

WEST AREA PLANNING COMMITTEE

7th May 2014

Application Number: 14/00450/FUL

Decision Due by: 17th April 2014

Proposal: Change of use from Use Class A1 (Shops) to Use Class A3 (Restaurants and cafes).

Site Address: 32 Little Clarendon Street And 126 And 127 Walton Street –
Appendix 1

Ward: North

Agent: Kemp & Kemp

Applicant: Shirehall Properties LTD

Application called in by Councillors Cook, Pressel, Fry and Clarkson to allow Members to be given the opportunity to consider the impacts of the proposed development on the vitality of the area.

Recommendation:

APPLICATION BE APPROVED

For the following reasons:

- 1 The proposed change of use will not, either individually or cumulatively, have a detrimental effect on the vitality or character of the Little Clarendon Street area or the wider Jericho Conservation Area. Furthermore, the proposals are also not considered to be likely to give rise to material harm to the amenity enjoyed by occupiers of nearby buildings including the student accommodation above. Consequently the proposals are considered to, on balance, accord with the requirements of all relevant policies of the development plan.
- 2 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.

subject to the following conditions, which have been imposed for the reasons stated:-

- 1 Development begun within time limit
- 2 Develop in accordance with approved plans
- 3 Hours of use

- 4 Removal of PD right to change from A3 to A2
- 5 Details of extraction equipment required

Main Local Plan Policies:

Oxford Local Plan 2001-2016

CP1 - Development Proposals
HE7 - Conservation Areas
CP19 - Nuisance
CP21 - Noise
RC6 - Street Specific Controls
RC12 – Food and Drink Outlets

Other Material Considerations:

National Planning Policy Framework
Planning Practice Guidance
This application is in or affecting the Central Conservation Area.

Relevant Site History:

- 09/02484/FUL - Retention and refurbishment of front range to 123-125 Walton Street along with erection of 3-storey rear extension plus basement. Erection of 3-storey building including basement and part roof storey to replace 126-127 Walton Street and 32-32a Little Clarendon Street. Provision of 36 Student rooms and shared facilities across the upper floors. Provision of 3 new shop fronts to 123-125 Walton Street and provision of replacement retail units on ground floor to 126-127 Walton Street and 32-32a Little Clarendon Street. Refused 15th February 2010.
- 09/02485/CAC - Demolition of 126-127 Walton Street and 32-32a Little Clarendon Street. Part Demolition to the rear of 123-125 Walton Street. Refused 15th February 2010.
- 10/01475/FUL - Retention and refurbishment of frontage to 123 to 125 and 127 Walton Street. Erection of new structure to rear to provide in total 6 retail units at basement and ground floor levels and 35 student study rooms on first, second and third floor. Permitted 17th September 2010.
- 10/01478/CAC - Demolition of 126 Walton Street and 32/32a Little Clarendon Street. Permitted 17th September 2010.
- 11/00711/FUL - Retention of front part of 123-125 and 127 Walton Street. Erection of new structure. Demolition of 126 Walton Street and 32-32A Little Clarendon Street and their replacement with new 3 and 4 storey building. Provision of 6 retail units on ground and basement floors with student

accommodation (41 Study rooms) on upper floors. (Amended Plans). Permitted 23rd August 2011.

- 11/00713/CAC - Demolition of 126 Walton Street and 32/32a Little Clarendon Street. Permitted 30th August 2011.
- 12/00861/VAR - Variation of condition 15 attached to planning permission 11/00711/FUL to enable the student accommodation to be used outside term-time by cultural and academic visitors and for conference and summer school delegates.. Permitted 31st May 2012.
- 11/00711/NMA - Application for a non-material amendment to planning permission 11/00771/FUL involving alterations to the courtyard, bin/bike store and car parking layout. Permitted 9th May 2012.
- 11/00711/NMA2 - Application for non-material amended involving alterations to the roofing materials. Permitted 9th May 2012.
- 11/00711/NMA4 - 30/01/2013 Non material amendment to planning permission
- 11/00711/FUL to amend the shop front elevation and fitting of air conditioning units to roof. Refused 15th March 2013.
- 13/00846/VAR - Variation of condition 2 (development in accordance with the approved plans) of planning permission 11/00711/FUL in order to allow the conversion of the three approved ground floor retail units within 123-125 Walton Street into one single retail unit, alterations to the ground floor Walton Street frontage and provision of air-conditioning units on the roof, post commencement of development. Permitted 4th June 2013.
- 13/01885/VAR - Variation of condition 28 of planning permission 11/00711/FUL (Provision of 6 retail units on ground and basement floors with student accommodation on upper floors) to allow delivery's to take place between 8am-12pm (midday) on Saturdays and Sundays. (Amended description). Permitted 8th October 2013.

Representations Received:

Five third party objections have been received raising the following concerns:

- There are already too many restaurants and bars in the immediate area which is detrimental to the character of the street and wider conservation area which was historically typified by mainly small independent shops;
- It is clear that from the marketing evidence submitted with the application that there has been interest from a number of retailers and more work should instead be done to improve the attractiveness of the units to interested retailers;
- There is already severe parking pressure within Jericho and some additional parking requirements would be expected from a new café/restaurant;
- The issue of food waste, kitchen venting and other related concerns are not

- fully addressed;
- There is doubt expressed about whether the marketing efforts by the developer were genuine;
 - The high rents demanded for these premises are not realistic. In applying for a change of use, the developer appears to suggest that it is entitled to protection from current trading conditions;
 - The area has a substantial number of the very best eating and drinking establishments in Oxford. What it now needs is interesting and high quality retail businesses which would return the area, and especially Little Clarendon Street, to its retail destination status of several years ago. That won't be achieved by reducing the number of retail premises or by setting rents so high that interesting and creative small businesses can't afford them;
 - The owners are claiming in their marketing evidence that there has been no serious interest in this unit from retailers. This is not true. Bike Zone has viewed this property and is interested in renting this unit for retail use (cycle shop) but feel that the price being asked is not realistic bearing in mind the peculiar layout. If the rent is reduced to allow for that they would still like to take it on;
 - The proposals would adversely affect the amenity of the Lincoln College students living above it as a result of noise, cooking odours and waste collection.

St John Street Area Residents Association - The original consent was for 6 individual retail units to replace 6 individual units lost in the demolition of the previous buildings. Three units have already been amalgamated to form the Co-op store. The application fails to address the planning significance of this latest further amalgamation and we would strongly object to the loss of small scale units and the creation of a further large unit. This would change forever the scale and feel of all retail or other units in the whole of Walton Street. If approved, six units would have become two and this amalgamation would also put the rents of such larger units beyond the reach of small local businesses

The Local Plan in paragraph 12.3.6 requires a “specific street controlled policy for Little Clarendon Street to maintain its special retail character and vibrance”. Policy RC.6 requires that in Little Clarendon Street the proportion of A1 uses should not fall below 65% of units. Inspection today shows that there are, excluding the subject premises, 27 existing units in Little Clarendon Street of which only 11 (just 40%) are traditional A1 retail shops; the remaining 16 are other uses, comprising 3 A2 offices and the rest (13 – 50%) serve food and refreshments for consumption on the premises. Little Clarendon Street therefore already falls woefully short of the required minimum A1 retail.

The applicant’s marketing proposed a combined rent of the three units in excess of £100,000. There is no comparable evidence, no breakdown by zones, and no information about other terms such as length of lease, rent free or inducements which lead to such a headline rent.

Walton Crescent Residents Association – Object. The proposals would result in a breach of the A1 retail threshold set out in policy RC6 b) of the Local Plan in that the street already falls below the required 65% of units in retail use. This proposal if

approved will further exacerbate and condone this unacceptable situation. The establishment of a restaurant, with its extended hours of operation, will also result in an adverse environment for the residential areas of Walton Street and Walton Crescent.

Statutory Consultees:

No comments received.

Officers' Assessment:

Application Site and Locality

1. The application site consists of a ground floor premises in a recently reconstructed four storey building on the corner between Little Clarendon Street and Walton Street which is on the boundary between the Central and Jericho Conservation Areas. The unit was part of a larger redevelopment of the site following the grant of planning permission in 2011 for a part three part four storey building featuring six small retail units on the ground floor with student accommodation on the floors above.
2. The 2011 planning permission was subsequently amended on a number of occasions providing consent for minor alterations to the appearance of the new building as well as the amalgamation of three of the six approved ground floor retail units into one larger unit that is now occupied by the Co-operative.
3. The three other units approved have, to date, not been built out as three separate retail premises internally and currently exist as one larger unoccupied unit with entrances on both Little Clarendon Street and Walton Street.

Description of Proposed Development

4. The application seeks consent for the conversion of this existing unoccupied retail unit into a restaurant or café within use class A3. No external alterations are proposed to the building to facilitate this proposed change of use.
5. Officers' consider the principal determining issues in this case to be:
 - Impact on the Vitality of the Little Clarendon Street Area;
 - Effect on Occupiers/Users of Neighbouring Properties;
 - Parking.

Impact on the Vitality of the Little Clarendon Street Area

6. Little Clarendon Street and parts of its immediate adjoining roads (short sections of Walton Street and Woodstock Road) are covered by a street specific planning policy control over uses of buildings at ground floor level as set out in policy RC6 of the Local Plan. This policy recognises the mixed-use nature of the area, which contains a balance of smaller specialist shops as well as restaurants which together contribute towards its distinctive character and vibrance. Such a mix of retail premises and café/restaurants contributes positively towards the special character of the Jericho area.

7. Policy RC6 of the Local Plan states that planning permission will only be granted for changes of use away from retail (Class A1) within the Little Clarendon Street area where the level of retail units (Class A1) does not fall below 65% of the total number of ground floor units.

8. Based on the Council's latest survey of the Little Clarendon Street area which was carried out in January 2014, 67.35% of the ground floor units are currently in A1 retail use. Taking the proposed change of use into account the area would fall to 65.3%. The proposal therefore fully complies with the requirements of policy RC6. It should be noted however that the Council's survey considered the premises as one unit rather than the three units approved. If the development had been built out as approved and then all three units were proposed to be changed to an A3 use, the proportion of retail units within the Little Clarendon Street area would fall below the 65% threshold set out in policy RC6.

9. In the wider context the application falls to be assessed having regard to the Government's current position on town centres and its general support for taking a more flexible approach when assessing proposals in relation to the economic benefits of development where this can support and encourage growth in the local economy. It is implicit within Government guidance set out in the NPPF, together with a number of recent changes to permitted development legislation (which allows greater movement between some use classes without the requirement for planning permission) that the Government is seeking to encourage a greater occupation and re-use of existing commercial premises for new uses in the interests of economic growth and to ensure more efficient recycling of brownfield land and sites.

10. With this wider context in mind, officers are of the view that the level of retail units remaining within the Little Clarendon Street area would be sufficient to conclude that the proposals would not significantly harm the vitality and character of the area by virtue of only a small reduction in retail premises. In reaching this conclusion, officers have also afforded weight to the benefits to the Jericho and Central Conservation Areas of having an active use in this prominent corner location which generally supports the mixed shop/café/restaurant character of the area rather than, as at present, the premises remaining unoccupied and detracting from the vitality and appearance of the area.

11. Furthermore, evidence of a significant marketing campaign has been submitted by the applicant. This marketing began prior to the substantial completion of the development and has therefore been undertaken over a period of a year. The evidence submitted has shown that few potentially viable retail occupiers were forthcoming and none were prepared to meet the rates required to sustain the unit as a viable competitive concern. Officers are of the view that the unit was marketed at rates and conditions consistent with that expected for the. The lack of interest from retailers willing to offer a competitive rate gives weight to the need to support a more flexible and beneficial use of the building as expressed in Government guidance given that, as set out above, such a proposed change would not be contrary to the overall requirements of policy RC6 of the Local Plan.

12. Concern has been raised by third parties about the amalgamation of the three approved small retail units into one larger unit which follows the same approach taken at the neighbouring Co-operative store. At present the three small units have not been created on site as per the approved plans though internal subdivision could take place at short notice at any time. Overall, this is disappointing as it will result in the originally approved six retail units being reduced to two larger units which are less capable of providing the local independent shops that were hoped for and which are historically characteristic of Little Clarendon Street and the Jericho Conservation Area. However, it is important to note that the amalgamation of different planning units that fall within the same use class does not constitute development as defined within The Town and Country Planning Act 1990 as it would not result in a material change of use. Therefore, such an amalgamation could be carried out at any time following the laying out of the three separate approved units without consent being required from the Council. This should, in officers' opinion, be afforded very significant weight. Furthermore, even without taking account of this amalgamation, the proposals would still not result in a level of retail units within the designated Little Clarendon Street area that would fall materially below the threshold set out in policy RC6.

13. Under existing permitted development legislation, consent is not required from the Council for a change of use from an A3 use (as proposed) back to a shop (A1) or a financial or professional services use (e.g. bank, building society, estate agency) within A2 use class. No concern is of course raised at the prospect of a potential future change of use back to a shop but its later potential to be converted into A2 use could prove harmful to the mix, vitality and character of the Conservation Area. Such a potential change of use should be the subject of further assessment and, consequently, a condition is recommended to be imposed removing this permitted development right.

14. Consequently, officers are of the view that the proposals will not materially harm the vitality of the immediate area and would in fact enhance the appearance and activity of the wider Jericho area.

Effect on Occupiers/Users of Neighbouring Properties

15. Little Clarendon Street and Walton Street feature a variety of pubs, bars and restaurants in addition to its shops. Evenings, particularly at weekends, can therefore be busy and vibrant. The majority of the existing establishments close before or at midnight. The creation of a restaurant or café in this location is consequently considered to be entirely in keeping with the existing mixed character of the area and its night time economy. Noise disturbance is not expected to be any greater than that stemming from a number of similar existing surrounding uses though, to be prudent, a condition is recommended limiting the operating hours to 11:30pm Monday – Saturday and 10:30pm on Sunday.

16. There is existing student accommodation on the floors above the proposed restaurant/café which is operated by Lincoln College. The noise disturbance from the restaurant use below is not likely to be significant given the nature of the use and its limited operating hours, nor therefore to prejudice the occupation of the accommodation.

17. A restaurant use would be expected to be accompanied by extraction equipment to disperse cooking fumes. No details are provided on such matters though a condition can be imposed accordingly, requiring full details to be approved subsequently. In this regard Environment Development colleagues have not raised concerns regarding the proposals.

18. Consequently officers are satisfied that the proposals will not give rise to significant harm to existing levels of amenity enjoyed by nearby occupiers in accordance with the requirements of policies CP1, CP10, CP19 and RC12 of the Local Plan.

Parking

19. The application site is located within city centre with good access by public transport; with public car parking available at St. Giles; and within walking distance of a significant local population. The immediate location is subject to parking controls. Consequently, officers are satisfied that the proposals will not result in additional parking pressure within the immediate locality. The Highway Authority has not raised objection to the proposals.

Conclusion.

20. The proposed change of use will not have a materially adverse effect on the character and vitality of the designated Little Clarendon Street area or the wider Jericho Conservation Area. The proposals are also not considered to give rise to unacceptable harm to the amenity enjoyed by occupiers of existing neighbouring properties or give rise to parking issues. Consequently the proposals are considered to accord with all relevant policies of the development plan and Members are recommended to approve the application subject to the imposition of the conditions listed.

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 approve, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

Background Papers:

09/02484/FUL
09/02485/CAC
10/01475/FUL
10/01478/CAC
11/00711/FUL
11/00713/CAC
12/00861/VAR
11/00711/NMA
11/00711/NMA2
11/00711/NMA4
13/00846/VAR
13/01885/VAR
14/00450/FUL

Contact Officer: Matthew Parry

Extension: 2160

Date: 28th April 2014

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