

PLANNING APPLICATION OFFICERS REPORT



Application Number	18/01598/FUL	Item	04
Date Valid	27.09.2018	Ward	DRAKE
Site Address	43 North Hill Plymouth PL4 8EZ		
Proposal	Change of use from Class A1 to Class A3 (restaurant/cafe)		
Applicant	Mr & Mrs Hassan Laura & Mousa		
Application Type	Full Application		
Target Date	22.11.2018	Committee Date	18.01.2019
Extended Target Date	N/A		
Decision Category	Councillor referral		
Case Officer	Mr Chris Cummings		
Recommendation	Grant Conditionally		



This planning application was called into Planning Committee by Councillor Chaz Singh.

1. Description of Site

43 North Hill is a mid-terrace property located in the Drake ward of Plymouth. It is located on the busy North Hill classified road and is in close proximity to the University of Plymouth campus. The proposal relates to the ground floor of the property that is currently in Class A1 use.

2. Proposal Description

Change of use from Class A1 (shop) to Class A3 (restaurant/cafe)

The original proposal was for a change of use to a hot food takeaway (Class A5), however this was found not to comply with Policy DEV6 of the emerging Joint Local Plan as it was sited within 400 metres of a site of secondary education. The proposal was then modified to apply for a change of use to a café/restaurant (Use Class C3).

3. Pre-application Enquiry

None

4. Relevant Planning History

80/01409/FUL - Retain additions to existing building and continue use as offices - Granted conditionally

84/00043/FUL - Installation of new shop front - Granted conditionally

90/02807/FUL - Alterations and extension to offices - Granted conditionally

91/01718/FUL - Extensions to offices - Granted conditionally

95/01445/FUL - Change of use of office to café/takeaway including installation of flue on the rear elevation - Refused

10/01902/FUL - Change of use from offices (Use Class B1) to hairdressing salon (Use Class A1)

5. Consultation Responses

Local Highway Authority - No objections to proposal

Public Protection Service -No objection to proposal subject to conditions on noise, hours of opening, deliveries and plant operation.

Public Health - No comments submitted

Police Architectural Liaison - No objections to proposal

6. Representations

20 Letters of Representation have been received for the original proposal as an A5 unit, 15 supporting and 5 against. The material considerations outlined in the representations are summarised below.

Following re-advertising of the revised proposal as an A3 unit on 6 November 2018 no further letters of representation were received. The application was re-advertised a third time following submission of a noise impact assessment and extraction unit details and 13 additional letters of representation were received (giving a total of 33 letters submitted) with 11 supporting and 2 objecting to the proposal.

Support:

- Increase variety of food available in nearby area
- Increase trade for other businesses
- Useful facility for students
- Supports regeneration of the area
- Already other food units in surrounding area

Oppose:

- Increased levels of late night noise
- Increased litter
- Smell and noise from cooking and any extractor units
- Large number of existing fast food and takeaway outlets in surrounding area
- Courtyard to rear is under ownership of business above café
- Potential anti-social behaviour from customers
- Impact on approved student accommodation to the south
- Lack of toilet provision for customers

There is not proposed to be any development on the rear courtyard and any issues relating to the ownership are a civil matter between the applicant and the land owner.

All other considerations raised will be dealt with in the analysis section of the report below.

7. Relevant Policy Framework

Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan comprises of the Local Development Framework Core Strategy (Adopted April 2007).

The Plymouth and South West Devon Joint Local Plan (the JLP) will replace the Core Strategy and other Plymouth Development Plan Documents as the statutory development plan for Plymouth once it is formally adopted.

Annex I of the National Planning Policy Framework (the Framework) provides guidance on determining the weight in relation to existing and emerging development plan policies.

- For Plymouth's current development plan documents, due weight should be given to relevant policies according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
- For the JLP which is an emerging development plan, the weight is to be determined by the stage of its preparation, the extent to which there are unresolved objections, and its degree of consistency with the Framework.

The JLP is at an advanced stage of preparation having now been submitted to the Planning Inspectorate for Examination, pursuant to Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations. It is considered to be a sound plan, consistent with the policies of the Framework, and is based on up to date evidence. It is therefore considered that the JLP's policies have the potential to carry significant weight within the planning decision, particularly if there are no substantive unresolved objections. The precise weight will need to be determined on a case by case basis, having regard to all of the material considerations as well as the nature and extent of any unresolved objections on the relevant plan policies.

Other material considerations include the policies of the Framework itself, guidance in National Planning Practice Guidance (NPPG). Additionally, the following planning documents are also material considerations in the determination of the application:

- Development Guidelines Supplementary Planning Document
- City Centre and University Area Action Plan

8. Analysis

1. This application has been considered in the context of the development plan, the submitted Joint Local Plan, the Framework and other material policy documents as set out in Section 7.
2. The site is an existing A1 unit, which is currently operating as a coffee shop with cold food available (in line with the restrictions of the A1 Use Class).
3. The original proposal looked for a change of use to hot food takeaway (Use Class A5), however it was found that the site was contrary to Policy DEV6 of the emerging Joint Local Plan as it was positioned within 400 metres of a site of secondary education. The applicant then revised the proposal to apply for a change of use of the site to café/restaurant (Use Class A3).

Principle of Development

4. Policy CCI6 of the City Centre and University Area Action Plan states that proposals in the North Hill Area should 'enhance the cultural district on North Hill'. The change of use to an A3 unit, although not directly providing a cultural use is considered to support the aims of Policy CCI6 in attracting footfall to this area of North Hill and supporting other cultural uses within the surrounding area.

5. There are some permitted development rights allowed for changes of use from shops to cafes, with Class C of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). This would be carried out through the prior approval process however, due to the location of nearby properties and need for extraction unit the outcome of any application through this route would be that a prior approval of the Council is required and a full application (such as the one submitted) would be needed to fully assess the noise and odour impacts.

6. Under Class D of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) the site is able to have a temporary change of use to Use Class A3 for a 2 year period without the need for any formal planning application to be submitted for the change of use. This route does not include the installation of any extraction units, which would require separate consent. This part of the GPDO does provide limited weight on the principle of a change of use from Use Class A1 to Class A3, subject to full assessment of impacts from any extraction systems that would require separate consents.

7. The surrounding area has a mix of uses including shops (Use Class A1), cafes and restaurants (Use Class A3), offices (Use Classes A2 and B1), bars (Use Class A4) and hot food takeaways (Use Class A5). Due to this range of existing uses in the immediate area the proposed change of use is not considered to be out of character with the surrounding area and will retain employment within the site, in accordance with Policy CS05 of the Core Strategy.

Visual Impacts

8. The proposal will not see any extensions to the existing premises, with the only external alteration being the installation of an extraction unit on the rear of the site.

9. The extraction unit will be positioned on a flat roof at the rear of the site. It will consist of a 6 metre high extraction funnel, connected to the kitchen area below.

10. This area is not readily visible from the public highway and is surrounded by neighbouring buildings, with no windows immediately adjacent to the proposed extraction unit.

11. On balance it is considered that there is not a significant enough level of visual harm generated from the installation of the extraction unit to warrant a refusal. The proposal is therefore found to comply with Policies CS02 and CS34 of the Core Strategy and Policy DEV20 of the emerging Joint Local Plan.

Amenity Impacts

12. The proposal has a number of existing business uses to the side of the site, and dwellings on Skardon Place to the rear.

13. The site is already in use as a coffee shop with customers visiting the shop and the change of use is not considered to create significant alterations to the existing amenity situation with regards to customers. However the use as a café has the potential to generate other impacts from odour or noise on the surrounding area.

14. The Council's Public Protection Service (PPS) originally objected to the proposal and the applicant has worked with them to ensure a suitable extraction unit is installed and that any odour or noise levels from the site are acceptable. The PPS final response raised no objections to the proposal subject to conditions.

15. PPS advised that the submitted noise impact assessment demonstrated that sensitive receptors will experience no adverse impact from noise from the extraction unit plants, however this made assumptions on the design and installation of the noise and emissions from the extraction unit. Further information was then submitted on these details to allow Public Protection to fully assess the impacts of the proposal detailing the noise attenuation and odour emission controls that will be installed. PPS advised that they considered the new information would adequately control noise and odour from the site.

16. Conditions were recommended from PPS that the noise of the ventilation system do not exceed background noise levels of more than 5db when measured from the nearest residential property and that all associated plant is turned off by 23.00 hours Monday to Saturday and 22.30hrs on Sundays and Bank Holidays.

17. A condition was also recommended that the carbon filtration system be installed prior to first use and be operated and maintained (including cleaning) in accordance with manufacturer's instructions and any variation would need written approval from the Council.

18. Proposed opening hours were submitted as 08.00 to 23.00 hours. The site is on a busy road and it is considered that these hours of operation are appropriate for Monday to Saturday, however Sundays and Bank Holiday use should be restricted further. PPS recommended hours of operation of 08.00 to 23.00 hours Monday to Saturday and 10.00 to 22.30 hours on Sundays and Bank Holidays and this is considered an appropriate level of restriction to further limit amenity harm to the surrounding area.

19. It is also considered appropriate to add a condition restricting deliveries and refuse collection to Mondays to Saturdays 8.00 to 18.00 hours only to protect residential amenity.

20. It is considered that with the additional submitted information and the use of conditions the proposal will, on balance, not generate any significant amenity impacts and complies with Policies CS22 and CS34 of the Core Strategy and Policies DEV1 and DEV2 of the emerging Joint Local Plan.

Highway Considerations

21. The Local Highway Authority were consulted on the proposal and raise no objections. The site is on a busy pedestrian route in close proximity to the university, on a primary route to and from Mutley and the City Centre and near to a number of existing offices. There is a public car park within close walking distance of the site. It is considered that due to the location the majority of visitors to the site will either be by foot or will be able to use existing parking facilities and there are no significant transport considerations raised by the proposal in accordance with Policy CS28 of the Core Strategy and Policy DEV31 of the emerging Joint Local Plan.

Other Considerations

22. No toilet has been provided for customers of the site. It was advised by the Public Protection Service that this is a requirement of catering establishments where occupants are invited to sit and drink on the premises. Although this is not a planning requirement, it is considered appropriate to add an informative to any approval decision to advise the applicant of this requirement.

23. It was noted by letters of representation the approval of student accommodation at 41 North Hill could be impacted by the proposal (approval 17/02091/FUL). No work has commenced on site for this proposal and the submitted proposal has been assessed against the existing setting of the site.

9. Human Rights

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.

10. Local Finance Considerations

No charge under current schedule

11. Planning Obligations

The purpose of planning obligations is to mitigate or compensate for adverse impacts of a development, or to prescribe or secure something that is needed to make the development acceptable in planning terms. Planning obligations can only lawfully constitute a reason for granting planning permission where the three statutory tests of Regulation 122 of the CIL Regulations 2010 are met.

Planning obligations not required due to the nature and size of proposal.

12. Equalities and Diversities

This planning application has had due regard to Section 149 of the Equality Act with regard to the Public Sector Equality Duty and has concluded that the application does not cause discrimination on the grounds of gender, race and disability. The entrance to the unit is level with the existing pavement and is considered to be physically accessible for all.

13. Conclusions and Reasons for Decision

The original proposal to hot food takeaway (Use Class A5) was found to be an unacceptable proposal and the application was subsequently amended to be a café/restaurant (Use Class A3). The applicant has worked with the Public Protection Service to ensure acceptable noise and odour measures are provided and it is considered that, with the use of conditions, that the proposal will not generate any significant impacts.

Officers have taken account of the NPPF and S38(6) of the Planning and Compulsory Purchase Act 2004 and concluded that the proposal accords with policy and national guidance and is therefore recommended for conditional approval.

14. Recommendation

In respect of the application dated 27.09.2018 it is recommended to Grant Conditionally.

15. Conditions / Reasons

The development hereby permitted shall be carried out in accordance with the following approved plans:

1 **CONDITION: APPROVED PLANS**

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, and paragraphs 124, 127, 130 and 131 of the National Planning Policy Framework 2018.

2 **CONDITION: COMMENCE WITHIN 3 YEARS**

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.

3 **CONDITION: CONTROL OF ODOURS AND FUMES**

The system of carbon filtration submitted with this proposal shall be fully installed and operational prior to the A3 use hereby approved opening to customers. The proposed scheme must be operated and maintained in accordance with the manufacturer's instructions, including cleaning of the internal ductwork by a relevant professional at regular intervals. Any alteration or variation to the approved details will require written submission to and approval from the Local Planning Authority.

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 in the surrounding area, in accordance with Policies CS22 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007 and Policies DEV1 and DEV2 of the emerging Plymouth and South West Devon Joint Local Plan (2014-2034)

4 **CONDITION: CONTROL OF NOISE**

Pre-use

Prior to the approved use first opening to customers the equipment identified in the submitted noise impact assessment, including silencers and anti-vibration mountings, shall be installed. All plant installed shall thereafter be operated and maintained in accordance with manufacturer's instructions.

The noise emanating from the approved ventilation extraction system (LAeqT) should not exceed the background noise level (LA90) by more than 5dB, including the character/tonalities of the noise, at any time as measured at the façade of the nearest residential property.

Reason: To protect the residential and general amenity of the area from noise emanating from the operation of any mechanical extract ventilation system and avoid conflict with Policies CS22 and

CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007 and Policies DEV1 and DEV2 of the emerging Plymouth and South West Devon Joint Local Plan (2014-2034).

5 CONDITION: DELIVERIES AND COLLECTIONS

Goods deliveries and refuse collections at the site shall be restricted to Mondays to Saturdays 08.00 to 16.00, with no deliveries or refuse collections on Sundays or Bank Holidays.

Reason: To protect the residential and general amenity of the area from noise emanating from delivery and waste collection activities and avoid conflict with Policies CS22 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007 and Policies DEV1 and DEV2 of the emerging Plymouth and South West Devon Joint Local Plan (2014-2034).

6 CONDITION: PLANT OPERATING HOURS

All plant associated with the cooking procedures shall only be in operation 08.00 to 23.00 Mondays to Saturdays and 10.00 to 23.00 hours on Sundays and Bank Holidays.

Reason: To protect the residential and general amenity of the area from noise emanating from the operation of any mechanical extract ventilation system during times when the overall background noise levels are lowest and avoid conflict with Policy CS22 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007 and Policies DEV1 and DEV2 of the emerging Plymouth and South West Devon Joint Local Plan (2014-2034).

7 CONDITION: HOURS OF OPENING

The use hereby permitted shall not be open to customers outside the following times: 08.00 to 23.00 hours Mondays to Saturdays inclusive and 10.00 to 22.30 hours on Sundays and Bank or Public Holidays.

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 Plymouth Local Development Framework Core Strategy (2006-2021) 2007, Policies DEV1 and DEV2 of the emerging Plymouth and South West Devon Joint Local Plan and Paragraphs 170, 180-183 of the National Planning Policy Framework 2018.

INFORMATIVES

1 INFORMATIVE: (NOT CIL LIABLE) DEVELOPMENT IS NOT LIABLE FOR A COMMUNITY INFRASTRUCTURE LEVY CONTRIBUTION

The Local Planning Authority has assessed that this development, due to its size or nature, is exempt from any liability under the Community Infrastructure Levy Regulations 2010 (as amended).

2 INFORMATIVE: CONDITIONAL APPROVAL (NEGOTIATION)

In accordance with the requirements of Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 and paragraphs 186 and 187 of the

National Planning Policy Framework the Council has worked in a positive and pro-active way with the Applicant and has negotiated amendments to the application to enable the grant of planning permission.

3 INFORMATIVE: FOOD PREPARATION DRAINAGE

The drainage in the A3 unit food preparation area will be required to be fitted with a grease separator in line with Building Regulations Approved Document H and prEN1825-1:2004, designed in accordance with prEN1825-2:2002, or other effective means of grease removal from the waste water systems.

4 INFORMATIVE: CUSTOMER TOILETS

All catering establishments where the public are invited to sit and drink on the premises must provide adequate toilet facilities for customers, as well as staff. British Standard 6465 Part 1 1994, Code of Practice for Scale of Provision, Selection and Installation of Sanitary Appliances, detail the number of facilities required for male and female customers.

5 INFORMATIVE: LICENSING POLICY

The Applicant should be made aware that the premises falls within the Authority's cumulative impact area and therefore is likely to be subjected to restrictions with regard to certain licenses. Details can be found at:
<https://www.plymouth.gov.uk/licensingandpermits/alcoholandentertainment/licensingpolicies>