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| APPLICATION NO. | P21/S4342/FUL |
| APPLICATION TYPE | FULL APPLICATION |
| REGISTERED | 19.10.2021 |
| PARISH | WALLINGFORD |
| WARD MEMBER(S) | Sue Roberts George Levy |
| APPLICANT | Mrs Mavis Somarakis |
| SITE | 76 High Street Wallingford Oxon, OX10 0BX |
| PROPOSAL | Removal of condition 5 (building to be used only for the purposes specified in the application) on planning application P75/W0446. (Internal alterations providing kitchen, dining areas & new toilet/bathroom areas. Change of use to restaurant.) |
| OFFICER | Nathaniel Bamsey |

1.0 **INTRODUCTION AND PROPOSAL**

1.1 This application is referred to planning committee at the request of Councillor Sue Roberts, the local member.

1.2 The application location plan is attached as **appendix 1**. The application site is no 76 High Street in the centre of the town of Wallingford. The building is currently vacant but was formerly in use as a restaurant on the ground floor level with residential accommodation above. Neighbouring buildings are to the east and west. Vehicular access is gained to a small parking area through a car park to the north. The building is in the Wallingford Conservation Area and within a primary shopping area designated by the development plan.

1.3 This application seeks to remove condition 5 of the permission P75/W0446. This application allowed the change of use of the former Beehive pub to a restaurant. Condition 5 reads as follows:

‘That notwithstanding the provisions of the Town and Country Planning Use Classes Order 1972 the building shall be used only for the purposes specified in the application and for no other purposes whatsoever.’

1.4 Reduced copies of the plans accompanying the application are **attached** at Appendix 2. Full copies of the plans and consultation responses are available for inspection on the Council’s website at www.southoxon.gov.uk.

2.0 **SUMMARY OF CONSULTATIONS & REPRESENTATIONS**

2.1 Full responses can be found on the Council’s website

2.2 **Wallingford Town Council**

‘It was proposed by Councillor Lester, seconded by Councillor Newcombe and RESOLVED THAT Wallingford Town Council supports this application’

3.0 **RELEVANT PLANNING HISTORY**

3.1 [P21/S3469/FUL](#) - Approved (01/12/2021)

Demolition of poor quality outbuildings and canopy roof, and external alterations.

[P21/S3468/N5B](#) - Refused (27/09/2021)

Change of use from class E to residential under the new permitted development class MA. the proposed change of use does not involve extensive alterations & building work, see design statement for further details.

[P75/W0446](#) - Approved (20/01/1976)

INTERNAL ALTERATIONS PROVIDING KITCHEN, DINING AREAS AND NEW TOILET/BATHROOM AREAS. CHANGE OF USE TO RESTAURANT

4.0 **ENVIRONMENTAL IMPACT ASSESSMENT**

4.1 The proposed development is not Schedule 1 or 2 development as defined by the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, so an Environmental Impact Assessment is not required.

5.0 **POLICY & GUIDANCE**

5.1 **Development Plan Policies**

South Oxfordshire Local Plan 2035 (SOLP) Policies:

DES1 - Delivering High Quality Development

DES2 - Enhancing Local Character

DES6 - Residential Amenity

ENV6 - Historic Environment

ENV8 - Conservation Areas

TC5 - Primary Shopping Areas

TRANS5 - Consideration of Development Proposals

5.2 **Wallingford Neighbourhood Plan**

HD1 - Design

HA1 - The Historic Environment

HA2 - Effects of Development on Historic and Heritage Assets

TC1 - Primary Shopping Area

TC2 - New Uses for Buildings within the Primary Shopping Area

MC4 - Safe Travel

MC5 - Vehicle Parking

5.3 **Supplementary Planning Guidance/Documents**

South Oxfordshire Design Guide 2016 (SODG 2016)

5.4 **National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG)**

5.5 **Other Relevant Legislation**

Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)
(P(LBCA)A)

In determining this application, the council has regard to its obligation to preserve the listed building or its setting or any features of special architectural and historic interest and/or to preserve or enhance the character and appearance of the conservation area

as required by the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).

Human Rights Act 1998

The provisions of the Human Rights Act 1998 have been taken into account in the processing of the application and the preparation of this report.

Equality Act 2010

In determining this planning application the Council has regard to its equalities obligations including its obligations under Section 149 of the Equality Act 2010.

6.0 PLANNING CONSIDERATIONS

6.1 The relevant planning considerations are the following:

- **Principle/impact on town centre**
- **Design and character**
- **Residential amenity**
- **Access and parking**
- **Other material planning considerations**

6.2 Principle/impact on town centre

When assessing an application made under S.73 of the Town and Country Planning Act 1990 (as amended), consideration can only be given to the impact of the proposed variation. Annex A of the PPG chapter 'Flexible options for planning permissions' states that, in reference to S.73 applications:

'Local planning authorities should, in making their decisions, focus their attention on national and development plan policies, and other material considerations which may have changed significantly since the original grant of permission.'

The decision notice on file appears to be incomplete as no reason is given for the restrictive condition being imposed so it is impossible to assess whether the original reason for imposing the condition still holds.

Since the permission was granted for the use of the building as a restaurant there have been significant changes to national policy through the introduction of the NPPF, and changes to the Use Classes Order (UCO) and the General Permitted Development Order (GPDO). The changes to the UCO and GPDO have greatly liberalised 'town centre' uses such that express planning permission is no longer required for most changes of use.

Class E is a new use class that came into force in 2020. This largely replaced the previous use classes A1/2/3, B1, D1(a-b) and 'indoor sport' from D2(e). Therefore, if it were not for this restrictive condition the building could be used for a wide range of purposes without requiring planning permission. These uses include shops, cafes, restaurants, offices and gyms. Whilst there is great variation in the uses, they are all capable of contributing to the vitality and vibrancy of town centres and meeting local needs, so removing the condition is not considered to harm the primary shopping area.

Moreover, the NPPF states that local planning authorities should allow 'town centres to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries' with 'a suitable mix of uses (including housing)'. Requiring the building to be used solely as a restaurant would be contrary to this aim as it would prevent a rapid

response to changes in demand and prevent the wide range of uses allowed by Class E which contribute to the suitable mixture of uses advocated by the NPPF.

Policies TC5 from SOLP and TC1 of the Neighbourhood Plan both seek to protect these Class E uses in the primary shopping areas. The removal of this condition would not lead to the loss of a Class E use so the variation would accord with these policies.

To sum up, considering the liberalisation of the UCO since the permission was granted and the fact the Class E uses that would be allowed would still contribute to the vitality and viability of the centre and meet the needs of local residents, officers hold that it would not be reasonable to insist that the condition remain. Therefore, the removal of the condition is acceptable in principle, subject to compliance with the other policies of the development plan.

6.3 Design, character and heritage impacts

Policy

Policy DES1 requires new development to be of high-quality design. The policy gives a wide range of measures against which development will be assessed, including efficient use of land, net gains and no net loss of biodiversity, sustainability and respect for local character and context. This respect for local character is echoed by policy DES2 which requires new development to be designed to reflect the positive features that make up the character of the local area and it should both physically and visually enhance and complement the surroundings.

This requirement for high quality design is echoed by the Neighbourhood Plan policy HD1 which states that new development should be of a high quality and sustainable design that conserves and enhances local character, especially in relation to distinctive building materials, and it should respond positively to local surroundings. Development is also required to have regard to the SODG.

Policy ENV8 requires development within a conservation area (CA) or its setting to preserve or enhance the CA's special interest, character, setting and appearance. Development is expected to: contribute to the CA's special interest and its relationship within its setting; take into account important views within, into or out of the CA and show that these would be retained and unharmed; respect the local character and distinctiveness of the CA; and be sympathetic to the original curtilage of buildings and pattern of development and important open spaces.

The Wallingford Neighbourhood Plan policy HA1 states that development proposals should protect, conserve or enhance the town's historic environment. Policy HA2 states that development that would lead to harm to or loss of a designated or non-designated heritage asset would require clear and convincing justification. It goes on to state that proposals for new development should be sensitively designed and should not cause harm to the historic environment. This should include conserving or enhancing heritage assets and the contribution of their setting, and the development making a positive contribution to local character and distinctiveness.

Discussion

There is no operational development proposed so the assessment of the impact on character and heritage assets is limited to the impact of the uses that would be allowed should be the variation be approved.

The uses allowed within Class E have broadly similar characteristics in that people come and go and activity takes place within the building. This ensures that a level of activity will be maintained which contributes to local character and the heritage as a market town.

None of the uses that would be allowed are likely to result in harm to local character. The greatest potential harm would come from storage of materials etc. to support light industrial uses but this storage would likely take place to the rear of the building, well screened by boundary treatments and surrounding buildings, preventing harm. Any external alterations to support different uses would require planning permission so their impacts can be suitably controlled.

As the application does not propose any operational development and the uses that would be allowed should the restrictive condition be removed will not be visually harmful and the character and appearance of the conservation area will be preserved, officers consider that the application complies with the requirements of the P(LBCA)A and policies DES1, 2, ENV8, of SOLP and HD1, HA1 & 2 of the WNP.

6.4 Residential amenity

Policy

Policy DES6 requires development proposals to demonstrate that they will not significantly impact the amenity of neighbouring uses in relation to loss of privacy, daylight or sunlight, dominance or visual intrusion, noise or vibration, smell, dust, heat, odour, gases or other emissions, pollution, contamination or the use of / or storage of hazardous substances and external lighting.

Discussion

The proposed variation would mean the building could be used for any of the uses within Class E without planning permission. The existing restaurant use is likely to generate similar impacts in terms of neighbour amenity as the other uses that would be allowed. Officers consider that removing condition 5 would not harm neighbours through undue disturbance, noise, smells nor other emissions and the application accords with policy DES6.

6.5 Access and parking

Policy

Policy TRANS5 requires develop proposals to provide for a safe and convenient access for all users to the highway network, provide cycle parking where relevant, be served by an adequate road network which can accommodate traffic without creating traffic hazards or damage to the environment, be designed to enable charging of plug-in and other lower emission vehicles, provide for loading, unloading, circulation and turning space and provide for the parking of vehicles in accordance with Oxfordshire County Council parking standards, unless specific evidence is provided to justify otherwise. Many of these requirements are echoed by policy MC4 of the Neighbourhood Plan which seeks to achieve safe travel in the plan area.

The Neighbourhood Plan policy MC5 states that development proposals should meet Oxfordshire County Council's minimum parking standards. Where feasible and appropriate, proposals for residential development should also meet parking standards given by the table at paragraph 8.3.13 of the plan. Within the defined town centre,

parking provision should take account of, and respond positively to, its historic environment. A reduced level of parking will be supported where it directly relates to the site concerned, the proposed use and to evidence of the way in which the proposed car parking provision can be satisfactorily accommodated in the local highway network.

Discussion

The building has no customer car parking, and the proposed variation would not change this. The building would continue to be accessed on foot with visitors using local car parks, public transport or walking and cycling. None of the uses that would be permitted by allowing unrestricted Class E use would lead to a significant intensification of the use of the building such that there would be a material impact on the local highway network nor a harm to highway safety. Officers therefore consider that the application complies with policies TRANS5 of SOLP and MC4 & 5 of the WNP.

6.6 Other material planning considerations

Conditions

S.73 of the Act allows local planning authorities to grant permission unconditionally or subject to different conditions to those originally imposed. The original permission was subject to the following conditions:

1. The development must be begun not later than the expiration of **FIVE** years beginning with the date of this permission, and if this condition is not complied with, this permission shall lapse.
2. That the development shall be carried out strictly in accordance with the description of the development, plans and specifications contained in the application, subject to the amendments referred to above, and subject to the conditions hereby imposed.
3. That no advertisement shall be displayed on the exterior of the premises without the prior express consent of the Local Planning Authority.
4. That no other alterations shall be made to the exterior of the building without the prior express permission of the Local Planning Authority.
5. That notwithstanding the provisions of the Town & Country Planning Use Classes Order 1972 the building shall be used only for the purposes specified in the application and for no other purposes whatsoever.

The time limit condition cannot be re-imposed as it has long since passed and the development was implemented.

The second condition is a compliance condition that defines the permission and ensures that no development is permitted beyond the details on the submitted plans and description. Officers recommend that a new approved plans condition is imposed to similarly define the permission and ensure that it's clear that no other development is permitted.

The display of advertisements is controlled by the Advertisements Regulations and as such it is not reasonable nor necessary to re-impose this condition.

Planning permission is required for alterations to the building as it is in a conservation area which excludes it from permitted development rights given by Class A of Part 7 of the GPDO for alterations. Under this Class extensions are only allowed in conservation areas if they are more than 2m from the boundary. The narrowness of the plot means this prevents all practical extensions. Therefore, officers consider this condition is

unreasonable and unnecessary to re-impose as planning permission would be required for all alterations in any case, and for any practical extension.

As outlined above, officers consider the removal of condition 5 will not harm visual amenity, heritage assets, neighbours nor highway safety and in light of the changes to national policy in the form of the UCO, GPDO and NPPF it would not be reasonable to insist on the retention of the condition. Officers are consequently of the opinion that the removal of condition 5 would accord with the policies of the development plan.

6.7 Community Infrastructure Levy (CIL)

The proposed variation has no impact in terms of CIL liability.

6.8 Pre-commencement conditions

The development to which the original permission relates has already been implemented so it is not possible to impose pre-commencement conditions.

7.0 CONCLUSION

7.1 The removal of condition 5 of application P75/W0446 will not harm the vitality and viability of the primary shopping area, visual amenity, heritage assets, neighbours nor highway safety and in light of changes to national policy since the grant of permission it would not be reasonable to require the retention of the condition. Officers are consequently of the opinion that the removal of condition 5 would accord with the requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) policies of the development plan and the application should be approved, subject to the recommended condition.

8.0 RECOMMENDATION

8.1 Planning Permission

1 : Approved plans

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