

West Area Planning Committee

26 August 2015

Application Number: 15/02142/SF56

Decision Due by: 7 September 2015

Proposal: Application for prior approval for the Change of Use from Financial/Professional Services (Use Class A2) to Restaurant/Café (Use Class A3).

Site Address: 68 Abingdon Road, **Appendix 1**

Ward: Hinksey Park

Agent: Mr Mohammed Nayheem-Al-Din

Applicant: Mrs Ali Khan

Application Called in – by Councillors – Price, Lygo, Pressel and Fry for the following reasons - This site has been the subject of a number of failed applications and this proposed use in a heavily residential area would have a major negative effect on the amenity of the neighbouring properties.

Recommendation:

That “Prior Approval” is required and should be granted subject to conditions.

Reasons for Approval.

- 1 The Council considers that 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.
- 2 Officers have considered carefully all objections to these proposals. Officers have come to the view, for the detailed reasons set out in the officers report, that the objections do not amount, individually or cumulatively, to a reason for refusal and that all the issues that have been raised have been adequately addressed and the relevant bodies consulted.

Conditions

- 1 Development begun within time limit
- 2 Develop in accordance with approved plans

- 3 Exclusion of other uses
- 4 No hot food takeaway items
- 4 Restricted hours/delivery times
- 5 Use of yard for deliveries.
- 6 No structural alterations or additions
- 7 Details of cycle parking.

Main Planning 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
- TR3 - Car Parking Standards
- RC12 - Food & Drinks Outlets

Core Strategy

- CS10 - Waste and recycling

Other Material Considerations:

- National Planning Policy Framework
- The Town and Country Planning (General Permitted Development) (England) Order 2015

Recent Planning History:

- 01/01152/NE - Change of use of ground floor from retail shop to hot food takeaway. REF 6th September 2001. DIS at appeal 15th August 2002.
- 02/01657/FUL - Change of use from retail (Class A1) to office (Class A2) (Amended Description). PER 20th December 2002.
- 05/01632/FUL - Demolition of garage and car port. Erection of two storey rear extension, with accommodation in roof space and alterations to existing two storey rear extension to provide 1x1 bedroom flat and 1x3 bedroom maisonette. REF 30th September 2005.
- 05/01637/FUL - Change of use from shop (use Class A1) to hot food outlet (use class A5) for delivery only. REF 4th October 2005.
- 06/00244/FUL - Change of use of ground floor office and garage (Class A2) to hot food outlet (for delivery only) (Class A5). REF 21st March 2006. DIS at appeal 8th January 2007.
- 06/00242/FUL - Demolition of existing garage and car port. Erection of 2/3 storey extension to form 2 flats (1x1 bedroom and 1x2 bedrooms). REF 30th March 2006.
- 09/02587/FUL - Demolition of existing garage. Erection of two storey extension to provide enlarged shop on ground floor and enlarged flat with new entrance on first floor. Provision of amenity space, bin stores and cycle parking. (Amended plans). PER 16th February 2010.

- 11/00027/FUL - Creation of dormer on rear roof slope in connection with loft conversion (retrospective). REF 25th February 2011.
- 11/00923/FUL - Loft conversion and alterations to existing roof involving flat roofed rear dormer windows. REF 27th May 2011.
- 12/01268/FUL - Modifications to rear extension approved under 09/02587/FUL comprising the repositioning of 2 external doors and addition of first floor window and retrospective change of slate roof to match modern smooth grey tiles on existing roof. REF 29th June 2012.
- 12/01798/FUL - Modifications to rear extension approved under 09/02587/FUL comprising the introduction of 3 windows and 1 door on ground floor. PER 20th September 2012.

Representations Received:

86 Abingdon Road: major worry that there could be unaddressed ecological concerns regarding the food handling and preparation, which could lead to a major issues for our small community such as increased traffic congestion, parking issues and the presence of vermin. There are already very strict regulations regarding parking in our area. Small residential community is already served by 2 cafes and 2 shops within a 100 metre radius and feel that we do not require another cafe/restaurant in this area.

1 Kineton Road: current development not built in accordance with the approved plans. There is no need for an additional food outlet on this stretch of Abingdon Road. Creation of a large new café at 68 Abingdon Road would substantially change the character of the area to its detriment. Any new food outlet would add to the existing extreme pressure on parking at the east end of Kineton Road. Any delivery vans or lorries would have to park at the rear of the property (the yard immediately abutting our own house, with all the attendant noise and disruption at unsociable times of day) or in the spaces at the top of Kineton Road, which are almost always fully occupied as it is. Concerned that our property would be seriously affected by the food waste and odours. The external flue which would be required for the oven (included in the present proposal) is situated immediately opposite (and relatively close to) our front door and first-floor window. We are very worried about the impact of this on the environment of our own property, particularly in hot weather. Proposed opening hours are completely inappropriate for a shop in a residential area.

11 Kineton Road: concerned that any approval for change of use to a food outlet will result in further misinterpretation of the council's intent and of what is now permissible on this site. Concerned that approval for any café will further encourage the series of applications for A5 usage (e.g. as a chicken shop) and / or make it easier for this status to be achieved in future. New café would substantially change the area from a quiet residential one. New food outlet would add to the existing extreme pressure on parking in Kineton Road. No faith that food waste would be properly handled and feel that vermin would be encouraged by the waste. Proposed opening hours are completely inappropriate for a shop in a residential area.

Statutory Consultees:

Highways Authority: (i): Holding objection; details of deliveries etc requested; details of cycle parking to be provided. (ii): No objection; note double yellow lines in vicinity

of property; if deliveries can utilise existing gates, the that alleviates concerns; cycle parking to be provided to required standard.

Site Description

1. The application sitelies at the southern corner of the junction of Abingdon Road withKineton Road to the south of the city centre and comprises a former ground floor office. To the northern side of the junction at 66 Abingdon Road is a laundrette. Abingdon Road is a principal radial road into the city centre, and the area generally residential in character, interspersed with commercial properties.
2. To the north of the application site at the junction of Abingdon Road with Whitehouse Road is a newsagents/general store, plus a shop and hairdressers. To the north side of that junction is the White House pub. In a southerly direction at the corner of Abingdon Road with Newton Road is a shop/general store.
3. A site plan is attached as **Appendix 1**.

Proposals.

4. The intention is for the property to sell tea, coffee, breads, pastries, cakes and sandwiches. The majority of the food would be delivered to site already prepared. Some hot food would be prepared and cooked in the kitchen, but on a domestic type electric range cooker
5. The opening hours proposed are as follows:
 - Mon – Fri 07:00 – 20:00
 - Sat 08:00 – 20:00
 - Sun 09:00 – 17:00

Prior Approval Procedures.

6. The application is seeking prior approval for a change of use from a Class A2 office (financial/professional services) to use Class A3 (café / restaurant). The application is made under the provisions of Schedule 2 Part 3 Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 which came into effect on 15th April 2015.
7. Under these provisions, (amongst others within the Order), a change of use from an office for financial and professional services to a café / restaurant as in this case is permitted development providing certain criteria are met. The premises to which they relate must not exceed 150 sq m however. A further provision allows a building to be used for the provision of facilities for ventilation and extraction and for the storage of rubbish if in association with a café or restaurant. Moreover the “Prior Approval” arrangements differ from the planning application procedure in that if no decision is made within 56 days then the prior approval is automatically granted. In this case the expiry date when this would occur is 7th September 2015.

8. In submitting an application for a change of use such as now sought, an applicant must apply to establish if prior approval is required for the following matters. Only these matters can be considered in determining the case:
- (a) noise impacts of the development,*
 - (b) odour impacts of the development,*
 - (c) impacts of storage and handling of waste in relation to the development,*
 - (d) impacts of the hours of opening of the development,*
 - (e) transport and highways impacts of the development,*
 - (f) whether it is undesirable for the building to change to a use falling within Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order because of the impact of the change of use—*
 - (i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, Class A2 (financial and professional services) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or*
 - (ii) where the building is located in a key shopping area, on the sustainability of that shopping area, and*
 - (g) the siting, design or external appearance of the facilities to be provided under Class C(b), and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.*
9. For the local planning authority consideration of the case is therefore a 2 stage process. Firstly it has to determine if prior approval is required, and secondly whether it should be granted bearing in mind the above criteria only.

Background to Case

10. A large number of planning applications have been submitted at the application site in recent years. These are listed at the head of this report. Of particular relevance to this latest submission are two cases which were refused planning permission and dismissed at appeal. Reference will be made to these cases later in this report
11. The first was an application refused planning permission on 10th September 2001 for a change of use from a then chemist shop to a hot food takeaway. In dismissing the subsequent appeal the Inspector concluded that the proposals would unacceptably reduce the level of neighbourhood shopping and would be harmful to road safety. However he also concluded that the appeal proposal would not cause material harm to the living conditions of local residents. The full text of the appeal decision is reproduced as **Appendix 2**. (Change of use to an office was subsequently granted in December 2002).
12. The second case was a change of use of ground floor office to hot food outlet, for the delivery only of take away meals. This was refused planning permission on 2st March 2006. Again the appeal was dismissed and again the Inspector did not consider there would be harmful effects on the living conditions of neighbouring occupiers. Rather he found that the development would be likely to have an adverse effect on parking and highway safety. **Appendix 3** refers.

Officers' Assessment.

13. In the text which follows the prior approval case is assessed against each of the criteria listed at paragraph 8, (a) to (g) above as the only criteria the local planning authority can take into account under these arrangements.

- (a) noise impacts of the development; and
(b) odour impacts of the development

14. Given the limited nature of cooking and the cooking facilities available then officers raise no objection to the proposal providing that it is limited to what is indicated in the application. In coming to this view officers are mindful of the Inspector's conclusions in the 2002 case where the relationship to neighbouring properties were much as now and where what was proposed at that time was potentially more damaging. Conditions are suggested however requiring details of the means of treating cooking odours to be submitted and agreed, and that there be no ancillary hot food takeaway items, other than tea, coffee, soup and minor microwaved foods.

- (c) impacts of storage and handling of waste in relation to the development

15. The storage and handling of waste would be accommodated in the current facilities available. It would be stored at the rear of the premises in segregated bins which is considered acceptable.

- (d) impacts of the hours of opening of the development.

16. The opening hours proposed in the prior approval application are as follows:

Mon – Fri	07:00 – 20:00
Sat	08:00 – 20:00
Sun	09:00 – 17:00

17. As an essentially day time use, Officers are satisfied these opening hours are reasonable in a residential area. They can be secured by condition.

- (e) transport and highways impacts of the development.

18. The Highway Authority was consulted on the application and has no objection to the proposed development. It notes the double yellow lines in the vicinity of the property, but if the deliveries are able to utilise the existing yard at the rear of the property, this alleviates the concerns. A condition can be added to restrict delivery times and require use of the yard. Cycle parking should be to the required standards. Conditions are suggested to secure.

- (f) whether it is undesirable for the building to change to a use falling within Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order because of the impact of the change of use:

19. The property has remained vacant for some time, and no objection is raised to the loss of the previous use as a small office, providing an acceptable alternative use

for the building can be secured. Subject to the conditions suggested to be imposed by the prior approval consent, then the use of the premises as a local café can be accepted.

(g) the siting, design or external appearance of the facilities to be provided under Class C(b), and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

20. Class C(b) relates to building or other operations for the provision of facilities for ventilation and extraction, including the provision of an external flue, and the storage of rubbish, reasonably necessary to use the building for a use falling within Class A3 (restaurants and cafes) of that Schedule. However in this case there is no building or other operations proposed therefore clause (g) does not apply.

Conclusion:

21. In reaching a recommendation that prior approval is required in this case and that it should be granted subject to conditions, Officers are mindful of the lengthy planning history to the site and the concerns raised to this and previous proposals. Concerns raised about the neighbourliness of a hot food takeaway and hot food delivery service have been tested at appeal however and the Inspectors in each case found that those potentially more damaging activities would not necessarily be unneighbourly subject to the provision of appropriate filtration equipment. These are important material considerations in this case where the scale of cooking is very limited anyway. Similarly the local highway authority raises no objection subject to suitable conditions being imposed.

22. Moreover the application is made under the recently initiated "Prior Approval" provisions for these types of change of use. These arrangements seek relaxation of the planning regime; bring greater flexibility, simplicity and certainty to cases of this sort; and to encourage local enterprise, aiding economic recovery. As such the proposals can only be opposed and refused on very specific grounds as set out above, and granted in any event if no decision is reached within 56 days. It is concluded that these grounds can be addressed by appropriate conditions, or in some cases are not relevant to the application.

23. Bearing in mind these important considerations, then on balance officers have come to the view that the proposals can be accepted subject to the conditions listed and that prior approval should be granted.

Human Rights Act 1998

Officers have considered the Human Rights Act 1998 in reaching a recommendation to grant prior approval, 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 prior approval, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

Background Papers: Applications 15/02142/SF56, 01/01152/NF, 06/00244/FUL

Contact Officer: Lisa Green

Extension: 2614

Date: 13 August 2015