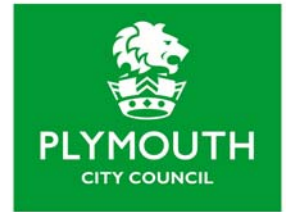


PLANNING APPLICATION REPORT



ITEM: 02

Application Number: 10/01802/FUL

Applicant: Mr Stephen Darke

Description of Application: Conversion and change of use of store rooms to hot food takeaway (Use Class A5) and provision of three parking spaces on existing grass at front of building

Type of Application: Full Application

Site Address: 8 ST MAURICE ROAD PLYMOUTH

Ward: Plympton Erle

Valid Date of Application: 16/11/2010

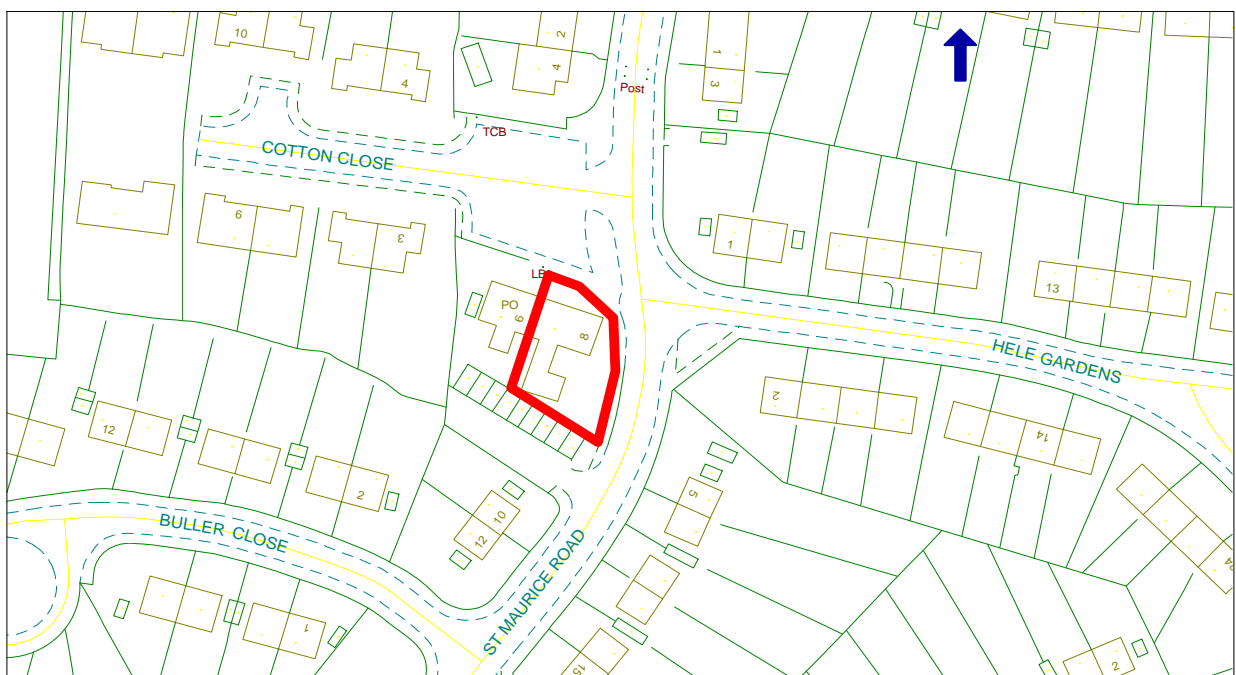
8/13 Week Date: 11/01/2011

Decision Category: Member Referral

Case Officer : Jon Fox

Recommendation: Grant Conditionally

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This application is being reported to Planning Committee following a member referral by Councillor Terri Beer on the grounds of highways, parking, litter and extraction fan noise and smell. The application was originally reported to the meeting of 28 April when a decision was deferred pending a site visit, which will have taken place in the morning of 2 June.

Site Description

The site comprises a small, single-storey attached outbuilding located to the rear of the main premises at 8 St. Maurice Road, which consists of a shop on the ground floor and a residential flat above.

Proposal Description

Conversion and change of use of store rooms to hot food takeaway (A5) and provision of three parking spaces on existing grass at front of building. Plans submitted following the original submission show that the premises would be provided with a crooked extract flue located at the western end of the building, which projects approximately one metre above the building eaves.

Relevant Planning History

06/01603/FUL - Change of use of ground floor from class A1 (shop) to class A5 (hot food takeaway). This application relates to the adjoining premises, at 6 St. Maurice Road, and was refused for the following reason:

(1) In the opinion of the Local Planning Authority, the proposed hot food takeaway would have an unacceptable impact on residential amenity due to odours associated with the hot food takeaway being introduced into the local environment, contrary to policies ASR19, ASR20, ASR21 and AEV49 of the adopted City of Plymouth Local Plan First Alteration 1996.

Consultation Responses

Highway Authority

The proposal would provide three off-street car parking spaces within the private property to support the use, and use an existing vehicular access point and vehicle crossing. The proposed hot food takeaway would become part of the group of the two adjacent local shops, for which on-street car parking is available in the fronting Cotton Close. St Maurice Road is a residential feeder road and a bus route that has been traffic calmed and forms a part of the residential 20 mph zone, where vehicle speeds are considered to be generally low. The Highway Authority would not wish to raise any objections to the proposal and recommend that a condition relating to car parking provision be included in any grant of planning permission.

Public Protection Service (PPS)

Raises no objections subject to conditions relating to details of ventilation extract system, noise from plant and litter bin provision.

In response to the ventilation extract system details supplied by the applicant, PPS recommends the following condition wording:

“The extract ventilation system and odour control equipment indicated by the applicant shall be installed before the use hereby permitted commences and thereafter be operated and maintained in accordance with the manufacturer’s instructions.”

In the analysis section below, a revised wording is recommended.

Representations

The representations fall into two categories; those received before the additional plans of the extract were submitted, and those that were received afterwards. 13 letters were received initially, which raise objections on the following grounds:

1. Detrimental to highway safety – dangerous stretch of road – the parking spaces are on a roundabout.
2. The use of the proposed parking spaces will cause a hazard.
3. Obstruction to emergency vehicles.
4. The removal of the wall next to the footpath will be detrimental to pedestrian safety.
5. Parking problems – this use is in addition to parking for the shops and Longcause School, which has permission for a new sports hall.
6. Noise, odour and fume problems.
7. The use will encourage anti-social behaviour and litter.
8. Litter.
9. If opening times are the same as the local pub this will create problems.
10. An A5 use is not needed here.
11. The waste from the premises would be a fire risk.
12. Vermin problems.
13. Harmful to, and out of character with, the area.
14. A precedent has been set by refusing permission at the adjoining shop.
15. The proposals will detract from businesses in the Ridgeway.
16. Fish and chips are not a healthy option and this does not promote healthy eating.

A further eight letters were received following the publicity given to the extract details submitted by the applicant’s agent. These raise objections on the following grounds:

1. Odour nuisance.
2. Parking problems.
3. Noise and disturbance and litter.
4. Anti-social behaviour.
5. Detrimental to highway safety. The use of the parking spaces will be unsafe. Vehicles speed on the road despite traffic calming measures.
6. Buses and parking will be much worse when Longcause School builds their new sports hall.
7. The proposed extraction process will not prevent local residents suffering from the smell of frying. These systems never totally eliminate cooking odours. Filters will not eradicate the smell of fried food.

8. The extract system will be noisy. There will be noise that will have a detrimental affect on the use of neighbour's garden.
9. Detrimental to pedestrian safety.
10. The existing off-street car parking spaces are not adequate to cater for the proposed use.
11. This is a quiet residential area and there are existing outlets within walking distance of this area.
12. The proposals contradict the healthy living advocated as part of the proposals for the sports hall at the nearby school.
13. Loss of privacy.
14. Litter and vermin associated with litter.
15. Fast food is unhealthy.

Members were advised in April of a 209 signatory petition in support of the proposals and, since then, a further supporting petition of 21 signatures has been submitted. Six more letters were also received, which raise objections to the proposals on the grounds of:

1. The use would be harmful to other takeaway uses and shopping centres.
2. Causing a hazard on a busy road by a mini-roundabout and bus stop.
3. The three car parking spaces would block garages and their use puts traffic into the path of sometimes speeding traffic. The use of the spaces would be hazardous to young children and older pedestrians.
4. Parking is inadequate and will result in parking on the footways and surrounding streets.
5. Odours, litter and vermin. Odours would be in serious conflict with the healthy style of living. Litter gets dumped in neighbours' gardens.
6. Noise, increased traffic and antisocial behaviour. The premises will be operating from approximately 6.30am.
7. The extract flue should be above the roof-line of the main building.
8. The latent heat from the exhaust fumes would be detrimental to the surrounding area and trees. The hot fumes from the extract would damage the garage roofs. Would the hot extract flue be a fire risk?
9. The refusal of a takeaway at 6 St. Maurice Road does set a precedent for refusing this proposal because the two proposed extraction systems would be only 10 metres apart.
10. Loss of privacy due to customers looking into neighbouring garden.
11. The opening times should be 12-2 and 6-9, in order to allow children to be undisturbed; hang out washing and park cars before the premises opens. 10pm is later than the fish and chip shop at Chaddlewood shopping centre, which are only permitted to operate until 9pm.
12. The public were not notified of the proposed opening hours. The public haven't had sufficient time to comment on opening hours. The opening hours would be harmful to this quiet community.
13. The area is already overwhelmed with takeaways.
14. The proposals are not considered complimentary to residential uses and this location.
15. If the view, that fish and chips is unhealthy, is not a planning matter, then anything that leads to a healthy lifestyle shouldn't be considered either, but this was the case in respect of the application at Longcause School.

16. Have the users of the nine garages, adjacent, been notified of the application?
The proximity of the proposed extract flue will lead to damage to the garages and their contents.
17. The car park takes up garden space for the flat above the shop and is therefore 'garden grabbing', which is harmful to the appearance of the area.
The flat would be left with inadequate garden space.

Analysis

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

The application turns on policies CS22, CS28 and CS34 of the Core Strategy of Plymouth's Local Development Framework 2007 and the main issues are the impact on highway safety; residential amenity, in terms of noise, disturbance, odours, litter and the character of the area.

With regard to highway safety, the proposal is relatively small scale and the level of parking proposed is considered adequate in the circumstances. Furthermore, the Highway Authority does not object to the proposals. The applicant has responded to concerns about parking and highway safety by stating that the premises would benefit from a potential 16 spaces; that the lunchtime opening hours would not generate significant parking demand for the shop, hairdressers and the proposed takeaway; that during the evening the shop and hairdressers will be closed and there will be a lot more space available; the premises would benefit from more parking spaces than many takeaways in the city.

With regard to residential amenity, the applicant has stated that the opening times would be 11.00 to 1400 hours and 17.00 to 22.00 hours on Mondays to Saturdays. On this basis, it is considered that the use would cease at a reasonable hour and would not lead to late night noise and disturbance from customers. The perceived potential otherwise for anti-social behaviour is not a planning matter and it would not be sustainable to refuse on these grounds. The use is not considered to result in an unreasonable loss of privacy for neighbours.

With regard to litter, it is considered that the provision of a litter bin in the grassed area next to the proposed parking spaces would adequately cater for discarded wrapping.

With regard to odour, it is considered that the submitted extraction details are sufficient to deal with odours emanating from the premises and the Public Protection Service (PPS) has recommended appropriate conditions to secure these facilities. From a visual point of view, the extract flue is a little too prominent and the applicant's agents have agreed to use a small stub flue instead, which they state can

be made to the required specification due to there being no gas extraction requirements. They confirm that changing the size of the discharge cowl will have no detriment to the effectiveness of the system in any way.

With regard to the character of the area, the proposals are relatively small and would not introduce a commercial use of a scale that would appear out of character in a residential area. In fact, appropriately located uses of this kind are considered complimentary to residential uses and this location, close to existing shops, would be in this category.

Waste (other than litter) from the premises and vermin would not be planning matters and would, if the need arose, be matters for the PPS. The issue of the hot fumes being damaging and the flue possibly being a fire risk are also not planning matters.

With regard to the presence of similar uses elsewhere and the perceived detrimental impact on the Ridgeway shopping centre, it is considered that the scale of the proposed hot food takeaway would not detract from the viability of other shopping centres and in this respect would not have any more impact than the existing shop and hairdressers nearby. The number of hot food takeaways in other areas of Plympton is also not considered a sustainable reason for refusing this application.

The view that fish and chips are not a healthy eating option is considered to be a matter that is outside the remit of land use planning considerations.

With regard to the application at No.6 St. Maurice Road, it is considered that the decision to refuse that application does not set a precedent to refuse the current proposals because that decision was based on the particular location of the proposed hot food takeaway in relation to residential neighbours.

With regard to notifying the users of the nearby garages, the application was publicised by neighbour letters and site notices, the latter being sufficient for these purposes.

With regard to the loss of garden space for the flat above the shop, the grassed area to the side of the property is not considered to be an amenable garden area, being situated so close to the road, and its use as parking for the proposed takeaway is not considered demonstrably harmful given that the affected property is a flat instead of a house.

Section 106 Obligations

None

Equalities & Diversities issues

None

Conclusions

The proposals are small scale and the opening times are reasonable; parking is adequate and extraction equipment is of a sufficient standard. On this basis the proposals are considered to be in accordance with policies CS22, CS28 and CS34 of

the Core Strategy and, subject to the submission of revised flue details, it is recommended that permission be granted subject to conditions.

Recommendation

In respect of the application dated **16/11/2010** and the submitted drawings 20103/01, 20103/02, 20103/03, AMQ48 (Sheet 1 of 2), AMQ48 (Sheet 2 of 2), EX-001 (Sheet 8 of 8), odour neutraliser, electrostatic precipitator and noise rating curves, it is recommended to: **Grant Conditionally**

Conditions

DEVELOPMENT TO COMMENCE WITHIN 3 YEARS

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

Reason:

To comply with Section 51 of the Planning & Compulsory Purchase Act 2004.

APPROVED PLANS AND DETAILS

(2) The development hereby permitted shall be carried out in accordance with the following approved plans and details: 20103/01, 20103/02, 20103/03, AMQ48 (Sheet 1 of 2), AMQ48 (Sheet 2 of 2), EX-001 (Sheet 8 of 8) and details of the odour neutraliser, electrostatic precipitator and noise rating curves, subject to conditions (5) and (7).

Reason:

For the avoidance of doubt and in the interests of good planning, in accordance with policy CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

CAR PARKING PROVISION

(3) The building shall not be occupied until the car parking area shown on the approved plans has been drained and surfaced in accordance with the details submitted to and approved by the Local Planning Authority, and that area shall not thereafter be used for any purpose other than the parking of vehicles.

Reason:

To enable vehicles used by occupiers or visitors to be parked off the public highway so as to avoid damage to amenity and interference with the free flow of traffic on the highway, in accordance with policies CS28 and CS34 of the Core Strategy of Plymouth's Local Development Framework April 2007.

OPENING HOURS

(4) The hot food takeaway hereby permitted shall not be open to customers outside the following times: 1100 to 1400 hours and 1700 to 2200 hours Mondays to Saturdays. It shall not be open to customers at any time on Sundays.

Reason:

To protect the residential and general amenity of the area from any harmfully polluting effects, including noise and disturbance likely to be caused by persons arriving at and leaving the premises, and avoid conflict with Policies CS22 and CS34 of the Core Strategy of Plymouth's Local Development Framework 2007.

EXTRACT EQUIPMENT

(5) Notwithstanding the submitted plans, details of a revised 'stub' type extract flue shall be submitted to and approved in writing by the Local Planning Authority and the approved extract ventilation system and odour control equipment shall be installed before the use hereby permitted commences and thereafter be operated and maintained in accordance with the manufacturer's instructions.

Reason:

To ensure that the use hereby permitted does not cause any adverse disturbance to the amenities of the residential properties near the premises, and any other properties, and the surrounding area, in accordance with policies CS22 and CS34 of the Core Strategy of Plymouth's Local Development Framework April 2007.

LITTER BIN

(6) A litter bin shall be provided on the site in accordance with details to be submitted to and approved in writing by the Local Planning Authority before the use hereby permitted commences and thereafter retained at all times.

Reason:

For use by customers of the permitted hot food takeaway in order to reduce the spread of litter, in accordance with policies CS22 and CS34 of the Core Strategy of Plymouth's Local Development Framework April 2007.

NOISE

(7) The noise generated by the extract ducting/ventilation/air conditioning equipment (LAeqT) shall not exceed the background noise level (LA90) by more than 5 decibels, including the character/tonalities of the noise, at any time, as measured at the façade of the nearest residential property.

Reason:

To control noise levels generated by the use hereby permitted, in accordance with policies CS22 and CS34 of the Core Strategy of Plymouth's Local Development Framework 2007.

Statement of Reasons for Approval and Relevant Policies

Having regard to the main planning considerations, which in this case are considered to be: the impact on highway safety; and residential amenity, in terms of noise, disturbance, odours, litter and the character of the area; the proposal is not considered to be demonstrably harmful. In the absence of any other overriding considerations, and with the imposition of the specified conditions, the proposed development is acceptable and complies with (a) policies of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007 and supporting Development Plan Documents and Supplementary Planning Documents (the status of

these documents is set out within the City of Plymouth Local Development Scheme) and the Regional Spatial Strategy (until this is statutorily removed from the legislation) and (b) relevant Government Policy Statements and Government Circulars, as follows:

PPG24 - Planning and Noise

PPS23 - Planning & Pollution Control

CS28 - Local Transport Consideration

CS34 - Planning Application Consideration

CS22 - Pollution

SPDI - Development Guidelines