the carrying out of any trade or business", is a condition which is regularly used when permitting outbuildings in order to protect the amenity of surrounding residents.

### **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 policies within the 1983 and 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:

FRP.10 (Noise)

BE.21 (Safeguarding of Amenity)

TR.31 (Road Safety)

S.4a (New Retail Development Outside Designated Centres)

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 20<sup>th</sup> November 2014. Policies in the Submission Joint Core Strategy have been prepared in the context of the NPPF and NPPG and are a material consideration. The weight to be attached to them is limited, the Plan has not yet been the subject of independent scrutiny and does not have development plan status. The Examination in Public has been ongoing since May 2015. 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, City Plan and any Neighbourhood Plans 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](http://www.gloucester.gov.uk/planning); Department of Community and Local Government planning policies - [www.communities.gov.uk/planningandbuilding/planning/](http://www.communities.gov.uk/planningandbuilding/planning/).

## **4.0 CONSULTATIONS**

### **4.1 Environmental Health Officer**

Concern was raised regarding the proposal and its potential impact upon neighbouring amenity as a result of the proposed frequency of sessions and hours of opening. It was considered that, by permitting the application and allowing the use to operate up to five sessions in any one month between the hours of 12:00-23:30, that this amount of use would potentially prove detrimental to the locality and give rise to Statutory Nuisance. This would be mainly due to the smoke/odour from the cooking facility within the building, along with the noise from the persons using the premises as a restaurant.

Whilst the EHO was not 'wholly in favour' of recommending approval, it was considered that an amendment to the number of sessions and operating

hours would allow the business to operate without materially interfering with the amenity of the locality.

## **5.0 PUBLICITY AND REPRESENTATIONS**

5.1 The occupiers of 16 neighbouring properties were notified of the original application by letter, and a Site Notice was displayed. In response, 3 letters of representation was received. The comments raised are summarised below:

### **5.2 Highways**

- Did not expect the restaurant to be opened as frequently or for as many hours. The additional parking required by customers over this period of time could cause problems for residents who already find it difficult to park on the road.
- Safe parking is extremely limited and is an issue once everyone returns from work. During the evenings and weekends the area is frequently gridlocked- this distance to walk from a space to [my] door is getting longer.
- Area is already used by several businesses and care homes as their parking- any additional congestion is an accident waiting to happen.
- Fear that the expanding business will lead to additional pressure for parking
- Increased need for parking could be dangerous- people are sometimes forced to park on the junction of Linden Road and Calton Road.

#### **Location**

- Location of this business in a busy residential street is not inappropriate
- Other businesses in the area are appropriate for their location within a residential area (e.g. Co-operative Store) as they are local amenities providing a service to the community they are located in.

#### **Noise**

- Fear that expanding business will lead to noise levels spiralling out of control
- Concurs with the EHO's consultation response and concerns regarding noise

#### **Other**

- Obvious that despite the fact the [previous application did not permit] a business to operate, local and national marketing activities and events continue to be held
- Concern regarding fire risk and smoke produced, particularly when lit during antisocial hours.
- Photos and statements submitted regarding the other local businesses in the area are inaccurate and misleading

5.3 The full content of all correspondence on this application can be inspected at the Herbert Warehouse reception, The Docks, Gloucester, prior to the Committee meeting.

<http://planningdocs.gloucester.gov.uk/default.aspx?custref=15/01450/FUL>

## **6.0 OFFICER OPINION**

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 Principle of Development**

The application proposes the change of use of a residential outbuilding to a restaurant (A3). This A3 use is defined within the National Planning Policy Framework (NPPF) as a 'main town centre use', and therefore consideration must be given to the sequential test and impact test.

6.3 In brief, the sequential test should be used to identify preferable sites for development within town centres for accommodating main town centre uses, which in this instance is a restaurant; paragraph 001 of the Planning Practice Guidance 'Ensuring the vitality of town centres' is relevant here. In summary, this paragraph sets out that main town centre uses have particular market and locational requirements, which means they can only be accommodated in specific locations. Although the application site is not within a town centre, it is considered that the proposal does have specific locational requirements, as the outbuilding would effectively be used as a 'dining room' serviced by either the kitchen within the principal dwellinghouse or by the fire pit within the outbuilding. In addition, the outbuilding can only accommodate up to 6 guests, which necessitates a much smaller floor space requirement than could be provided within an existing restaurant unit within the nearest designated local centre (at Seymour Road) or within the City Centre.

6.4 Further, it is noted that the proposal would be providing a bespoke service, as opposed to being open to the public on a daily basis, and would only be available for use for a specified number of days per annum. It is therefore considered that, due to the specific locational requirements and low intensity use in comparison to that of a restaurant found within a local or city centre, there would be no other sequentially preferable site for this use to be located.

6.5 The impact test determines the likelihood of a proposal having significant adverse impacts as a result of locating main town centre development outside of existing town centres. However, this test only applies above a floor space threshold of 2,500 square metres, as set out in paragraph 26 of the NPPF. The scale of the proposal is considerably below this threshold, and consequently it is considered unlikely that the proposal would have any significant adverse impact upon the vitality of any designated centre.

6.6 It is consequently considered that, given the small scale and specific requirements of the proposal, the operations would not detract from or have any impact upon the vitality of any designated centre. The proposal therefore complies with Policy S.4a of the Gloucester City Council Second Stage Deposit Local Plan (2002), and would not be contrary to paragraphs 23- 27 of the National Planning Policy Framework (2012).

## 6.7 Highway Issues

The application proposes a maximum of 30 sessions per annum, with no more than 5 sessions in any one month. With a maximum number of 6 people able to visit at one time, this would result in a maximum of 6 additional vehicles parked along the unrestricted highway of Linden Road at a given time. The issues of parking pressures and congestion in the area were raised through the letters of representation; however it is not considered that the addition of a 6 vehicles being parked on the highway would result in any severe impact upon highway safety. The proposal therefore complies with Policy TR.31 of the Gloucester City Council Second Stage Deposit Local Plan (2002), and would not have a severe impact as referred to in paragraph 32 of the National Planning Policy Framework (2012).

## 6.8 Amenity Impact

Concern was raised by the Environmental Health Officer and within the comments received regarding the potential impact of the proposal on neighbouring amenity, particularly with regard to noise and as a result of the odour and smoke from the cooking facility within the outbuilding. The EHO considered that the use of the outbuilding as a restaurant, for up to five sessions per month and between the hours of 12.00 to 23.30 as proposed, could potentially prove detrimental to the locality and give rise to Statutory Nuisance. Consequently, it was proposed that the frequency of the use and times of operating should be reduced, to 2 session per month and between the hours of 16.00 to 22.00 Monday to Saturday, and not on public or bank holidays, respectively.

6.9 Paragraphs 6.2 to 6.6 of this report have identified that the proposed use would be small in scale, and it is not considered that the use could be likened to that of A3 units located within designated centres. Similarly, and as aforementioned, to use the restaurant requires a booking in advance, and is not open to members of the public on a daily basis as per A3 units within designated centres.

6.10 The EHO proposed a reduction in the number of sessions per month and operating hours. Conversely, it is considered that the proposed number of sessions, at 30 per annum, with a maximum of 5 sessions per month, would be acceptable. On average, this would result in 2.5 sessions per month. This frequency can be conditioned to ensure that this number is not exceeded in order to protect neighbouring amenity. However, it is concurred that the hours of opening to 23.30 would not be acceptable, and allowing the use to this time could give rise to Statutory Noise nuisance. It is not considered that the use between the hours of 12.00 and 16.00 would result in any significantly adverse impact upon neighbouring amenity. It is therefore proposed that the operating hours should be from 12.00 to 22.00; this can be controlled by condition.

6.11 It is not considered that any noise generated between the hours of 12.00 and 22.00, on a maximum of any 5 days per month, would be significantly detrimental upon neighbouring amenity, as it is not considered that it would be dissimilar to the applicant having 6 friends to visit and using the outbuilding for

informal purposes, as if it were ancillary to the principal dwellinghouse. It is proposed that any permission granted be made personal, as the operation is only considered acceptable with regard to the particular circumstances of the proposal. The proposal is therefore considered to comply with Policy BE.21 of the Gloucester City Council Second Stage Deposit Local Plan (2002).

## **7.0 CONCLUSION/REASON FOR APPROVAL**

7.1 Taking into account all of the above, it is considered that the proposal would not have any severe impact upon highway safety; would not have any significantly detrimental impact upon neighbouring amenity, and the location of the proposal is appropriate and acceptable due to the specific nature of the business. It is therefore concluded that, subject to the compliance with conditions, the proposal would be in accordance with policies FRP.10, BE.21, TR.31 and S.4a of the Gloucester City Council Second Deposit Local Plan (2002).

## **8.0 RECOMMENDATIONS OF THE DEVELOPMENT CONTROL MANAGER**

8.1 That planning permission is granted subject to the following conditions:

### **Condition 1**

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

### **Reason**

Required to be imposed by 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**

This permission shall enure for the benefit of Kathryn Minchew only and not for the benefit of the land or any other persons interested in the land.

### **Reason**

The nature and scale of the development is such that it is only considered acceptable in this location having regard to the applicant's special circumstances.

### **Condition 3**

When the dwellinghouse ceases to be occupied by Kathryn Minchew, the use hereby permitted shall cease.

### **Reason**

The nature and scale of the development is such that it is only considered acceptable in this location having regard to the applicant's special circumstances.

### **Condition 4**

The restaurant shall not open to the public outside the following times:  
Monday- Sunday 12:00hrs – 22:00hrs.

**Reason**

To protect the amenity of the occupiers of neighbouring properties and in accordance with policy BE.21 of the Second Deposit City of Gloucester Local Plan (2002).

**Condition 5**

The restaurant shall not open more than five (5) times in any calendar month, and shall not open more than thirty (30) times in any calendar year. The applicant shall maintain a logbook to record the dated of use and the number of sessions each month. This information shall be made available to the local planning authority on request.

**Reason**

To restrict the scale of the use and to protect the amenity of the occupiers of neighbouring properties and in accordance with policy BE.21 of the Second Deposit City of Gloucester Local Plan (2002).

**Condition 6**

Prior to the commencement of the development, a waste management plan for the commercial use, including waste oil, shall be submitted to and approved in writing by the local planning authority. The approved plan will be implemented on permission being granted and shall be retained for the duration of the use.

**Reason**

To protect the amenity of the occupiers of neighbouring properties and in accordance with policy BE.21 of the Second Deposit City of Gloucester Local Plan (2002).

Decision: .....

Notes: .....

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Person to contact: Carly Holder (Tel: 01452 396361)



15/01450/FUL

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Planning Committee 12.01.2016

