

East Area Planning Committee

1st July 2015

Application Number: 15/00775/FUL

Decision Due by: 11th May 2015

Proposal: Part demolition of existing building. Erection of a single storey side extension fronting Bartholomew Road. Change of use from Use Class A4 (Public House) to Use Class A1 (Retail). Installation of a rooftop plant enclosure. Provision of 8no. car parking spaces.

Site Address: Former Nuffield Arms Littlemore Road (**site plan: appendix 1**)

Ward: Littlemore Ward

Agent: Mr Jonathan Rainey

Applicant: The Co-Operative Group
Food Ltd And Midland
Assured Consulted Ltd

Application Called-in by Councillors Tanner, Turner, Van Nooijen and Paule on grounds that there are concerns about the proposal from local residents.

Recommendation:

The East Area Planning Committee is recommended to approve planning permission for the following reasons:

Reasons for Approval

- 1 That notwithstanding the material fallback position that the use of the existing building could change from a public house (A4) to a retail (A1) store without planning permission, and subsequently extend the building once the retail (A1) use is implemented, the application has provided sufficient evidence to justify the change of use of the public house. The proposed extension would create an appropriate visual relationship with the built form of the existing building, and the subsequent conversion to a retail unit would maintain the external appearance of the existing building. The extension has been designed in a manner that would safeguard the residential amenities of the adjoining properties. The proposed change of use and the associated parking and servicing arrangements would be unlikely to give rise to significant residential amenity and highway safety issues subject to appropriate mitigation measures being secured by condition, which would otherwise not be achieved should the use commence within the building using the available permitted development

rights. As such the proposal would accord with current national planning policy guidance, and the relevant policies of the adopted Oxford Local Plan 2001-2016 and emerging Oxford Core Strategy 2026.

- 2 In considering the application, officers have had specific regard to all the comments of third parties and statutory bodies in relation to the application however officers consider that these comments have not raised any material considerations that would warrant refusal of the applications, and that any harm identified by the proposal could be successfully mitigated by appropriately worded conditions.
- 3 The Council considers that, by virtue of the provisions to be made under the section 106 agreement, the proposal accords with the policies of the development plan as summarised below. It has taken into consideration all other material matters, including matters raised in response to consultation and publicity. Any material harm that the development would otherwise give rise to can be offset by the conditions imposed.

Conditions:

- 1 Development begun within time limit
- 2 Develop in accordance with approved plans
- 3 Materials - matching
- 4 Opening Times - 07.00-22.00
- 5 Revised Noise Management Plan
- 6 Revised Service Management Plan
- 7 Revised Parking Layout
- 8 Ground resurfacing - SUDS compliant
- 9 Air conditioning plant

Main Local Plan Policies:

Oxford Local Plan 2001-2016

- CP1** - Development Proposals
- CP6** - Efficient Use of Land & Density
- CP8** - Design Development to Relate to its Context
- CP10** - Siting Development to Meet Functional Needs
- CP19** - Nuisance
- CP21** - Noise
- RC18** - Public Houses
- TR3** - Car Parking Standards
- TR4** - Pedestrian & Cycle Facilities
- TR14** - Servicing Arrangements

Core Strategy

- CS2_** - Previously developed and greenfield land
- CS18_** - Urban design, town character, historic environment

Sites and Housing Plan

- Policy SP10 – Cowley Centre

Other Material Considerations:

National Planning Policy Framework
Planning Practice Guidance
Technical Advice Note 4: Community Public Houses

Relevant Site History:

None

Representations Received:

Letters of comment have been received from the following addresses.

- 1, 2a Bartholomew Road; 21 Littlemore Road

Their comments are summarised as follows

- The Public House is located on a busy corner with parking close to the corners of Bartholomew Road and Littlemore Road.
- The use of the parking area will be dangerous to vehicles turning into Bartholomew Road which is also a bus route.
- There is an access road to the rear of the site which leads to 2a Bartholomew Road and a number of garages. This access should not be disturbed by deliveries or customers
- Littlemore Road and Bartholomew Road is extremely busy from 07.00 to 09.30 and late afternoon. It can be difficult to move through this road and junction at these times without the proposed retail traffic.
- On road parking has also become a serious problem which could add to problems at the shop.
- The noise from the air conditioning and refrigeration plan will have an impact upon the adjacent Bartholomew Road properties
- The plant is to be located on the flat roof and the noise assessment does not sufficiently deal with the impact of noise
- There have been noise problems with the public house in the past.
- The flat face of the public house amplifies the noise
- The application does not provide any details of the external lighting and impact of this upon adjoining properties.
- Consideration should be given to deliveries. There should be no deliveries between 08.00-09.15hours and 14.45-15.45 hours during school terms.
- The fridges, radios and engines are switched off whilst unloading and loading

Statutory Consultees:

Oxford Civic Society: In principle the Society welcomes this application which retains most of the character of the original building. We would strongly urge that a better solution is designed for the elevation to the extension at the right of the main northern elevation, when building a new back-up area to the store. The existing public house has a poorly designed extension at this point, which is out of keeping with the original building.

The current proposal essentially repeats the same design and dimensions. We strongly urge that, before granting planning approval, the developers and the Council officers find a solution which will improve the whole of the north elevation

Oxfordshire County Council Highways Authority: No objection subject to conditions requiring the public highway to be altered to the county's standards; the surfacing and parking area should be permeable paving; no surface water should be discharged onto the highway; cycle and refuse storage should be provided to standards; and an amended Service Management Plan provided.

Officers Assessment:

1. The site is a prominent corner plot that is situated on the eastern side of Littlemore Road at the junction with Bartholomew Road. The site is bordered by 29 Littlemore Road to the south and to the east a service road that leads to 2a Bartholomew Road with 2 Bartholomew Road opposite the service road (**appendix 1**)
2. The site comprises the former Nuffield Arms Public House, which is 2.5 storey purpose built building which faces onto both Littlemore Road and Bartholomew Road. There is a small pub garden to the rear, and the building has already had a small single storey extension added to it. There is an open forecourt on both road frontages which provided parking for patrons.
3. The Nuffield Arms is currently vacant having ceased trading in September 2014

Proposal

4. Planning permission is sought for the partial demolition of the existing building within the rear service yard and the erection of a single storey extension in the rear service yard to facilitate the change of use of the building from Public House (Class A4) to retail (Class A1).
5. The retail unit would be a 'local' convenience store (292m²) operated by The Co-Operative Group Food Ltd.
6. The scheme would also include the installation of a rooftop plant enclosure and the provision of 8 car parking spaces on the Bartholomew Road frontage.
7. Officers consider that the main determining issues in this case to be
 - principle of development;
 - loss of the public house
 - site layout and built forms;
 - impact on adjoining properties;
 - noise and disturbance;
 - transport

Principle of Development

8. The proposal is seeking permission for a number of works to the existing building to facilitate the change of use of the vacant premises from a drinking establishment (Class A4) use to a retail (Class A1) use.
9. The Town and Country Planning (General Permitted Development) Order 2015 states that planning permission is not required for the change of use of a building falling within the Class A4 use to Class A1 use. The order also allows for retail (Class A1) uses to extend their buildings under certain requirements.
10. The applicant considers that the change of use of the building should not form part of the consideration in this application because a retail (Class A1) use could be implemented within the building without planning permission and so the applicant could occupy the building without permission or restriction if they so wished. Moreover, an extension of almost identical size to that proposed could be provided without planning permission once the retail use had been implemented. It is the applicant's position that this constitutes a material fall-back position in the determination of this application should the change of use of the building be considered.
11. In terms of the fallback position as a material consideration, the courts have held that there has to be more than a theoretical prospect (i.e. a real prospect) of this occurring. In this regard the applicant has indicated that should planning permission not be forthcoming for the proposed development, then the Co-op would occupy the building and provide an extension using the permitted development rights.
12. Having regard to these points, officers acknowledge that it is necessary to take into account the available permitted development rights for the change of use and extension of the building. However, the weight to be attached to this fallback position is a matter for the Council to consider. In this regard officers consider that the proposed development would result in the overall change of use of the building because the extension would facilitate the change of use from a public house to retail food store. The applicant has only provided anecdotal evidence that the co-op would occupy the premises regardless, and although this would not demonstrate beyond reasonable doubt that there would be more than a theoretical prospect of this use commencing, the statement needs to be taken on face value. The use of the building for a retail use and its resultant extension under permitted development rights would be unrestricted which could give rise to material harm that could be worse than the current proposal where the Council would have control. Therefore officers would attach some weight to the consideration of the fall-back position when considering the change of use of the building. This will be discussed in more detail below.

Loss of Public House

13. The National Planning Policy Framework identifies public houses as community facilities which enhance the sustainability of communities.

14. Oxford Local Plan Policy RC18 deals specifically with the loss of public houses and identifies public houses as having two distinct roles, firstly as a community facility in residential areas and secondly as part of the historic legacy of Oxford. The policy supports their loss where it can be demonstrated that no other potential occupiers can be found; or that evidence of non-viability is provided; or there are suitable alternatives in the local area. The method for assessing a proposal against these criteria is set out within the Community Public House Technical Advice Note.
15. Notwithstanding the applicant's position that the change of use of the building should not form part of this application, they have provided an assessment of the proposal in the context of Policy RC18.
16. Marketing: The public house was marketed by Savills from November 2013 for a period of 12 months. The majority of interest from prospective purchasers was to develop the site for residential use with interest in a continued pub/restaurant negligible. There were three offers at the guide price (£425,000) which then went beyond this price. All three of these were for alternative uses of the building.
17. Viability: The applicant has provided limited information on viability. Punch Taverns have indicated that the operation was considered 'marginal' with overheads at approximately the same level as takings. The pub needed significant investment (approx. £50k) to bring it up to modern standards but this needed to be set against the marginal trading. In addition it was considered that the building was not suitable to change the business model towards a more destination led food operation.
18. Alternative Public Houses: There is not an abundance of other public houses within the immediate vicinity of the site, but there are approximately 4 within an 800m radius. These are the William Morris, The Golden Ball, The Jolly Postboys and The Original Swan. In addition to this there is also the Cowley Workers Social Club.
19. Having reviewed the submitted information, officers would consider that the marketing was undertaken for a reasonable period of time. It was advertised in the most relevant places for a commercial property of this type and through the licensed trade and had a realistic guide price. It is recognised that market conditions in recent times have been difficult, although the number of pub closures has been less than during the recession according to CAMRA. There has been limited information provided on viability, and it would have been useful to understand whether the previous occupiers considered this a determining factor in them leaving. There would be a number of public houses in reasonable proximity to the site, and it is noted that there have been no objections to the loss of the public house during the public consultation. Therefore officers consider that the proposed change of use would have satisfied at least two of the determining criteria of Policy RC18 that deal with marketing (part a) and alternative provision (part c) irrespective of any material fall-back position regarding the permitted change of use of the building to retail use. Therefore officers consider that there would be no material grounds to object to the loss of the public house.

Site Layout and Built Form

20. Policy CS18 of the Oxford Core Strategy 2026 requires development to demonstrate high-quality urban design responding appropriately to the site and surroundings; creating a strong sense of place; contributing to an attractive public realm; and providing high quality architecture. The Oxford Local Plan 2001-2016 requires development to enhance the quality of the environment, with Policy CP1 central to this purpose. Policy CP6 emphasises the need to make an efficient use of land, in a manner where the built form and site layout suits the sites capacity and surrounding area. This is supported through Policy CP8, which states that the siting, massing, and design of new development should create an appropriate visual relationship with the built form of the surrounding area.
21. The proposed development would involve the demolition of the existing additions to the rear of the existing building, and the erection of a single storey extension increase the overall floor area by approximately 90m². The extension would measure 10.4m – 7.4m in length from the existing building to the south and north respectively, 11.1m wide, and 3.7m – 4m in height to the south and north respectively.
22. The extension would be of a simple form and appearance mirroring the existing extension to the rear (or side) of the existing building. The extension would be subservient to the main building and would appear as an ancillary element to the main façade which would retain the appearance as the primary face of the building onto Bartholomew Road. The simple form of the extension would also sit more comfortably alongside the existing building than the current extension and boundary wall of the pub service yard / garden. As such officers consider that the overall size, scale, and design of the proposed extension would be appropriate in design terms and therefore accord with the overall aims of the above-mentioned policies.

Impact on adjoining properties

23. Policy HP14 of the Sites and Housing Plan states that residential development should provide reasonable privacy and daylight for the occupants of both existing and new homes. This is supported by Policy CP10 of the Oxford Local Plan 2001-2016 which require development proposals to be sited in a manner which meets functional need, but also in a manner that safeguards the amenities of other properties.
24. The property that would stand to be most affected by the proposal would be 29 Littlemore Road. The Public House forms the northern boundary of this adjoining property with the pub and its rear garden. The existing public house would already create a significant sense of enclosure on the boundary with this property. The proposed extension would effectively fill in the existing pub garden and service area, and would be sited approximately 2m from the boundary with 29 Littlemore Road. Although the level of built form would be increased alongside this boundary, the 2m set back would reduce the visual impact of the extension and officers are mindful that an extension of similar size could be built

in this position using permitted development rights. The property at 29 Littlemore Road lies to the south of the application site and therefore the proposed extension will not reduce the amount of light received in the garden, while the increased sense of enclosure would likely outweigh any impact from the use of this area as a pub garden and service area. As such officers consider that the proposed extension would not have a significant impact upon the amenities of this adjoining property to warrant refusing the application on this basis.

25. The proposed extension to the building would not have a material impact in terms of loss of light, privacy, or overbearing impact upon the other surrounding properties such as 2 Bartholomew Road which lies to the east and has its side gable facing the public house which is also separated by an access road. Similarly the properties on the northern side of Bartholomew Road would also be unaffected in this regard.

Noise and Disturbance

26. Oxford Local Plan Policy CP21 states that permission will not be granted for development that causes unacceptable noise, with particular attention paid to noise levels close to noise-sensitive developments; and public and private amenity space, both indoor and outdoor. It goes on to state that the Council will impose enforceable conditions to minimise any adverse impacts as a result of noise and transmission.

27. A Noise Impact Assessment has been submitted to consider the noise impact associated with the proposed food store. The assessment assesses the current background noise levels for the site and the noise levels from the operation of the food store through its use, servicing, and plant and machinery. This is then compared to the likely noise levels that would be derived from the fall-back positions of the store opening and extending under the permitted development rights that allow the change of use without permission. The assessment makes clear that the proposal will create a level of noise impact no greater than the British Standard low adverse impact level. The noise from delivery operations and car park activities will be audible externally but will be mitigated through a Noise Management Plan that has been prepared. The Noise Management Plan has been provided in **Appendix 2** of this report and includes such measures as restricting the delivery times; ensuring that all delivery vehicle engines, radios, and refrigerators are shutdown whilst on site; care is taken with cage trolleys to avoid additional and unnecessary noise; no raised voices in spoken communication between staff; and that all staff are made aware of the policy.

28. The assessment states that this Noise Management Plan could be secured by use of a planning condition. It also infers that two fall-back positions would be unrestricted in planning terms and would cause significant adverse impact in noise impact terms. This is largely due to the fact that there will be no control over the use in these circumstances and by definition the implementation of the noise management plan. Officers consider that the mitigation measures within the Noise Management Plan (**appendix 2**) are simple common sense measures that could be imposed by the store irrespective of whether they are secured by a planning condition. Moreover the failure to do so would be unneighbourly and as

such the two fall-back positions would have little weight in this regard.

29. Environmental Health Officers accept that the proposed change of use within the proposed trading hours (07.00-23.00 hours) will increase the local ambient noise level in what is predominately a residential area. In particular 3 Bartholomew Road which will be directly adjacent to the proposed extension/ delivery area may at times be subjected to high peak levels of noise even with a stringent Service Management Plan for delivering in place. However the noise levels are not likely to be in excess of similar retail operations of this type, and as such an enforceable Noise Management Plan could be secured by condition to mitigate against this harm. Therefore the potential noise impact of the proposal upon the surrounding properties would not be so significant to warrant refusal because appropriate mitigation measures could be secured by condition.
30. The Noise Impact Assessment makes clear that the application does not include refrigeration or air conditioning plant for the building which will be subject to a separate application. Officers consider that the impact of such plant is likely to be significant and therefore any proposed air conditioning, mechanical ventilation or associated plant, should be designed to ensure that existing noise level is not increased when measured one metre from the nearest noise sensitive elevation. The plant should be designed / selected or the noise attenuated so that it is 10dB below the existing background level. This will maintain the existing noise climate and prevent 'ambient noise creep'. This should be included as an informative on the application.
31. Policy CP19 also states that permission will be refused for development that causes unacceptable nuisance, but where such nuisance is controllable, appropriate planning conditions will be imposed.
32. The application states that the opening hours for store would be 07.00 – 23.00 hours Monday to Sundays. This is considered excessive for a retail store that is located within a predominately residential area and not within a district centre. Officers consider that it would be more reasonable to restrict the opening times to 07.00-22.00 hours (Monday – Sunday) in order to reduce the potential noise and nuisance disturbance for local residents. This should be secured by condition.

Transport

33. A Transport Assessment has been submitted with the application. The site is located at the junction of Littlemore Road and Bartholomew Road. The existing public house has two forecourts on both frontages that provided ad-hoc parking for patrons.
34. The proposal would provide 8 designated off-street parking spaces (including a parent/child and disabled space) along with a service area that would be accessed from Bartholomew Road.
35. Traffic Generation: The site is in a Transport District Area which is considered to be easily accessible by non-car modes of transport and provides access to a good range of public transport, shops and services. The Transport Assessment

acknowledges the fact that the site is well served by non-car travel modes and that the store intends to cater for a mainly walk-in catchment. The Transport Statement also acknowledges that the building was formally in commercial use and would therefore generate a level of traffic. The proposed store would not generate significant levels of traffic when compared to the fallback scenarios of the building being used for a retail store, and then subsequently extended without planning permission. The Local Highways Authority has raised no objection to the proposal in terms of traffic generation or impact upon the existing junction.

36. Car Parking: There would be 8 off-street parking spaces accessed from Bartholomew Road. The proposed level of off-street parking would exceed the maximum parking standard for a retail store of 1 space per 50m² by approximately 2 spaces. The site is in a sustainable location and the store would seek to serve a mainly walk-in catchment for the surrounding area which would support a level of parking below the maximum standard. That said officers are mindful of the fact that the fallback scenario of the use commencing within the building would mean that 8 spaces could be marked out on the existing frontage without planning permission. As such it may not be reasonable to object to the proposed level of parking in this instance.
37. The Transport Assessment also states that the parking standards would be laid out to the following dimensions 2.4m x 4.8m. The Local Highways Authority would normally require a parking space to measure 2.5m x 5m. Therefore officers would recommend a condition be imposed which requires a revised parking plan that ensures the spaces are laid out to standard.
38. Servicing: A Service Management Plan has been provided which sets out how the unit will be serviced (**appendix 3**). The plan makes clear that the site will be serviced in a manner which minimises the impact on residential amenity.
39. The site will be serviced between the hours of 07.00-20.00 hours (Monday-Saturdays) with newspapers possibly delivered before 7am. On Sundays all deliveries apart from newspapers will be after 09.00hours. In terms of frequency it is anticipated that there will be 6 fresh and frozen deliveries, and 3 ambient deliveries per week. With additional deliveries of bread, newspapers, and sandwiches per day. Overall there will be a maximum of 5 deliveries per day.
40. The Service Management Plan identifies that these deliveries could be scheduled outside of the 'school run hours'. This would be acceptable given the location of Church Cowley St James CofE Primary School further eastwards along Bartholomew Road. The applicant has amended the Service Management Plan to reflect this.
41. The deliveries will typically be made using a 10m rigid lorry, with bread deliveries using a 6m rigid vehicle and transit van for newspapers and sandwiches. The plan states that all vehicles will be fitted with reversing alarms although they will not be used before 09.00 and 07.00 hours. The plan also provides details on reducing noise levels which have already been discussed above.

42. A Swept Path Diagram has also been provided to demonstrate that delivery vehicles can enter the site in a forward gear and reverse towards the servicing bay to enable the easy loading and unloading of goods. The plan allows for the vehicles to then leave in a forward gear. The 10m delivery vehicle will require parking spaces 6-8 to be kept clear to allow vehicles to manoeuvre into the service bay. Officers had raised concerns about how these spaces would be managed to ensure that the servicing arrangements were practicable. The applicant has confirmed that delivery drivers will be provided with risk assessments that highlight delivery arrangements before leaving the depot. The co-op uses specific software to programme deliveries to avoid specific times of the day and provide delivery slots to stores. The store managers will be made aware of the slots so that they can manage the use of the parking spaces. The spaces will be managed using demountable posts which will be pulled up to keep the spaces clear prior to delivery, with staff waiting for customers to depart any occupied space before pulling up the posts to ensure that they are not in use prior to any delivery. This could be secured through the condition for the revised parking plan, and also to be made clear within the Service Management Plan to ensure that such a scheme can be practically enforced. This method of managing parking spaces has been used on other similar types of retail scheme across the city.

43. The Transport Assessment has made clear that the ability to obtain a service management plan through this planning application would have highway safety and operational benefits for the proposed store when compared to the fallback scenarios of an unrestricted retail use operating within the building. Officers would agree with this assessment and consider that the proposed store could be serviced in such a manner that would minimise the impact upon highway safety and would recommend a condition requiring an amended service management plan to be submitted which sets out how the parking spaces will be controlled to allow access for delivery vehicles and to confirm that no deliveries will take place during school run hours. The Local Highways Authority has raised no objection to the proposal subject to an amended Service Management Plan being secured and implemented by condition.

Conclusion:

44. The proposal is considered to be acceptable in terms of the relevant policies of the Oxford Core Strategy 2026 and Oxford Local Plan 2001-2016 and therefore East Area Planning Committee is recommended to approve the application.

Human Rights Act 1998

Officers have considered the Human Rights Act 1998 in reaching a recommendation to grant planning permission, subject to conditions. Officers have considered the potential interference with the rights of the owners/occupiers of surrounding properties under Article 8 and/or Article 1 of the First Protocol of the Act and consider that it is proportionate.

Officers have also considered the interference with the human rights of the applicant under Article 8 and/or Article 1 of the First Protocol caused by imposing conditions. Officers consider that the conditions are necessary to protect the

rights and freedoms of others and to control the use of property in accordance with the general interest. The interference is therefore justifiable and proportionate.

Section 17 of the Crime and Disorder Act 1998

Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to grant planning permission, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

Contact Officer: Andrew Murdoch

Extension: 2228

Date: 12th May 2015