

GLOUCESTER CITY COUNCIL

COMMITTEE : **PLANNING**

DATE : **6th SEPTEMBER 2016**

ADDRESS/LOCATION : **88 WESTGATE STREET**

APPLICATION NO. & WARD : **16/00539/FUL
WESTGATE**

EXPIRY DATE : **6TH JULY 2016**

APPLICANT : **MISS QUEENIE VIEN**

PROPOSAL : **CHANGE OF USE OF GROUND FLOOR
PREMISES FROM CLASS A3 RESTAURANT
TO CLASS A5 HOT FOOD TAKEAWAY**

REPORT BY : **ED BAKER**

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

1.0 SITE DESCRIPTION AND PROPOSAL

- 1.1 The application site relates to No. 88 Westgate Street. The site comprises a flat roofed single storey corner unit on the corner of Westgate Street and Three Cooks Lane.
- 1.2 The premises is attached to buildings on both its east and north sides. To the east is No. 86 Westgate Street which is the end building of the historic frontage to this part of Westgate Street. No. 86 is a two storey building and comprises a hairdresser's at ground floor and a flat above.
- 1.3 At the rear is No. 2 Three Cooks Lane, which is a two storey building with a commercial unit at ground floor and what might be a flat at first floor. To the west side of No. 88, to the other side of Three Cooks Lane, is a circa 1960/1970s office building. No. 88 itself is a more modern structure and not part of the historic core of the Westgate Street.
- 1.4 The site is within the City Centre Conservation Area. Nos. 84 and 86 to the immediate east are Grade II Listed Buildings. Nos. 81 and 83 Westgate Street, located to the opposite side of Westgate Street but to the south west, are also Grade II Listed.
- 1.5 The application seeks planning permission for change of the premises from Class A3 restaurant to Class A5 hot food takeaway.

1.6 The applicant is proposing to open the premises during the following hours:

Monday to Friday – 12:00 to 23:30

Saturday – 12:00 to 23:30

Sundays and Bank Holidays – 12:00 to 23:00

1.7 The application is referred to the planning committee because the application seeks planning permission for a change of use to a hot food takeaway and an objection has been received.

2.0 PLANNING HISTORY

2.1 The site has no recent relevant planning history.

3.0 PLANNING POLICIES

3.1 This part of the report identifies relevant local and national planning policies and considers the weight that can be afforded to them.

Statutory Development Plan

3.2 The statutory Development Plan for Gloucester remains the partially saved 1983 City of Gloucester Local Plan ("1983 Local Plan").

3.3 Paragraph 215 of the National Planning Policy Framework ("NPPF") states that '*...due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.*'

3.4 The 1983 Local Plan is more than thirty years old and, according to the Inspector who dealt with an appeal relating to the Peel Centre, St. Ann Way (13/00559/FUL), '*...its sheer ages suggests it must be out of date...*' (par. 11 of the Inspector's report). Members are advised that the 1983 Local Plan is out-of-date and superseded by later planning policy including the NPPF.

National Planning Policy Framework

3.5 The NPPF published in March 2012 is a material consideration of considerable importance. It sets out the Government's planning policies for England and how these are expected to be applied.

3.6 Guidance on how to interpret the NPPF is provided by online National Planning Policy Guidance ("NPPG").

3.7 Annex 1 of the NPPF provides advice on the weight that should be afforded to adopted Local Plans that pre-date the NPPF, and emerging Local Plans.

3.8 Paragraph 14 of the NPPF says that: ‘*At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking...*

...For decision-taking 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 this Framework taken as a whole; or*
 - *specific policies in the Framework indicate development should be restricted.’*

Draft Joint Core Strategy for Gloucester, Cheltenham and Tewkesbury

3.9 The City Council is currently working on a new Development Plan that will replace the 1983 Local Plan. The new Development Plan will comprise the Joint Core Strategy for Gloucester, Cheltenham and Tewkesbury (“JCS”) and Gloucester City Plan (“City Plan”) once they are adopted.

3.10 The JCS was submitted to the Government for Inspection in November 2014. Policies in the Submission Joint Core Strategy have been prepared in the context of the NPPF and are a material consideration.

3.11 Paragraph 216 of the NPPF states that weight can be given to relevant policies in 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 NPPF.

3.12 The JCS is part way through the Examination process and the Inspector published their Interim Report in May 2016. However, a number of proposed modifications are expected to be made to the policies in the plan. The Council has received legal advice to the effect that the JCS can only be given limited weight at this time.

Gloucester City Plan

3.13 The Gloucester City Plan (“City Plan”) is at a much less advanced stage than the JCS. The City Plan will be presented in three parts: Part 1 will set out the

context for the City Plan, including the main challenges facing the city, a strategy for development and key development principles. Part 2 will identify development management policies. Part 3 will identify development opportunities.

- 3.14 Part 1 was subject to consultation in 2012 and is to be reviewed. Part 2 was subject to consultation in 2013 on potential future development sites in the City as well as a draft vision and strategy for the city centre. Parts 2 and 3 have also yet to be completed.

Gloucester Local Plan, Second Stage Deposit 2002

- 3.15 Regard is also had to the policies contained within the Gloucester Local Plan, Second Stage Deposit 2002 ("2002 Local Plan). The 2002 Local Plan was subject to two comprehensive rounds of public consultation and was adopted by the Council for development management purposes.
- 3.16 However, the 2002 Local Plan was never subject to Examination and was never formally adopted. In this regard, the 2002 Local Plan should therefore only be given limited weight.
- 3.17 Members are advised that the following development management policies that broadly accord with the policies contained in the NPPF should be given some weight:

FRP.10	Noise
BE.7	Architectural Design
BE.21	Safeguarding Amenity
BE.23	Development Affecting the Setting of a Listed Building
BE.29	Development within Conservation Areas

- 3.18 The 1983 Local Plan, JCS, 2002 Local Plan and draft City Plan can be viewed at the following website address:-
<http://www.gloucester.gov.uk/resident/planning-and-building-control/planning-policy>. The NPPF and NPPG can be viewed at the Department of Community and Local Government website:-
<http://planningguidance.communities.gov.uk/>.

4.0 CONSULTATIONS

4.1 Environmental Health Officer (Gloucester City Council)

22 June 2016

No objection – recommends approval:

- The restaurant was previously an Indian restaurant which produces very aromatic food due to the ingredients. No odour complaints were ever received. The new use is for a burger business which is still odourful but in my opinion the odours likely to be produced are not

quite so potent whilst the existing extraction on the building will remove odour from the premises;

- A bin store is located on the side of the building;
- The proposed open hours of the premises would be 11am to 11pm.

The following conditions are recommended:

- Restriction on opening hours – 11am to 11pm
- Maintenance of extraction equipment

01 August 2016

No objection to the opening hours proposed in the application form.

4.2 Conservation Officer (Gloucester City Council)

Comments as follows:

- The site is within the City Centre Conservation Area and is a neutral building within the street scene. The site is highly prominent with a key view towards the Cathedral from the corner of Westgate Street and Upper Quay Street;
- There is no objection to the change of use. Further information is needed in relation to any proposed changes to extraction which may be required; and
- Changes to the signage would require separate Advertisement Consent. Permission would also be needed for any alterations to the shopfront/façade.

5.0 PUBLICITY AND REPRESENTATIONS

5.1 The application has been publicised by way of press notice and the display of a site notice. In addition, seven neighbouring properties were directly notified of the applications in writing.

5.2 At the time of writing this report, the Local Planning Authority has received the following summarised consultation responses.

5.3 Civic Trust

No objection – ‘acceptable’.

5.4 No. 86 Westgate Street

Comments as follows:

- Requests that the planning officer visits their property

- Concerned about the impact of the proposal on their buildings, business and home
- The smoked glass windows were fitted without planning permission
- The extraction fan system caught fire around 1999
- The air conditioning unit was incorrectly and insecurely fitted
- The gas utilities company issued the previous tenant with a Compliance Order
- We therefore have concerns about a new landlord and new tenants
- Any new business in the premises should be safe
- What provision will be made for food waste?
- What provision is there for extra street rubbish?
- Will the pavement be washed down if there are grease and food spillages?
- Concerned about odour impacts and the extraction system not been maintained
- The noise from the extractor fans keep them awake at night

5.5 Maydene, Broom Hill, Huntley

Objection – comments as follows:

- Increase in noise
- Increase in on street parking
- Increase in traffic
- Smell
- The premises would not lend themselves to a takeaway
- Devaluation of local property

5.4 The full content of all correspondence on this application can be inspected at Herbert Warehouse, The Docks, Gloucester, or via the following link, prior to the Committee meeting:

<http://planningdocs.gloucester.gov.uk/default.aspx?custref=16/00539/FUL>

6.0 **OFFICER OPINION**

Legislative background

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the Local Planning Authority to determine planning applications in accordance with the Development Plan, unless material considerations indicate otherwise.

6.2 Members are advised that the main issues relevant to consideration of this planning application are as follows:

- Impact on the vitality and viability of the City Centre
- Economic benefit
- Impact on neighbouring property
- Impact on the historic environment
- Access and transport
- Other matters

Impact on the vitality and viability of the City Centre

6.3 The site is located at the edge of but within the Primary Shopping Area as identified by the 2002 Local Plan. This is therefore a suitable location for a town centre use such as a takeaway. The proposal would support the vitality and viability of the City Centre and the proposed change of use is considered acceptable in principle.

Economic benefit

6.4 The NPPF states that '*...significant weight should be placed on the need to support economic growth through the planning system.*' [par. 19]

6.5 The proposal would support the applicant's business and would help to bring the premises back into a viable use. The proposal would therefore have some economic benefit.

Impact on neighbouring property

6.6 It is considered that this is the most important issue for the consideration of this application. The Environmental Health Officer confirms that they have no objection to the application. They note the previous use of the premises as an Indian restaurant (which produces very aromatic food due to the ingredients). No odour complaints were ever received. The applicant intends to use the premises as a gourmet burger takeaway. The Environmental Health Officer advises that such use is likely to be less odourful than the previous use as an Indian restaurant.

6.7 It is important for officers to point out, however, that the proposal is not specifically for the sale of gourmet burgers but a general Class A5 takeaway use, which means that other types of takeaway (including Indian and Chinese food, and fish and chips) could also be prepared on the premises if planning permission were to be granted.

6.8 There is an existing extraction system in place and the Environmental Health Officer advises that this will remove odour from the premises.

6.9 The proposed use of the premises as a takeaway would result in the comings and goings of people, including late and night, and potential noise impacts from customers. However, the proposed hours of operation of the premises

are deemed acceptable. Regard is had to the location of the site within the Primary Shopping Area where there will be similar activities; and the proposal would not be out of character with the site's central City Centre location. Moreover, the site has previously been used as a restaurant which would have generated people traffic and not dissimilar issues.

- 6.10 Having regard to the fall-back position of the existing use of the premises as a restaurant and the advice from the Environmental Health Officer, it is considered unreasonable to refuse planning permission on grounds of environmental impacts on surrounding property.
- 6.11 The opening hours (as specified on the application form) should be controlled by condition. The Environmental Health Officer seeks a condition to require that the extraction equipment is regularly maintained, however, this is considered unenforceable. However, a condition is recommended to require that the extraction equipment is operational and kept in working order.
- 6.12 The proposal is considered acceptable having regard to Policies FRP.10 and BE.21 of the 2002 Local Plan.

Impact on the historic environment

- 6.13 The proposal is for a change of use of the premises only. No alterations are proposed to the exterior of the building and the existing extraction equipment would be retained.
- 6.14 The character and appearance of the Conservation Area would be preserved. The setting of nearby Listed Buildings would be preserved.
- 6.15 The proposal is considered acceptable having regard to Policies BE.23 and BE.29 of the 2002 Local Plan.

Access and transport

- 6.16 Paragraph 32 of the NPPF says that: '*Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.*'
- 6.17 The proposed change of use from Class A3 restaurant to Class A5 takeaway is unlikely to generate an appreciable increase in traffic movements. The site is a central and sustainable location close to the City Centre. There is ample opportunity to reach the site by more sustainable modes of transport. There are several nearby public car parks to provide parking for customers and staff. No severe impacts on the highway network are identified. The proposal would not significant or demonstrably affect highway safety.

Other matters

- 6.18 The neighbour at No. 86 raises a number of further issues, many of which are not planning matters.

- 6.19 The planning officer visited their ground floor commercial premises at the time of the site visit. It was considered unnecessary to view their residential accommodation above.
- 6.20 That previous works may have been carried out without planning permission is not relevant to the consideration of the current application proposal.
- 6.21 Health and safety issues are dealt with by other non-planning legislation.
- 6.22 The Local Planning Authority cannot take into account the competency of the applicant or landlord – the issue for the application is whether the proposed use of the land is acceptable.
- 6.23 There is dedicated space with the building for the disposal of food waste.
- 6.24 The applicant will provide a bin within the premises. They confirm that the premises will not be used for dining (the proposed use is for a takeaway only).
- 6.25 Any grease or food spillages onto the highway are a matter for the applicant, Highway Authority and city centre management authorities
- 6.26 Any noise from the extractor fan is an existing issue and not one which would necessarily be compounded by the current proposal.

7.0 CONCLUSION

- 7.1 The City Council does not have an up-to-date Development Plan. This activates paragraph 14 of the NPPF, which requires that planning permission is granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the NPPF taken as a whole.
- 7.2 The site is within the Primary Shopping Area where Class A5 takeaway uses are acceptable in principle.
- 7.3 No external alterations are proposed and the proposal would have no significant or demonstrable impacts on the visual amenity of the area. The character and appearance of the Conservation Area and setting of nearby Listed Buildings would be preserved.
- 7.4 The existing lawful use of the premises is as a Class A3 restaurant. Given this fall-back and the advice from the Environmental Health Officer, it is considered that the proposal would not have a significant nor demonstrable impact on the amenities of neighbouring property.
- 7.5 The site is a sustainable location which is accessible by modes other than the private car. There are several public car parks within walking distance of the site providing parking for customers and staff. No severe impacts on the highway are identified. There would be no significant or demonstrable impact on highway safety.

- 7.6 There is no technical evidence to suggest that any adverse impacts resulting from the development will significantly and demonstrably outweigh its benefits. In accordance with paragraph 14 of the National Planning Policy Framework, and having regard to policies in the 2002 Local Plan and emerging JCS insofar as they are relevant, the proposal is acceptable and planning permission should be granted.
- 7.7 The proposal has also been considered with regard to the provisions of Sections 66 and 72 of the Planning (Listed Buildings and Conservation Area) Act 1990, which require special attention to be paid to the desirability of preserving nearby Listed Buildings and their setting, as well as preserving or enhancing the character or appearance of the Conservation Area.

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

The development hereby permitted shall be carried out in accordance with the approved site location plan, block plan and floor plan received on 10 May 2016.

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

Condition 3

No customers shall be served or remain in the building outside the following hours:

Monday to Friday – 12:00 to 23:30

Saturday – 12:00 to 23:30

Sundays and Bank Holidays – 12:00 to 23:00

Reason: To safeguard the amenities of and the area, having regard to Policies FRP.10 and BE.21 of the Gloucester Local Plan, Second Stage Deposit 2002.

Condition 4

The premises shall not be operated as a Class A3 or A5 takeaway unless the existing extraction equipment is in operation in full working order.

Reason: To safeguard the amenities of and the area, having regard to Policies FRP.10 and BE.21 of the Gloucester Local Plan, Second Stage Deposit 2002.

NOTES

Note 1

The applicant is advised that separate Advertisement Consent may be required for any new signage at the premises. Further advice can be obtained from the *Outdoor Advertisement and Signs: A Guide for Advertisers*, published by DCLG (2007) at the following link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11499/326679.pdf

Note 2

Your attention is drawn to the requirements of the Building Regulations, which may be obtained as a separate consent to this planning decision. You are advised to contact the Gloucestershire Building Control Partnership on 01453 754871 for further information.

Statement of Positive and Proactive Engagement

In accordance with the requirements of the National Planning Policy Framework, the Local Planning Authority has worked with the applicant in a positive and proactive manner in seeking solutions to secure sustainable development which will improve the economic, social and environmental wellbeing of the area. In particular, the Local Planning Authority has clarified the proposed opening hours; the provision of existing extraction equipment; whether customers will be eating-in at the premises; and proposals for dealing with commercial and customer waste.

Decision:

Notes:

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Person to contact: Ed Baker
(Tel: 396835.)

16/00539/FUL

88 Westgate Street
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GL1 2NZ
Planning Committee

