

WEST AREA PLANNING COMMITTEE

12th June 2018

Application Number: 17/03429/FUL

Decision Due by: 19th February 2018

Extension of Time: To be agreed

Proposal: Change of use of 4-5 Queen Street at basement and ground floor from A1 (retail) to A2 (bank).

Site Address: 4-5 Queen Street, Oxford, Oxfordshire, OX1 1EJ

Ward: Carfax Ward

Case Officer: Robert Fowler

Agent: Mr Mark Underwood **Applicant:** Mr Ewing

Reason at Committee: The application is before the committee because it has been called in by the Head of Planning, Sustainable Development and Regulatory Services

1. RECOMMENDATION

1.1. West Area Planning Committee is recommended to:

(a) Approve the application for the reasons given in the report and subject to the required planning conditions set out in section 12 of this report and grant planning permission

(b) Agree to delegate authority to the Head of Planning, Sustainable Development and Regulatory Services to:

1. Finalise the recommended conditions as set out in this report including such refinements, amendments, additions and/or deletions as the Head of Planning, Sustainable Development and Regulatory Services considers reasonably necessary;

2. EXECUTIVE SUMMARY

2.1. This report considers the change of use of the existing basement and ground floor of the recently completed retail unit at No. 4-5 Queen Street from its lawful use as retail (Use Class A1) to a bank (Use Class A2). The proposed development would be within the primary shopping frontage where the number of units that fall outside of a A1 use is already below the threshold of 80% outlined in Policy RC3 of the Oxford Local Plan; this would mean that the development would normally be contrary to Policy. However, officers advise that in this case there is a fallback position that would allow for the ground floor and basement to

be changed to an A2 use without a grant of planning permission (subject to some restrictions) which means that the development can be supported. Officers also consider that the radically changed retail environment within the City Centre that has resulted from the development of the Westgate Centre means that, on balance this development can be supported. The proposals accord with the wider requirements of providing suitable uses within the City Centre and making efficient use of land and the proposals therefore conform with Policies CS1 and CS31 of the Core Strategy (2011) and Policies CP1, CP6 and CP10 of the Oxford Local Plan 2001-2016.

3. LEGAL AGREEMENT

3.1. This application is not subject to a legal agreement.

4. COMMUNITY INFRASTRUCTURE LEVY (CIL)

4.1. The proposal is not liable for CIL.

5. SITE AND SURROUNDINGS

5.1. The site is located within the City Centre on Queen Street and close to the junctions of High Street, Cornmarket Street and St Aldates (Carfax). The site forms part of a wider site (4-5 Queen Street and 114-119 St Aldates) that gained planning permission for a redevelopment in 2015 (reference 14/02256/FUL). The approved scheme was for retail units in an A1 use on Queen Street and St Aldates and student accommodation at the upper floors. The retail unit on St Aldates is now in use as a small Sainsburys Supermarket.

5.2. The application site lies close to a number of Grade II Listed Buildings (including the Carfax Tower, Tower House, Midland Bank and a telephone box outside of the Carfax Tower). The site also lies within the Central (University and City) Conservation Area.

5.3. In August 2017 a retailer started to trade from parts of the application site; this use would have fallen within a retail use (Use Class A1). That use continued for just over one month before ending. That use has subsequently restarted for a longer period of time and then ended since this planning application was submitted.

5.4. A number of changes have recently been made to the shop front that benefit from planning permission (17/01244/FUL) and there is an advertisement consent application that at the time of writing is still pending (18/00759/ADV). These changes are associated with the applicant for this application who is the prospective user of the retail unit, Metro Bank.

5.5. Site Location Plan



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Ordnance Survey 100019348

6. PROPOSAL

- 6.1. Planning application is sought for a change of use of the ground floor and basement from an A1 (retail) use to an A2 (bank) use. The proposals do not include any physical development to the building.

7. RELEVANT PLANNING HISTORY

- 7.1. The table below sets out the relevant planning history for the application site:

14/02256/FUL - Demolition of 4-5 Queen Street and rear of 114-119 St Aldates. Renovation and alteration of remaining properties at 114-119 St. Aldates with roof extension, plus erection of new building to Queen St on 5 levels plus basement. Change of use from offices and retail to form 2 Class A1 retail units plus further unit for either Class A1 (retail), Class A2 (offices) or Class A3 (restaurant) at basement and ground floor levels. Provision of 133 student study rooms at upper levels, plus ancillary facilities at basement level and cycle parking for 110 cycles at ground floor level.. PER 4th August 2015.

15/03391/VAR - Variation of condition 15 (Noise Insulation) of planning permission 14/02256/FUL to allow rewording of this condition.. PER 29th April 2016.

14/02256/NMA - Non-material amendment of planning permission 14/02256/NMA to enable alterations to the internal courtyard elevations, including changes to gable wall of the west elevation, the addition of pipes/vents to the rear court yard elevations and to re-use some existing window openings and render existing walls of two narrow elevations to the rear of St Aldate's.. PER 29th February 2016.

17/00403/VAR - Variation of condition 16 (Air conditioning plant) of planning permission 14/02256/FUL to allow new location for mechanical plant.. PER 13th April 2017.

17/01244/FUL - External alterations to shopfront, installation of 1No. ATM to shopfront and associated works. (Amended plans and description). - PER

17/03429/FUL - Change of use of 4-5 Queen Street at basement and ground floor from A1 (retail) to A2 (bank).. Pending.

18/00759/ADV - Display of 1no. internally illuminated fascia sign and 2no. internally illuminated signs. (amended plans). PCO .

8. RELEVANT PLANNING POLICY

8.1. The following policies are relevant to the application:

Topic	National Planning Policy Framework (NPPF)	Local Plan	Core Strategy	Sites and Housing Plan	Other Planning Documents
Design	14				
Conservation/ Heritage	131-134				
Commercial	19, 24		CS1, CS31		
Transport	4	TR3 and TR4			Parking Standards SPD

Environmental	10	CP19, CP21			Energy Statement TAN
Misc	5	CP.13, CP.24, CP.25		MP1	Telecommu- nications SPD, External Wall Insulation TAN,

9. CONSULTATION RESPONSES

- 9.1. Site notices were displayed around the application site on 25th January 2018 and an advertisement was published in The Oxford Times newspaper on 25th January 2018.

Statutory and Non-Statutory Consultees

Oxfordshire County Council (Highways)

- 9.2. No comments

Public representations

- 9.3. Councillor Wolff, comments in support:
- Additional retail at Westgate may make this acceptable
 - Proposal would not include changes to the shopfront

Stoneybrook Horsham, objections:

- Access
- Amount of development
- Effect on character of area

Officer Response

- 9.4. The above points have been responded to in the Officer report below. The comments relating to the physical changes to the building that would result are not relevant as the proposals do not include any changes to the appearance of the building and only its use.

10. PLANNING MATERIAL CONSIDERATIONS

- 10.1. Officers consider the determining issues to be:

- i. Principle of development;
- ii. Design, Impact on Conservation and Listed Buildings
- iii. Neighbouring amenity
- iv. Access and Parking

i. Principle of Development

Policy RC3 of the Oxford Local Plan 2001-2016

- 10.2. The proposed development falls within the designated primary shopping frontage set out in Policy RC3 of the Oxford Local Plan 2001-2016. The policy requires that planning permission would only be granted for a change of use to a bank (A2) where the proportion of units at the ground floor level in A1 use (in the primary shopping frontage) does not fall below 80% of the total number of units. This policy is the main policy consideration in terms of assessing the acceptability of these proposals and whether or not a change of use from retail (Use Class A1) to a bank (Use Class A2) can be supported.
- 10.3. A survey was carried out in August 2017 that found that 74% of units within the primary shopping frontage were considered to be in A1 use however this did not take into account the recent completion of the Westgate Shopping Centre (and therefore did not include any of the retail units within that part of the primary shopping frontage). A more recent survey has been carried out that includes the original areas of the Westgate Shopping Centre (that have been refitted) that were included in the primary shopping frontage for the purpose of Policy RC3 of the Oxford Local Plan 2001-2016. This survey found that approximately 77% of units within the primary shopping frontage fell within an A1 use. It is important to point out that this figure does not include any of the new retail units created within the Westgate as the policy does not identify them within the primary shopping frontage (the policy pre-dates the recently completed Westgate).
- 10.4. On the above basis the development would not be acceptable in the context of Policy RC3 of the Oxford Local Plan 2001-2016. However, officers take the view that there are other considerations and merits to these proposals that may make the change of use acceptable in planning terms. Each of these considerations are explored below.

National Planning Policy Framework (NPPF) and Policy CS31 of the Core Strategy (2011)

- 10.5. The NPPF post-dates Policy RC3 of the Oxford Local Plan 2001-2016. With the exception of a specific sequential approach to deal with applications for town centre uses in edge of centre or out of town locations the NPPF does not include detailed prescriptive advice about how to assess planning proposals for changes of use (other than the core planning principles set out in Paragraph 17 of the NPPF and the presumption in favour of sustainable development set out in Paragraph 14 of the NPPF). The applicant's agent suggests in their planning statement that the NPPF requires that local planning policies should ensure the vitality of town centres and policies need to be positive and promote competitive town centre environments. Whilst it is acknowledged that Policy RC3 of the Oxford Local Plan 2001-2016 pre-dates the NPPF it does arguably meet the specified policy requirements set out in Paragraph 23 of the NPPF.

- 10.6. Policy CS31 of the Oxford Core Strategy (2011) requires that planning permission be granted for development that is appropriate in relation to the role and function of each centre. The City Centre is identified as the first place in terms of the retail hierarchy of the City for retail development. The proposals are for a change of use of an existing retail (A1) site; however the change of use would be for an A2 use which would be acceptable in the City Centre in the context of Policy CS31 (notwithstanding the aforementioned requirements of Policy RC3 of the Oxford Local Plan 2001-2016).

Operations of Metro Bank

- 10.7. The applicant's agent makes a case that the nature of Metro Bank differs from other banks and similar uses falling within Use Class A2. Metro Bank have been identified as the end user in this case (and are the applicant) and it is worth considering that they typically have longer opening hours and seek to promote more active frontages (which may give rise to higher levels of footfall). The submitted planning statement suggests that the level of activity generated by their operations is more akin to a retail (A1) use and the merits that result from this would make the proposed change of use more acceptable.
- 10.8. Officers note that the prospective user of this unit would be Metro Bank and acknowledge the nature of their operations and how this may generate more footfall than other typical banks. However, it is not considered that this alone would make the development acceptable. If members are minded to consider that the nature of Metro Bank's use of the unit would make this change of use acceptable then they should consider including a personal condition to ensure that the unit is not changed to another A2 use and is always limited to Metro Bank (or could revert to an A1 use) unless a further change of use planning application is made.

Fallback Position and Permitted Development

- 10.9. An application for a lawful development certificate (17/02510/CPU) for a proposed use of the application site was submitted in August 2017. The basis of this lawful development certificate was to prove that a change of use from A1 to A2 would be lawful. The government allows for permitted changes between retail (A1) and financial and professional services (which includes banks) (A2) (this is set out in the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO). At the time that the application was made a retail (A1) use was taking place in part of the building and that use did continue for a period of just over one month. Officers refused that application on the basis that the entire development of 4-5 Queen Street (and 114-119 St Aldates) was not substantially completed, only a small part of the premises were in use as a retail use and that use had only taken place for a short period of time; this meant that because the A1 use had not fully commenced then no subsequent permitted change to an A2 use could take place.
- 10.10. The applicant's agent makes a case in their submitted planning statement that the development sought in this case could be carried out as permitted development. Whilst the application for a certificate of lawful development

(17/02510/CPU) was refused on a sound basis at the time (and not subsequently challenged at appeal by the applicant) officers consider that the position has changed and there may now be a strong 'fallback' position that the development proposed could be carried out as permitted development. Since the application for a lawful development certificate (17/02510/CPU) was submitted the Sainsburys supermarket in St Aldates has opened and additional work has been carried within the rest of the property. Officers would suggest that as a result the application site and approved redevelopment of the site (17/00403/VAR) may now be regarded as substantially complete. Further to this a retail (A1) use in the retail unit that is the subject of this application did commence in the building for a longer period and this would re-enforce the view that a subsequent A2 use could now commence in the building as permitted development.

- 10.11. On the above basis, officers would recommend that the proposed development could likely be carried out without a need for planning permission and members should take into account this fallback position when making a decision.

Emerging Policy and Oxford Local Plan 2036

- 10.12. The submitted planning statement suggests that there is a need to consider the emerging planning policy position and specifically the review of the Local Plan, which has been referred to as Local Plan 2036. Whilst officers cannot afford much weight to the emerging planning policies or evidence that underpins it the above analysis of the Council's existing retail policies does point to the importance of considering the changing retail environment in Oxford, the NPPF (which post-dates existing policies including RC3 of the Oxford Local Plan 2001-2016), the changes to the GPDO and the wider changes to retail and City Centres. The submitted planning statement suggests that subject to the recommendations of the Council's commissioned Retail and Leisure Study (Carter Jonas, 2017) being brought forward into emerging policy then the proposed development may be acceptable in principle once the new Local Plan is adopted. One paragraph from the aforementioned retail study is particularly relevant to this application and the assessment of these proposals in a policy context:

"the Council's current policies are restrictive with a tendency towards measuring and retaining a proportion of the number of A1 units within the defined Primary Shopping frontage (PSF) or Secondary Shopping Frontage (SSF). However, there is a need for the centres within the City Council area to adapt to future changes. As noted in Section 2, the ratio of Use Class 'A' type of uses is changing with an inclination towards leisure related uses such as bars, cafes and restaurants as well as other leisure uses."

(Retail and Leisure Study, Carter Jonas, 2017)

- 10.13. Whilst officers do not recommend that weight be afforded to the above position it is a worthwhile consideration in the context of the Council's emerging policy on changes of use in the City Centre.

Conclusions – Principle of Development

10.14. Officers regard that there is a slight deficiency in terms of the proportion of retail units in the Primary Shopping Frontage that fall within an A1 use that would make the proposed development unacceptable in the context of Policy RC3 of the Oxford Local Plan 2001-2016. However, having had regard to the slight nature of this deficiency, the wider requirements of the NPPF and Policy CS31 of the Oxford Core Strategy (2011), the emerging retail position and most importantly the fallback position that exists to carry out the change of use as permitted development the application should be supported in policy terms.

ii. Design, Impact on Conservation Area and Listed Buildings

10.15. The proposed development would not involve any physical changes to the building. Changes to the front of the building that would include a shopfront have already been approved (reference 17/01244/FUL) and an application for advertisement consent (associated with the applicant's proposed use of the building) is currently pending consideration (18/00759/ADV). As the proposed development only relates to the use of the building (and that use is not out of character with the area which contains a number of buildings in close proximity that fall within the same use) then the development would not have a harmful impact on the character, appearance and special significance of the Conservation Area or the setting of nearby listed buildings. The development therefore complies with the requirements of Policy HE7 of the Oxford Local Plan 2001-2016 and Paragraphs 131-132 of the NPPF.

iii. Impact on Neighbouring Amenity

10.16. The proposed use of the building would not have an increased impact on privacy or daylight/sunlight conditions for any nearby residential occupiers. The upper floors of the building are in use as student accommodation. Officers have had regard to the nature of the proposed use and consider that this could be carried out in the building without giving rise to an unacceptable impact on noise and disturbance for the occupiers of upper floors or any other nearby residential occupiers. The development complies with the requirements of Policy CP1, CP19 and CP21 of the Oxford Local Plan 2001-2016 and Policy HP14 of the Sites and Housing Plan (2013).

iv. Transport

10.17. The proposed development would be for a change of use of an existing retail unit. The proposals would not increase the number of vehicle movements or servicing requirements associated with the use above and beyond those approved for the retail unit and the redevelopment of the site (17/00403/VAR). The site lies in a highly sustainable location close to the City Centre's bus stops and within walking distance of the railway station. There are numerous public cycle stands close to the application site. The development therefore complies with the requirements of Policies TR3 and TR4 of the Oxford Local Plan 2001-2016.

v. Other Matters

10.18. The existing site includes a basement. The proposed use of the basement in conjunction with the rest of the proposed use would not have an adverse impact on the risk of flooding or an impact on surface water drainage. The development therefore complies with the requirements of Policy CS11 of the Core Strategy (2011).

11. CONCLUSION

11.1. It is recommended that the Committee resolve to grant planning permission for the development proposed subject to conditions set out in Section 12 of the report below.

12. CONDITIONS

- 1 The development to which this permission relates must be begun not later than the expiration of three years from the date of this permission.

Reason: In accordance with Section 91(1) of the Town and Country Planning Act 1990 as amended by the Planning Compulsory Purchase Act 2004.

- 2 The development permitted shall be constructed in complete accordance with the specifications in the application and approved plans listed below, unless otherwise agreed in writing by the local planning authority.

Reason: To avoid doubt and to ensure an acceptable development as indicated on the submitted drawings in accordance with policy CP1 of the Oxford Local Plan 2001-2016.

13. APPENDICES

Appendix 1 – Site Location Plan

14. HUMAN RIGHTS ACT 1998

Officers have considered the implications of the Human Rights Act 1998 in reaching a recommendation to approve this application. They consider that the interference with the human rights of the applicant under Article 8/Article 1 of Protocol 1 is justifiable and proportionate for the protection of the rights and freedom of others or the control of his/her property in this way is in accordance with the general interest.

15. 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.