

WEST AREA PLANNING COMMITTEE

12 August 2014

Application Number: 14/01642/FUL

Decision Due by: 11 August 2014

Proposal: Erection of single storey rear extension incorporating new ventilation. Formation of bin storage area to rear. Erection of railings to front boundary.

Site Address: Walton Café, 67 Walton Street – **Appendix 1**

Ward: Jericho And Osney

Agent: Mr Simon Sharp, JPPC

Applicant: Mr Melih Tanyeri-Aladag

Application called in by Councillors Pressel, Fry, Smith and Malik due to concerns about the potential noise, smell and parking implications for occupiers of nearby dwellings.

Recommendation:

APPLICATION BE APPROVED

For the following reasons:

- 1 The proposed rear extension and front boundary treatment would be of a form, scale and appearance such that they would preserve the special character and appearance of the Jericho Conservation Area. Subject to the imposition of conditions, the proposals are not considered to be likely to have a significant adverse impact on neighbouring residential amenity taking account of the existing lawful use of the premises and the site's mixed-use context. As a consequence, the proposals are considered to comply with the requirements of all relevant policies of the development plan with no material planning considerations indicating otherwise.
- 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:-

- 1 Development begun within time limit
- 2 Develop in accordance with approved plans
- 3 Materials as specified in approved plans

- 4 Extraction system to be installed as approved prior to development being brought into use and retained as approved thereafter
- 5 Operating hours: 8.30am – 11pm Monday – Saturday; 9am – 10pm Sundays
- 6 All windows/doors/rooflights in approved extension to be closed by 10pm
- 7 Details of final design of railings to be submitted and approved prior to commencement

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
- CP9** - Creating Successful New Places
- CP10** - Siting Development to Meet Functional Needs
- CP19** - Nuisance
- RC6** - Street Specific Controls
- HE7** - Conservation Areas

Core Strategy

- CS18** - Urban design, town character, historic environment

Other Material Considerations:

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

Relevant Site History:

Single storey rear extension to form store - 80/00586/NF | Status: **Approved 30.06.1980**

Change of use from retail shop to hot food take-away - 03/00476/FUL | Status: **Refused 03.06.2003**

Alterations to shop front including new fascia, awning and replacement fenestration - 13/02007/FUL | Status: **Approved 12.09.2013**

Application to certify that existing use as cafe and hot/cold takeaway is lawful - 13/02978/CEU | Status: **Approved 23.12.2013**

Erection of a single storey rear extension incorporating 1no. louvre. Formation of bin storage area to rear. Erection of railings to front boundary - 14/01082/FUL | Status: **Withdrawn 09.06.2014**

Representations Received:

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

- Until recently the premises only traded as a daytime business that mainly produced cold snacks and baguettes. The current proposals would cause extreme distress to occupiers of the flats above if allowed to trade into the evening;
- Cooking fumes as well as noise from staff and diners will affect the enjoyment of the flats above so that occupiers would not be able to open their windows in summer;
- The proposed extension shows a set of bi-folding doors indicating that these would be open during warmer months allowing noise from dining and music to cause a real disturbance to neighbours;
- Use of the rear garden for dining and drinking, which is clearly intended, would exacerbate the noise impacts even further;
- The area is predominantly residential and it would introduce an anti-social use and level of disturbance;
- There are many families living in the neighbouring houses and all of the noise would have a real impact on their quality of life;
- The proposals could give rise to increased parking pressure within surrounding roads.

Statutory and Internal Consultees:

Environmental Development – Some reservations expressed as to how noise from the vertical extract will impact on occupants of 1st and 2nd floors of No. 67 and 3rd floor of No. 68. However, it is unlikely that the levels would be appreciably above the existing background noise levels and on that basis no objection is made.

Local Highway Authority – No objection.

Officers' Assessment:

Application Site and Locality

1. The application site relates to an existing café/restaurant premises set over the ground and basement floors in a three storey mid-terrace building within the Walton Street shopping area of Jericho. The premises traded for many years as a shop (Class A1) though obtained lawfulness through the passage of time as a café and take-away in December 2013. Separate self-contained flats form the upper floors of the application building. The remainder of the terrace comprises mainly three storey town houses though the Brasserie Blanc restaurant occupiers the ground floor of a building at the northern end of the terrace on the corner with Juxon Street. The southern end of the terrace is formed by the three storey 1960's era former Jericho Health Centre with residential accommodation at upper levels. A parking court accessed from Cranham Street served the Health Centre and wraps around the back

of the properties in the terrace so that it is adjacent to their rear gardens. The site lies within the Jericho Conservation Area.

2. The application site can be seen in its context on the site location plan attached as Appendix 1.

Description of Proposed Development

3. The application seeks consent for the erection of a single storey extension to the rear of the building as well as the formation of a bin storage area. Walls and railings are also proposed to the front boundary of the premises alongside the public footway.

4. Officers consider the following to be the main planning issues relevant to the determination of this case:

- Design and Appearance;
- Impact on Neighbouring Properties;
- Parking.

Design and Appearance

5. Policies CP1 and CP8 of the Local Plan require new development to be of a high quality that responds appropriately to the form, scale, layout and design detailing of its context. Policy CS18 of the Core Strategy reflects these requirements by seeking development of good quality urban design that enhances the townscape and historic environment. Of greatest relevance however is policy HE7 of the Local Plan which requires development within conservation areas to preserve or enhance their special character and appearance. This policy requirement is consistent with Government guidance which places great emphasis on the preservation of heritage assets as part of achieving sustainable development.

6. Whilst the application site is within a conservation area it does not follow that all of the buildings surrounding and adjoining it are of particular architectural merit. Indeed the adjoining former Health Centre building is a rather utilitarian 1960's construction which detracts from the character and appearance of the area. From the front the application building is relatively traditional featuring a rendered front façade and mansard type roof with modestly proportionated pitched roof dormer windows. Some of the fenestration on the upper floors is also more traditional given its sliding sash windows. The building itself however is something of an anomaly in the wider terrace in that it is neither in the same form or scale as the town house properties adjoining it to the north yet clearly distinguishable from the 1960's era Health Centre building to the south. From the rear the building has retained less of its traditional appearance with unsympathetic modern fenestration and flat roof extensions where the brick type and bonding does not tie in well with that of the building's original walls. The brickwork to the rear is also noticeably darker than the buff brick used to construct the rear walls of the rest of the town houses in the terrace which also marks it out as something of an anomaly. Notwithstanding this, many of the other houses in the terrace have been altered and/or extended to the rear over the years with single storey additions as well as dormer windows in the roofslopes having been constructed so that the original uniformity no longer exists.

7. The existing single storey rear extension to the building is poor quality and its

replacement is, in principle, welcomed. The extension proposed projects approximately halfway down into the rear garden which is not considered to be excessive in design terms given that other larger extension exist elsewhere within the terrace. As a result, sufficient garden space would remain to preserve the lower-key backland character of the terrace whilst ensuring that the extension is not so significant in depth to appear as an awkward projection off the main building. The extension itself is of a more contemporary flat roof form though constructed using red brick to match the main building. In addition, since the proposed extension is modest in height, it would not detract from the views of the majority of the original building from outside the site. Furthermore, the extension would have a limited impact on the wider conservation area as a result of its location to the rear of the building. Consequently officers are satisfied that, in this respect, the proposals would preserve the special character and appearance of the Jericho Conservation Area.

8. Turning to the front walls and railings proposed, officers would support the introduction of this type feature in Jericho given its historic precedent within the area for use in demarcating the public and private land. However, to ensure that the proposed railings are of a type that is historically characteristic of the area, a condition is recommended requiring final details of their design to be submitted and approved by the Council prior to commencement of development. The Highway Authority has not raised a concern about any constriction of the footway in this location given the sufficient footway width that would remain.

9. To facilitate the conversion of the premises from a café to a restaurant, significant new extraction systems are proposed. Amongst other things this results in the installation of an inlet louvre and large flue to the rear wall running up above the eaves line of the building to allow emissions to be dispersed at a high level. Such a flue is not likely to prove to be an attractive feature. However, taking a pragmatic approach and affording significant weight to the need to protect neighbouring occupiers from unpleasant emissions, officers would not object to this element of the proposals given that the flue is to be located to the rear of the building thus having limited impact on the appreciation of the wider conservation area.

10. Consequently officers have concluded that, subject to further details of the proposed railings, the development would preserve the significance of the conservation area as a heritage asset such that the proposals are considered to accord with the requirements of all relevant development plan policies and Government guidance.

Impact on Neighbouring Properties

11. Policies CP1 and CP10 require new development to adequately safeguard the amenity enjoyed by surrounding properties. Policies CP19 and CP21 of the Local Plan state that development will not be granted where they give rise to unacceptable noise and nuisance that cannot be adequately controlled by condition(s). Policy RC12 of the Local Plan is specific to food and drink outlets and adds that the City Council will impose any conditions necessary to limit their adverse impacts.

12. The existing premises benefits from a lawful use as a café with ancillary take-away facility. This means that it can be used to provide any type of café or restaurant with no consent required from the Council as local planning authority. As local

planning authority the Council therefore has no control over the premises' operations provided they remain with the same use class. This planning application is simply seeking to extend the premises to the rear to create a larger restaurant. No change of use is therefore proposed and only the impact of the proposed additional floor space should be assessed as part of this application.

13. There are existing flats in the building above the premises as well as in the upper floors of the adjoining building. Three storey town houses are to the north of the site with their rear gardens running parallel to that serving the application premises. It is clear from the representations received from third parties that the recent café operations were not causing undue nuisance to occupiers of nearby dwellings. However it seems that the premises closed early in the evening and mainly served snacks and cold foods. It also appears as if the rear garden was not regularly used for customer seating. Given that the café use has now been confirmed as lawful by the Council via the certificate granted in December 2013, the operations could be extended longer into the evening and regular use made of the rear garden for dining all without being subject to planning control. There may however be implications under Environmental Health legislation if significant nuisance was being caused.

14. In considering this application weight should be afforded to this existing situation and fallback. Notwithstanding this it is clear that the proposed extension would help facilitate a more intensive use of the premises with the consequent potential for additional disturbance for neighbouring properties. In particular, the rear extension proposed would provide a notable increase in space for seating with much of this seating being provided within what is effectively a residential garden environment. In officers' view, seating within the building itself is unlikely to give rise to significant noise when windows and doors are closed. However it is only reasonable to expect that there would be many occasions when the proposed rear bi-fold doors and rooflights would be opened, particularly in warmer weather. This would be likely to cause noise spillage from the restaurant.

15. Officers therefore take the view that, provided the dining takes place within the restaurant building itself and does not extend into unsociable hours, the increase in noise and disturbance caused as a result of the proposed extension would not be materially above that which could already take place from the building. Officers are also mindful that, whilst there are residential properties in the immediate site surroundings, account should be taken of the mixed use context of the Walton Street area where some noise is associated with the vitality and character of the area.

16. Notwithstanding this, officers recognise that outside eating and drinking, particularly likely during summer evenings, would potentially have an intrusive impact on the enjoyment of the relatively quiet nearby residential gardens. To a lesser but still material extent, dining within the extended premises itself would also give rise to noise for neighbours when windows and doors are left open. Such impacts are likely to increase as a result of the development proposed and it is therefore officers' view that it is entirely appropriate and proportionate for the Council to exercise control over such effects through the use of planning conditions. In this respect Government guidance makes it clear that planning permission should not be refused where the adverse impacts of a development can be satisfactorily controlled through the use of planning conditions. Officers have been mindful of this guidance in reaching their

recommendation.

17. Having considered this matter carefully, officers are of the view that any significant adverse effects of the proposed development on neighbouring dwellings can be appropriately controlled by conditions. In this case officers have recommended conditions restricting any outside drinking and/or dining by customers (including the provision of tables and chairs), the closing of all windows and doors in the proposed extension by 10pm as well as limiting its operating hours until 11pm Mondays-Saturdays and 10.30pm on Sundays. These conditions would give the Council a level of control over the use of the premises which at present it does not benefit from. Subject to these conditions, officers are satisfied that the proposals would not result in a material increase in noise and disturbance for neighbouring dwellings above and beyond that which could already occur lawfully at the premises.

18. Some concern has been raised by third parties about the potential for noise and smells from the extraction system to affect the enjoyment of the upper floor flats. A noise impact assessment has been carried out by consultants for the applicant which concludes that the proposed extraction system would not give rise to noise noticeably above the current background levels. The Council's Environmental Development officers concur with these findings. Similarly Environmental Development officers do not raise a concern with respect to smells and find the system proposed to be suitable for the use intended. However, to ensure that the system proposed is installed and retained fully operational, officers recommend an appropriately worded condition in this respect.

19. Consequently officers have concluded that, subject to the recommended conditions, the living conditions enjoyed by occupiers of nearby dwellings would be adequately safeguarded in accordance with the requirements of policies CP1, CP10, CP19 and CP21 of the Local Plan.

20. A dedicated bin storage area is also proposed to the rear of the garden with direct access out into the yard. This would prevent unsightly bin storage on the footway and provide an improvement to the appearance of the yard given that the bins would be enclosed and protected from view. Officers support this approach.

Parking

21. The premises does not benefit from any off-street parking in common with other shops, cafes and restaurants in the locality. Policy TR3 of the Local Plan requires an appropriate level of car parking as part of new development up to maximum standards set out in Appendix 3. The site is located within the designated transport central area (TCA) where dedicated parking provision is not supported as it encourages further car use despite the existence of excellent public transport alternatives. As a result officers are not concerned about the lack of parking provision given that this approach supports wider sustainably objectives and complies with the requirements of development plan policy. No dedicated cycle parking provision is shown though this is in common with other similar restaurants in the locality. In any event, there is not sufficient space to satisfactorily accommodate such a facility without compromising the appearance of the streetscene or rear garden area.

Conclusion:

22. The development proposed is considered to be of a form, scale, layout and appearance such that it would preserve the special character and appearance of the Jericho Conservation Area. Furthermore, subject to the imposition of the recommended conditions, the proposals would not be likely to have a significant adverse effect on neighbouring residential amenity. Consequently officers have concluded that the proposals are in accordance with the requirements of all relevant development plan policies such that Members are recommended to approve the application subject to the conditions listed at the beginning of this report.

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:

80/00586/NF
03/00476/FUL
13/02007/FUL
13/02978/CEU
14/01082/FUL
14/01642/FUL

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Extension: 2160

Date: 31 July 2014