

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Committee

6 August 2014

AUTHOR/S: Planning and New Communities Director

Application Number: S/2544/13/FL

Parish: Cottenham

Proposal: Change of Use from Shop (Use Class A1 to Traditional Fish and Chip Take Away (Use Class A5) including External Flue.

Site address: 288 High Street, Cottenham

Applicant(s): Mr Nasir Guvercin

Recommendation: Approval

Key material considerations: Potential Loss of Village Service
Residential Amenity
Parking and Highway Safety
Impact on the Conservation Area and Setting of Listed Buildings.

Committee Site Visit: Yes

Departure Application: No

Presenting Officer: Dan Smith

Application brought to Committee because: Parish Recommends Refusal
Local Member Requests Referral to Committee

Date by which decision due: 9 May 2014

Executive Summary

1. The application seeks permission for a change of use from shop to hot food takeaway including an external flue. A previous application for the change of use was refused under delegated powers on the grounds that the impact of the noise and odour created by the use on the flat above had not been formally assessed and would not be adequately mitigated leading to significant harm to the residential amenity of the occupants of that flat. The Parish Council has recommended refusal of the current application and the Local District Councillor, Lynda Harford, has requested that the application be referred to the Committee. 11 objections have been submitted by local residents. The Council's Environmental Health Officer has considered the additional noise assessment undertaken and the noise and odour mitigation proposed. While noting that some additional noise and cooking smells may be detected by immediate neighbours, he is of the view that the use would not cause any statutory nuisance and

the impacts are reasonable for a change of use of this nature. He is therefore content that the application be approved subject to conditions. The impact of the proposal on parking and highway safety, the Conservation Area and setting of adjacent listed buildings and the provision of services within the village are also considered acceptable and the recommendation is therefore for approval of the application.

Site and Surroundings

2. The application site is a two storey building in gault brick under a hipped, slate roof with a two storey hipped roof rear element and a later flat roof single storey extension. It has a modern shopfront at ground floor level and a vehicle access to the North East side serving a small parking area. There is a flat above the shop on the first floor. There are two parking lay-bys to the front, providing approximately 5 parking spaces however these are unmarked and not allocated specifically for use of the shop. The premises is situated within the Cottenham Conservation Area and adjacent to no. 290 High Street and opposite nos. 309 and 311 High Street which are all grade II listed buildings. No. 284 High Street is also a grade II listed building, as is the nearby war memorial. The residential nearest neighbours in addition to those listed above are no. 286 immediately to the North East, no. 286a to the North behind no. 286 and nos. 1 and 2 Lacks Close to the rear (North West) of the shop.

Proposal

3. The proposed development is the change of use of the premises from a convenience store (Use Class A1) to a Hot Food Take Away (Use Class A5) and includes the provision of an extraction flue to the rear of the premises. Further noise and odour assessment has been submitted as well as additional information detailing the specification for the extraction system and noise mitigation.

Planning History

4. **S/0174/13/FL** – Planning application for the change of use of the premises from A1 to A5 use was refused on the grounds of the impact of noise and odour from the use on the residential amenity of the occupants of the flat above the shop.
5. **S/2183/12/FL** – Planning application for the change of use of the premises from A1 to A5 use was submitted and later withdrawn.

Planning Policies

6. *National Planning Policy Framework*
7. *Local Development Framework*
 - DP/1 Sustainable Development
 - DP/2 Design of New Development
 - DP/3 Development Criteria
 - DP/7 Development Frameworks
 - CH/4 Development Within the Curtilage or Setting of a Listed Building
 - CH/5 Conservation Areas
 - NE/15 Noise Pollution
 - NE/16 Emissions
 - SF/1 Protection of Village Services and Facilities
 - SF/2 Applications for New Retail Development
 - SF/4 Retailing in Villages
 - TR/2 Car and Cycle Parking Standards

Consultations

8. Cottenham Parish Council has recommended refusal of the application on the grounds of the loss of the convenience store, the impact on residential amenity from noise, odour and smoke, disturbance (particularly late evening) and parking provision, and the impact on visual amenity including Conservation Area and setting of Listed Buildings. It also raises concern regarding the suitability of the submitted noise assessments. [New noise assessments have since been carried out by the applicant at the request of the Council's Environmental Health Officer.]
9. Cottenham Village Design Group states that it supports the creation of employment generating business and notes the parking provision to the front of the premises. It expresses concern about competition created with other hot food takeaway uses within the village and the potential impact on the viability of all such businesses. It expresses concern regarding the loss of the shop unit with the Co-op the nearest similar shop. It expresses disappointment that no enhancements to the shopfront are proposed in the application. It states that the intention to disguise the flue is welcomed but that the use of a brick effect cladding indicated that the proposals are not suitable in this location either from a materials or a design standpoint.
10. District Councillor Lynda Harford has noted that there is significant opposition to the application from local residents regarding parking, littering, noise, odour, harm to neighbours' amenity and inappropriateness of the change of use to the needs of the village. She also questions whether it is appropriate for a lower level of amenity to be tolerated for the flat above the shop on the basis that it will be occupied by staff who will be used to the noise and smell while at work. She feels there is merit in the argument that the village is in much greater need of retaining a retail/convenience store than an additional hot food takeaway.
11. Local Highways Authority has requested that the Local Planning Authority ensure that the rear car parking area be used for staff and servicing only and that a management plan with regard to this be required by condition.
12. SCDC Conservation Team has previously indicated that the current position of the flue close to the two storey extension to the rear limits the prominence of the flue in public views to a level which would preserve the character and appearance of the Conservation Area and have a negligible impact on the setting of adjacent listed buildings. The brickwork effect cladding, while not a traditional material, could, if properly specified and installed, improve the appearance of the flue and result in an acceptable appearance which would preserve the setting of the adjacent listed buildings and the character and appearance of the Conservation Area.
13. SCDC Environmental Health Officer initially expressed concern that the information submitted as part of the application was fragmented and not presented in a cohesive way, making it difficult to assess the proposed installation. He requested that a new noise assessment be prepared and the mitigation based on those assessments. The applicant has provided that information and the Council's Environmental Health Officer is content that the odour extraction and noise mitigation of that system are sufficient that the change of use would not unacceptably impact on the amenity of neighbours although he notes that some cooking odours and noise from general operation will be likely to be noticeable in the immediate vicinity of the premises. He has requested conditions be applied to any permission controlling the implementation and maintenance of the odour extraction and noise mitigation measures and that a post installation survey be undertaken to ensure the required mitigation has been

achieved. He also requests conditions in respect of construction hours, delivery hours, opening hours and any future installation of external lighting.

Representations

14. 13 representations have been received from owner/occupiers of nos. 2, 3 and 6 Lacks Close, nos. 260-266, 272-274, 286, 290, 294, 309, 332 High Street and No. 14 Denmark Road, each objecting to the application on a variety of the following grounds:
- Harm to residential amenity, including through noise, disturbance and odour;
 - Lack of need for an additional hot food takeaway in the village;
 - Loss of a village service (the convenience store);
 - Traffic generation;
 - Parking demand;
 - Highway safety;
 - Impact on the character of the Conservation Area and adjacent Listed Buildings;
 - Increased instances of anti-social behaviour;
 - Opening hours;
 - Litter;
 - Health impacts.
 - Inadequate information.

Planning Comments

15. The main planning considerations in this case are the potential loss of a village service, residential amenity, parking and highway safety, impact on the character of the area, impact on the Conservation Area and setting of adjacent Listed Buildings.
16. **Loss of a village service** – The proposed change of use would result in the loss of the convenience store use (A1) and replace it with a Hot Food Takeaway use (A5). The impact on the loss of the A1 shop use therefore needs to be considered against the requirements of policy SF/1 which seeks to ensure the ongoing provision of services for local people and the long term viability of villages. The policy states that proposals which would result in the loss of a village service, including shops will not be supported where such loss would cause an unacceptable reduction in the level of community or service provision in the locality. In order to determine the impact of the loss of the convenience store it is therefore necessary to have regard to whether or not other similar facilities exist locally which would continue to provide an acceptable service to the village. There is a Co-op further along the High Street to the North East which is approximately 200m from the shop. The Co-op is large relative to the convenience store at 288 and provides the same service in planning terms.
17. It is the case, however, that the loss of the store would result in a reduction in the level of choice locally and would result in residents to the South and West of the village having to travel further to access a convenience store. It would also result in some residents having to walk up to 200m further to visit a shop and, as noted in some consultation responses from local people, this would mean that some residents would not have a shop within 400m of their home as recommended by the Council's District Design Guide. While the recommendations within the District Design Guide are presented in the context of the design of residential and mixed use developments, rather than in preserving existing facilities, it is a matter of fact that some residents of Cottenham would have to travel further to the Co-op than to the existing store at 288 High Street.

18. Policy SF/1 requires that in coming to a view on the level of harm, consideration be given to the use of the premises and its existing and potential contribution to the local population, the presence of other village services and facilities which provide an alternative with convenient access by good local public transport services, or by cycling or walking; and the future economic viability of the use. In terms of the existing and potential contribution of the current use, the shop is currently closed and the previous leasehold owner of the shop has stated that the business had been struggling financially for some time and on that basis the shop is not currently providing an existing service to the locality, although if re-opened, a shop use would clearly contribute a level of amenity to the local population. Nonetheless, this would not necessarily be in the form of a convenience store as the existing A1 use would not be restricted to such a shop and could be for a variety of different types of retail business. In addition, the proposal would not result in the total loss of a retail function at the premises it would retain an element of local service provision through the proposed A5 Hot Food Takeaway use. As detailed above, there is an existing Co-op on the High Street within 200m of the application premises which would continue to provide a convenience store service in the village. On balance, given the size of the Co-op and its proximity to the application premises, it is not considered that a significant loss of service would result from the loss of the A1 retail use at 288 High Street. The proposed change of use is therefore considered to comply with the requirements of policy SF/1.

19. Concern has been raised locally regarding the provision of a Hot Food Takeaway in relatively close proximity to another similar business on the High Street approximately 80 metres along the High Street, including the viability of such an arrangement and potential conflict with policies SF/2 and SF/4. As stated within the policy, policy SF/2 relates to new retail development and does not apply to proposals for new shops and extensions to existing shops in villages. Policy SF/4 requires that proposals for new shops or for the redevelopment or extension of existing shops, or the change of use of buildings to shops within a village only be permitted where the size and attraction of the shopping development is of a scale appropriate to the function and size of village. As the premises is already in a retail use and the application is for a change of use to another retail use it is not considered that policy SF/4 is particularly apposite to the consideration of this application. Nonetheless, the provision of the Hot Food Takeaway has been considered in terms of whether its scale is appropriate to the function and size of village as per the requirements of the policy and given the relatively limited scale of the shop and the relatively large size of Cottenham as a Minor Rural Centre, it is not considered that it is of a disproportionate scale which would conflict with the policy. The issue of the provision of an alternative Hot Food Takeaway in addition to the existing Hot Food Takeaway premises within the village is not considered to conflict with any Local Plan policy. The proposed change of use is therefore considered to be acceptable in principle.

20. **Residential Amenity** – The introduction of a hot food use close to existing detached residential premises has the potential to significantly impact on the amenity of those detached neighbours through noise from mechanical ventilation, traffic movements and visitors to the premises, odour from cooking and light pollution. The application has therefore been assessed by an Environmental Health Officer (EHO) from the Council's Environmental Protection Team. The Council's EHO was not satisfied with the initial noise assessment nor the detail of the odour control and noise mitigation measures. He requested new assessment and these were undertaken and form the basis for the systems specified.

21. In terms of odour, the EHO has stated that he is confident the system proposed demonstrates that the applicant is utilising the “best practical means” of controlling odour. The filtration system includes electrostatic precipitator filtration, carbon filtration and a UV ozone odour destruction component and the Council’s EHO has confirmed that this system would meet the DEFRA requirement for “Very High Level of Odour Control” which in his view exceeds that which is usually required for such a use and offers the highest level of odour control available. His conclusion is that while the change of use would be likely to have some impact on detached neighbours, the proposed odour control is of a level which means that the impact from odour would be slight albeit noticeable in garden areas of adjacent properties. While the odour relating to the change of use would not go unnoticed in the immediate vicinity of the shop, including at some residential properties, it is considered that on balance it would not cause any significant harm to the amenity of neighbours and the proposed use is therefore acceptable in terms of its impact of cooking odours.
22. In terms of noise from the extraction system, the Council’s EHO is content that the specified fans are adequate for the extraction and filtration system to be effective and that the noise generated by the fans as well as the mitigation measures proposed to reduce the noise reaching neighbouring properties, including sound proofing around the fans and anti-vibration mounting of the equipment, are such that the proposal would not cause any significant noise nuisance to the occupants of the detached neighbouring properties.
23. In terms of the flat above the shop, the Council’s EHO has noted that the submitted report concludes that the rise in background noise should be 5dB rather than the 3dB specified by the Council’s SPD on the basis that the occupiers would be involved in the operation of the takeaway and would be less likely to complain. While it is considered likely that this would be the case, the amenity of the occupiers remains a material planning consideration. The EHO is of the view that a 2dB difference (between the 3dB increase specified in the SPD and the 5dB allowed in the noise report) would result in a negligible additional impact and would not result in any statutory nuisance being caused to the occupants of the flat. On balance, while the impact of noise on the flat above the shop would be slightly greater than other neighbours and while the noise would likely be noticeable to the occupants, it is not considered that it would cause any significant harm to their amenity. The fact that they would be involved in the running of the premises, while not justifying a significantly lower level of amenity, does naturally mean that they would be less likely to consider any noise generated harmful to their amenity than an occupant unrelated to the operation of the business. It also means the occupants would have an additional interest in the ongoing maintenance of the equipment.
24. In terms of the impact of the vehicle movements and visitors to the shop, it is inevitable that a level of noise and disturbance associated with the use will occur. However it is also the case that a level of noise and disturbance did and would occur in association with the existing shop use and this issue with the existing use has been reported by residents in response to consultations on this scheme. It is therefore necessary to assess whether or not a significant increase in noise and disturbance is likely to occur if the change of use is granted. While it is not possible to accurately predict the exact number of customers who will visit the takeaway, either by car or foot, it is considered unlikely that the number of visitors would so significantly exceed the number who would visit the convenience store that there would be a material increase in the noise and disturbance to neighbouring properties, either from vehicle movements on what is a main road, or from noise from customers as they arrive and leave the premises. Concern has been expressed regarding the later proposed opening hours of the takeaway (10pm) compared to the previous opening hours of

the shop (8pm) and the additional disturbance that could result later in the evening is a material consideration. It should be noted, however, that the current hours of operation for the premises are not restricted by planning condition and a convenience store or other A1 retail use could remain open later if the proprietor wished. While it is accepted that some additional noise would be created from traffic movements and customers arriving and leaving the premises, on balance it is not considered that this impact would cause a significant loss of amenity for neighbours, particularly considering the existing established use and unrestricted opening hours and the location of the premises on the High Street, where a higher level of vehicle noise and parking movements are expected. A condition would be applied to any permission controlling the opening hours of the premises, which would allow the takeaway to be open until 10pm at night.

25. Concern has been expressed locally regarding the existing levels of anti-social behavior and littering associated with the existing shop use and the potential for this to worsen in association with the proposed use. Anti-social behavior and littering result from the choices of individuals and it is impossible to state with any certainty what impact, if any, the change of use would have in that regard. As such it would not be reasonable to refuse permission for the change of use on that basis. Litter bins are already sited within the immediate surroundings of the premises which would provide reasonable opportunity for patrons to dispose of rubbish responsibly.
26. **Parking and Highway Safety** – The Local Highways Authority has not objected to the proposed development in terms of impact on parking or Highway Safety in the area. It has requested that the rear car park be used for staff only, given the relatively tight access arrangements and limited amount of parking to the rear of the shop, and that this be secured by a planning condition requiring a management plan for that area. Parking for the residents of the flat would also occur in the rear car parking area. This would mean that customer parking would occur in the lay-bys to the front of the premises and in other unrestricted areas. The SCDC maximum parking standards for the current A1 retail use would require a provision of 5 spaces for the existing use. The parking standards for the proposed use as a Hot Food Takeaway are not prescriptive and simply state that parking be provided 'on merit'. It is considered that a similarity exists between the current and proposed use in terms of the nature of the parking requirements as both uses tend to result in demand for short stay parking in close proximity to the premises with a similar length of stay for both shop and takeaway uses being likely. The Local Highways Authority has not expressed any concern regarding the parking requirements of the proposed use in comparison to the existing use. It is not considered that the change of use is likely to result in a significant increase in parking demand and it is therefore considered that the existing parking available in the immediate locality, both in lay-bys to the front of the premises and, where necessary, through other unrestricted on street parking in the immediate locality, would be sufficient to serve the proposed use.
27. It is not considered that the use of the existing lay-bys or on street parking in the area would have any significant impact on highway safety. The existing narrow access to the side of the premises would be used for staff parking only and a management plan would be conditioned at the request of the Local Highways Authority to ensure that this was not used for customer parking, given the limited visibility of the access. The proposed use is not considered likely to result in a significant increase in vehicle movements in the immediate vicinity of the premises over and above those which would be expected in association with a convenience store nor to have any significant impact on highway safety in the area. The proposed change of use is therefore considered to be acceptable in terms of its parking provision and impact on highway safety.

28. **Impact on the Conservation Area and setting of adjacent Listed Buildings** – The proposed change of use would require the installation of a flue to the rear of the property which would terminate 1 metre above the eaves of the rear roof slope and approximately 500mm below the main ridge. The flue would be located relatively centrally on the rear elevation of the property and would be largely screened from views within the Conservation Area by the main bulk of the building on the street frontage, the two storey rear extension to the South West side of the flue and by other neighbouring buildings. The top section of the flue would be visible in glimpses between the roofs of neighbouring buildings from the High Street and in one view from Lacks Close and these would include some distance views in which the premises would be the backdrop to views of adjacent listed buildings. The proposal is to clad the flue in a brick effect cladding to mitigate the industrial appearance of the flue itself and benefit its visual relationship with the main building. While the quality of such brick effect cladding varies, it is possible to specify cladding of sufficient quality that the it would have the appearance of a brick chimney from all public viewpoints. The specification of the cladding would be controlled by a condition. Given the very limited public views of the top of proposed flue and the fact that it would be clad to match the main building, it is not considered that the flue would have any detrimental impact on the setting of adjacent listed buildings and would preserve the character and appearance of the Conservation Area.
29. **Health impacts** – Concern has been raised locally with regard to the impact of the creation of a hot food takeaway on the health of the local populous, in particular children attending the primary and secondary schools in the village. It is considered that while the impact of such provision on health could be a material planning consideration, limited weight should be given to it in this case. While the change of use to a hot food takeaway would increase the availability of takeaway food available in the village, it would not dictate how often residents would make use of such a facility if, indeed, they use it at all. As such the provision of the takeaway is not considered unacceptable in terms of the aim of SCDC to promoting active and healthy lifestyles.
30. **Other matters** – Reference has been made in representations relating to this application to a document produced by SCDC called '*A guide for businesses – June 2012*' which states that "sites for cafes, pubs or takeaways should be located away from residential properties to minimise impact (such as noise, smell and traffic) on nearby homes. For example, a hot food takeaway will not be acceptable if it adjoins homes". This guide was intended to provide general guidance and the planning process requires that each application be assessed on its individual merits to establish its acceptability or otherwise.

Recommendation

31. Having regard to applicable national and local planning policies, and having taken all relevant material considerations into account, it is recommended that the application be granted Planning Permission, subject to conditions relating to the following matters:
1. Timescale for implementation.
 2. Approved plans and specifications
 3. Specification of brick effect cladding prior to installation.

4. Installation of the specified extraction system and noise mitigation measures prior to first operation.
5. Post-installation survey of extraction system and noise mitigation measures and additional attenuation where necessary to achieve specified noise and odour levels.
6. Maintenance of extraction system and noise mitigation measures in accordance with approved details.
7. Opening hours between 11am and 10pm only.
8. Construction hours between 8am and 6pm weekdays and 8am and 1pm Saturdays.
9. Deliveries hours between 8am and 6pm.
10. Submission of Parking Management Plan to ensure no customer parking to the rear of the site prior to first operation.
11. No further heating, ventilation or extraction equipment unless approved in writing by the Local Planning Authority.
12. No external lighting to be provided unless approved in writing by the Local Planning Authority.

Background Papers

Where [the Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012](#) require documents to be open to inspection by members of the public, they must be available for inspection: -

- (a) at all reasonable hours at the offices of South Cambridgeshire District Council;
- (b) on the Council's website; and
- (c) in the case of documents to be available for inspection pursuant to regulation 15, on payment of a reasonable fee required by the Council by the person seeking to inspect the documents at the offices of South Cambridgeshire District Council.

The following background papers were used in the preparation of this report:

1. South Cambridgeshire Local Development Framework Core Strategy DPD 2007
2. South Cambridgeshire Local Development Framework Development Control Policies DPD 2007
3. South Cambridgeshire Local Development Framework Supplementary Planning Documents
4. National Planning Policy Framework 2012
5. SCDC – 'Planning Services - A guide for businesses' 2012
6. Planning File References: S/2183/12/FL, S/0174/13/F and S/2544/13/FL

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