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|---------------------------|---|--------------------|--------------|
| <b>Application Number</b> | 13/1653/FUL   | <b>Agenda Item</b> |              |
| <b>Date Received</b>      | 15th November 2013  | <b>Officer</b>     | Mary Marston |
| <b>Target Date</b>        | 10th January 2014   |                    |              |
| <b>Ward</b>               | Market  |                    |              |
| <b>Site</b>               | 9 Burleigh Street Cambridge CB1 1DG   |                    |              |
| <b>Proposal</b>           | Change of use of ground floor of building from a sandwich bar (Use Class A1) to a restaurant (Use Class A3) |                    |              |
| <b>Applicant</b>          | Ms Wenyan Li<br>c/o Agent   |                    |              |

|                       |   |
|-----------------------|---|
| <p>SUMMARY</p>        | <p>The development accords with the Development Plan for the following reasons:</p> <p>A temporary change of use to Class A3 has already taken place in accordance with the provisions of the Town and Country Planning General Permitted Development Order 1995 (As Amended) Class D.</p> <p>The objections received are chiefly concerned with the number of similar businesses in the area, with impacts associated with the current lawful use, and with potential impact on the viability of competitors.</p> <p>No evidence has been submitted that would support the view that the proposal is likely to result in harm to the vitality of the City Centre; this is the test applied by Policy 6/6 of the Cambridge Local Plan (2006) to a change of use from Class A1 to Class A5 in a primary shopping frontage.</p> |
| <p>RECOMMENDATION</p> | <p>APPROVAL</p>   |

## **1.0 SITE DESCRIPTION/AREA CONTEXT**

- 1.1 The site occupies the ground floor of a 3 storey terraced property located at 9 Burleigh Street, Cambridge, and is currently in use as a café (A3). The upper floors are in residential use.
- 1.2 Burleigh Street is a pedestrianised thoroughfare which links Fitzroy Street with the eastern end of the Grafton Centre and is designated as Primary Shopping Frontage in the Cambridge Local Plan (2006). The application site fronts onto the north side of Burleigh Street and is flanked by a café to the west and a charity shop to the east.
- 1.3 The site falls outside the adjacent Conservation Area, but within the controlled parking zone.

## **2.0 THE PROPOSAL**

- 2.1 The application seeks permission for a change of use of the ground floor from sandwich bar (Use Class A1) to a restaurant (Use Class A3). The application is retrospective in that the proposed use has already commenced, but under recent flexible Use Class changes, the current use is deemed to be Permitted Development for a period of up to two years. This application is to make the change permanent.
- 2.2 The proposed hours of operation are as follows:
- Sunday - Thursday – 8am – 10pm
  - Friday and Saturday – 8am – 11pm
- 2.3 The application is accompanied by the following supporting information:
1. Covering letter and photograph of kitchen extractor vent;
  2. A scaled floor plan to show the ground floor layout;
  3. Photograph of kitchen extractor vent.
- 2.4 The application is brought before Committee because there have been four objections to the proposed permanent change of use.

### 3.0 SITE HISTORY

| Reference     | Description   | Outcome             |
|---------------|---|---------------------|
| 11/0673/CLUED | Continued use of the ground floor of 9 Burleigh Street for the preparation and sale of cakes, biscuits, bread, confectionary, sandwiches, paninis, savouries hot and cold, soup etc.) | Certificate Granted |

3.1 Café Oriental has been in operation at the site since 1<sup>st</sup> October 2013 and this application is to regularise the current use. The premises were previously occupied by a Sandwich Bar.

3.2 A prior notification application was submitted in October 2013 which sought to benefit from the change to Permitted Development rights introduced in May 2013 to allow change of use within Class A1 to a flexible use including Class A3. The current flexibility lasts for a period of up to two years beginning on the date the use change commences.

### 4.0 PUBLICITY

|                        |     |
|------------------------|-----|
| 4.1 Advertisement:     | No  |
| Adjoining Owners:      | Yes |
| Site Notice Displayed: | No  |

### 5.0 POLICY

5.1 See Appendix 1 for full details of Central Government Guidance, Cambridge Local Plan 2006 policies, Supplementary Planning Documents and Material Considerations.

5.2 Relevant Development Plan policies

| PLAN                      | POLICY NUMBER   |
|---------------------------|-----------------|
| Cambridge Local Plan 2006 | 3/4<br>6/6 6/10 |

### 5.3 Relevant Central Government Guidance, Supplementary Planning Documents and Material Considerations

|                             |   |
|-----------------------------|---|
| Central Government Guidance | National Planning Policy Framework March 2012<br>Circular 11/95 |
|-----------------------------|---|

### 5.4 Status of Proposed Submission – Cambridge Local Plan

Planning applications should be determined in accordance with policies in the adopted Development Plan and advice set out in the NPPF. However, after consideration of adopted plans and the NPPF, policies in emerging plans can also be given some weight when determining applications. For Cambridge, therefore, the emerging revised Local Plan as published for consultation on 19 July 2013 can be taken into account, especially those policies where there are no or limited objections to it. However it is likely, in the vast majority of instances, that the adopted development plan and the NPPF will have considerably more weight than emerging policies in the revised Local Plan.

For the application considered in this report, there are no policies in the emerging Local Plan of relevance:

## 6.0 CONSULTATIONS

### **Cambridgeshire County Council (Highways Development Management)**

6.1 The Highway Authority has no comment to make on this application.

### **Head of Refuse and Environment**

6.2 The Environmental Health Officer has no objection to this application in principle, subject to the following comments and recommended condition and informative.

### 6.3 Environmental Quality

#### Kitchen odour extraction

As part of the application, a photo of the existing kitchen extraction vent has been attached. It appears to be a standard vent for a domestic cooker or tumble dryer vent. It is not suitable for a restaurant kitchen extract.

January's covering letter dated 14 November 2013 details that no frying/wok use occurs onsite as the restaurant specialises in dumplings which are cooked via boiling. This appears to be satisfactory and not requiring a full odour abatement system. However, I recommend the full menu be submitted and cooking techniques for all cooking on site prior to determination to ensure local amenity is protected, including the flat located above. If this cannot occur, I recommend the standard C60 odour condition and informative.

### 6.4 Hours of operation

The proposed hours of operation seem reasonable.

### 6.5 The above responses are a summary of the comments that have been received. Full details of the consultation responses can be inspected on the application file.

## 7.0 REPRESENTATIONS

### 7.1 The owners/occupiers of the following addresses have made representations:

- 8 Burleigh Place
- 10 Burleigh Place
- 11 Burleigh Place
- 10 Burleigh Street

### 7.2 The representations can be summarised as follows:

- The unpleasant odours from the kitchen prevent enjoyment of the terrace and if door and windows are left open the smell wafts inside;
- The drains smell;
- Customers make a lot of noise at night and keep us awake;
- There is no need for another Chinese restaurant in this area;

- Additional rubbish will result in more litter and attract homeless people;
- The value of neighbouring businesses will be reduced;
- Additional parking pressure will create problems;
- The restaurant will have a visual impact and negative effect on the area
- There are too many restaurants in the area already;
- The restaurant will have an adverse effect on surrounding residential property;
- The property only has an outdoor customer toilet;
- The property has insufficient extraction capabilities;
- The street furniture in use at these premises block access to No 10 Burleigh Street and obstructs buggies and wheelchairs;
- Burleigh Street needs more variety and a sandwich bar is more appropriate

7.3 The above representations are a summary of the comments that have been received. Full details of the representations can be inspected on the application file.

## **8.0 ASSESSMENT**

8.1 From the consultation responses and representations received and from my inspection of the site and the surroundings, I consider that the main issues are:

1. Principle of development
2. Context of site, design and external spaces
3. Residential amenity
4. Third party representations

### **Principle of Development**

8.2 The current application is required solely because the applicant seeks a permanent change of use. A temporary change of use to Class A3 has already taken place in accordance with the provisions of the Town and Country Planning General Permitted Development Order 1995 (As Amended) Class D.

8.3 In making my assessment, the principle at issue is whether the proposal will result in harm to the vitality of the City Centre; this is the test applied by Policy 6/6 of the Cambridge Local Plan (2006) to a change of use from Class A1 to Class A3 in a

primary shopping frontage. I have noted the concerns raised by the owners and/ or occupiers of neighbouring properties and give further consideration to third party representations below. I have also been mindful of the current flexibility that exists under the GPDO and the Government's intention to maintain and enhance economic viability within town and city centres by allowing for such a temporary change.

- 8.4 I have seen no evidence that would lead me to view the proposal as likely to be harmful to city centre vitality. In my opinion, the principle of the development is acceptable and in accordance with Policy 6/6 of the Cambridge Local Plan.

### **Context of site**

- 8.5 In terms of the local context, I have considered the compatibility with other uses in the vicinity of the application site. I have noted the concerns raised by objectors in relation to the potential for the viability of other businesses to be harmed by the proposed development. I deal separately with the concerns raised in relation to impact on residential amenity below.
- 8.6 Whilst Burleigh Street is designated as primary shopping frontage, its character reflects its peripheral location on the eastern edge of the city centre. Subject to being satisfied that there will be no adverse impact on residential amenity, I consider that the proposed use is broadly compatible with the mix of uses present. Bearing in mind the current use and planning status of the premises, I do not consider that the impact on other commercial premises, including hot and cold food outlets, provides grounds for refusal. The same concerns relate equally to activities associated with the current lawful use of the premises and whilst it is understood that competition can impact on the viability of adjacent businesses, it is not the function of the planning system to regulate competition within a primary shopping frontage.
- 8.7 In my opinion the proposal is compliant with Cambridge Local Plan (2006) policy 3/4, subject to my assessment of impact on residential amenity.

### **Residential Amenity**

Impact on amenity of neighbouring occupiers

- 8.8 My assessment of the likely impact on residential amenity has had regard to the provisions of Policy 6/10 of the Cambridge Local Plan, and takes account of objections from the occupiers of 8, 10 and 11 Burleigh Place. I have also taken account of the comments provided by the Environmental Health Officer and Highways Authority officer, neither of whom has raised an objection to the proposed use.
- 8.9 The issues raised by residents can be summarised as unpleasant smell, both from cooking and from drains, noise late at night, litter, and demand for parking spaces. The applicant has confirmed that no frying will take place on the premises and bearing in mind the current use and planning status of the premises, I do not consider that there will be additional impact on residential amenities that would provide grounds for refusal. The Environmental Health Officer has indicated that the fume extraction equipment can be controlled via a condition prior to the use becoming permanent, and if unpleasant odours or any other nuisance should arise, these matters would need to be brought to the attention of the Environmental Health Officer for investigation.
- 8.10 In my opinion the proposal adequately respects the residential amenity of its neighbours and the constraints of the site and I consider that it is compliant with and Cambridge Local Plan (2006) policies 3/4 and 6/10.

### **Third Party Representations**

- 8.11 I have considered third party representations from local residents and businesses above. The occupiers of the ground floor retail unit at 10 Burleigh Street have raised similar concerns to those raised by residents, and object to the loss of the sandwich bar. However, for the reasons stated above I do not consider that these are matters which provide grounds for refusal. I do not consider that other issues raised, relating to toilet facilities and obstruction of the highway, to be planning matters.

## **9.0 CONCLUSION**

- 9.1 The National Planning Policy Framework provides a presumption in favour of sustainable development, subject to



finding the proposal compliant with Cambridge Local Plan Policies. My assessment of the acceptability of the proposed change has been informed by local context and the mixed use character of the neighbourhood. I am satisfied that conditions can be attached to protect residential amenity.

## **10.0 RECOMMENDATION**

### **1. APPROVE subject to the following conditions:**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In accordance with the requirements of section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the approved plans as listed on this decision notice.

Reason: In the interests of good planning, for the avoidance of doubt and to facilitate any future application to the Local Planning Authority under Section 73 of the Town and Country Planning Act 1990.

3. Before the development/use hereby permitted is commenced, details of equipment for the purpose of extraction and/or filtration of fumes and or odours shall be submitted to and approved in writing by the local planning authority. The approved extraction/filtration scheme shall be installed before the use hereby permitted is commenced.

Reason: To protect the amenity of nearby properties. (Cambridge Local Plan 2006 policy 4/13)

4. The use hereby permitted shall be carried out between the following hours: 0800 hours to 2200 hours Sunday to Thursday, 0800 hours to 2300 hours on Friday and Saturday.

Reason: To protect the amenity of the adjoining properties. (Cambridge Local Plan 2006 policy 6/10)

**INFORMATIVE:** To satisfy standard condition C60 (Odour/Fume Filtration/Extraction), details should be provided in accordance with Annex B of the, 'Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems,' prepared by Netcen on behalf of Department for Environment, Food and Rural Affairs (DEFRA) dated January 2005 available at:

<http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/environment/quality/noise/research/kitchenexhaust/documents/kitchenreport.pdf>