

MEETING:	PLANNING COMMITTEE
DATE:	15 DECEMBER 2010
TITLE OF REPORT:	<p>DMN/102310/F - CHANGE OF USE FROM VACANT BARBERS (A1), TO HOT FOOD TAKEAWAY (A5) AT 36 CHURCH STREET, KINGTON, HEREFORDSHIRE, HR5 3BE</p> <p>For: Mr Temel per Mr Richard Simpson, Burgate, 63 Cedar Road, Sutton, Surrey, SM2 5DJ</p>

Date Received: 8 September 2010 **Ward: Kington Town** **Grid Ref: 329584,256640**

Expiry Date: 3 November 2010

Local Member: Councillor TM James

1. Site Description and Proposal

- 1.1 The site consists of a mid-terrace three-storey building fronting onto Church Street, the ground floor of which was last in use as a 'Barber's Shop', the upper floors are in residential use.
- 1.2 The site is located within the central shopping and commercial area but outside of the primary shopping frontage, as referred to in the Herefordshire Unitary Development Plan inset map for Kington. It is an area in mixed use being mainly residential, with some retail units on the ground floors. The site is within the Conservation Area.
- 1.3 The application proposes change of use from class use A1 (Retail) to A5 (Hot Food Take-Away).
- 1.4 The only external alteration proposed is the installation of a galvanised steel square section extract flue and high velocity cowl pipe to the rear elevation of the property.

2. Policies

2.1 Herefordshire Unitary Development Plan

S1	-	Sustainable Development
S2	-	Development Requirements
S5	-	Town Centres and Retail
DR1	-	Design
DR2	-	Land Use and Activity
DR3	-	Movement
DR4	-	Environment
DR13	-	Noise
TCR1	-	Central Shopping and Commercial Areas
TCR2	-	Vitality and Viability

TCR6		Non- Retail Uses
TCR15	-	Hot Food Take-Away Outlets
T11	-	Parking Provision
HBA4	-	Setting of Listed Buildings
HBA6	-	New Development Within Conservation Areas

3. Planning History

3.1 None on site.

4. Consultation Summary

4.1 Statutory Consultees

None required.

4.2 Internal Council Advice

The Transportation Manager raises no objections. In a further response in consideration of concerns raised by local residents, the Transportation Manager states: "the site is acceptable for the proposed use, as the car park at Crabtree Road is only some 150 metres away an easy walk and limited other spaces exists nearby. It is better for the vibrancy of the town to have retail development in the established town centre retail area.

4.3 The Conservation Manager raises no objections in respect of impact on the setting of nearby listed buildings or the Conservation Area.

4.4 The Environmental Health Manager raises no objections stating: "*information provided by the applicant indicates that the noise levels generated by the mechanical ventilation system affecting neighbouring residential premises will be below levels suggested by the World Health Organisation.*

However, if the methodology suggested by BS 4142 Method for rating industrial noise affecting mixed residential and industrial areas were to be used, although it could be argued that this proposal is not industrial it is likely that the noise would be of significance as regards the likelihood of complaint. This is because this method compares the introduced noise against existing background noise levels. It is my experience that background noise levels in Kington even during the proposed operating hours are very low and even a relatively low level of introduced noise could be considered problematic.

The proposed use is similar to one in Leominster which has not been subject of complaints about odour or noise. If permission is granted and nuisance is caused to neighbours powers are available to the Council to deal with odour and noise as a statutory nuisance although defences of best practicable means which have both a technical and financial element would be available. I would take this opportunity to clarify that nuisance as used in this context is more serious than a mere annoyance or less of a level of amenity which might result from this proposal without the existence of an actionable nuisance. It is very likely that neighbours will be aware of the take-away operation should permission be granted.

In conclusion if it is minded to grant permission I would recommend that conditions are imposed restricting opening hours between 10.00am and 11.00pm, approval of a scheme of mechanical ventilation, approval of the use of any other noise generating plant such as refrigeration units and a scheme of storage of refuse."

5. Representations

5.1 Kington Town Council object to the application summarising their grounds for objection as:

- Location between two dwelling houses and within 30 metres of 30 other houses and flats.
- Loss of amenity to neighbouring residences.
- Noise
- Odour
- Highways
- Late night disturbance
- Visual intrusion
- Inadequate information accompanying the application on type of take-away flue extraction system to be installed. Details of refuse storage arrangements and grease traps.

Health Impacts

The Council also wishes it to be noted that if permission is granted no further permission would be required, if the hot food on sale, understood to be pizzas, was changed to fish and chips or another high odour product.

5.2 Letters of objection have been received from the following:

- Mr P and Mrs S Baines, 35 Church Street, Kington
- Janet Thomas, The Kington Gallery, 4 Church Street, Kington
- Mr R Symondson, The Hotpotch, Husseys Lane, Kington
- G R and M V Maynard, 8 Church Street, Kington
- RJ Hyde, The Cottage, 37 Church Street, Kington
- Mr T Lam, 6 Church Street, Kington
- Mr & Mrs N Layton, 34a Church Street, Kington
- Peter Horrocks, 10 The Square, Kington
- Gerald Parry, 7 Church, Kington

Objections raised can be summarised as follows:

- Over-supply of this form of business in the town
- Public highway issues in consideration of the proposal
- Impact on surrounding residential amenity (noise, smell etc)
- Concerns about use of outbuilding as a cold store

5.3 The full text of these letters can be inspected at Planning Services, Garrick House, Widemarsh Street, Hereford and prior to the Committee meeting.

6. Officer's Appraisal

6.1 The key issues in respect of this application are set out in Policy TCR15, as follows:

- Impact on surrounding residential amenity
- Public highway issues
- Impact on surrounding character
- Whether suitable servicing is provided

Impact on surrounding residential amenity

- 6.2 The Environmental Health Manager in his response to the application has indicated that the proposed use is a similar use to a shop unit in Leominster, and that this has not been subject of complaints about odour or noise. He further emphasises that powers are available to the Council to deal with issues of odour and noise as a 'statutory nuisance' (Environmental Health Regulations).
- 6.3 The Town Council and members of the public have raised concerns about lack of information about the type of flue pipe proposed to be attached to the rear of the building. The plans submitted for planning consideration clearly state that the applicant proposes a 'galvanised steel square extract flue and high velocity cowling fixed to the wall and lower section of the roof (eaves), with anti-vibration mounts and rising to minimum one metre above any windows in order to meet DEFRA standards. The Environmental Health Manager raises no objections to the type of flue pipe and method of discharge from the building. It is recommended that conditions are attached requesting full detail of all mechanical ventilation on site as well as detail in respect of the proposed flue pipe.
- 6.4 Concerns have been raised about late night disturbance within the surrounding area. This is primarily a police issue but it is recommended that a condition be attached restricting opening hours.
- 6.5 Concerns have also been raised by local residents about the site's close proximity to the town's schools. This is not considered a material planning issue in the context of this application as the site is not adjacent to school premises, being in the central shopping and commercial area where such uses would normally be expected to be located. In any event there is not a proliferation of such outlets in order to cause undue concern to the eating habits of pupils of local schools.

Public highway issues

- 6.6 There are adequate car parking facilities within easy walking distance of the proposed development. Issues of illegal parking is a matter for the Police to deal with, and illegal parking for this proposal is no more of an issue than for any other businesses in Church Street as well as on the town's High Street. The Council's Transportation Manager raises no objections and the proposal on Highway issues is considered acceptable.

Impact on surrounding character

- 6.7 The site for the proposed development is within the town's Conservation Area and within the setting of a nearby listed building (numbers 34 and 35 Church Street).
- 6.8 The Conservation Manager advises that the proposal should not harm the character of the surrounding Conservation Area or the setting of the listed building. The proposal subject to this application does not propose any changes to the front of the building, a flue pipe to the rear elevation, to which the Conservation Manager raises no objections. Therefore the proposed development is considered acceptable in consideration of the surrounding Conservation Area and setting of nearby listed buildings.
- 6.9 Concerns have been raised about disposal of rubbish and potential for increase of litter on surrounding streets, as a result of the proposed development. Accordingly a litter management plan is recommended as a condition. In order to allay fears on method of storage of refuse on site, it is recommended that a condition is also attached requesting detail on method of on-site refuse storage.

Servicing

- 6.10 Members of the public have raised concerns about the amount of take-away outlets within the town and the over-supply of such business within a small market town.
- 6.11 However the site is contained within the central shopping and commercial area where such uses are considered acceptable and forms part of the vitality and commercial activity of the surrounding area.
- 6.12 It is noted that Church Street is within the town centre area of Kington on a street that has a mixture of uses, predominantly residential with other retail outlets such as a bookshop, gallery, supermarket, off licence, public house etc.
- 6.13 A concern has also been raised about the impact of the proposed 'flue pipe' on a holly tree to the rear of the application site and its possible removal in the future. The site is within the town's Conservation Area and, therefore, mature trees have the benefit of protection under Conservation Area regulations. It is not considered that the proposed development will have any negative impact on the holly tree.

Conclusion

- 6.14 The proposed change of use is considered acceptable in relationship to the surrounding Conservation Area and represents an appropriate form of use for an outlet situated within the town's central shopping and commercial area and therefore compliant with Policy TCR1 and 2.
- 6.15 Therefore, whilst the concerns of the Town Council and members of the public are noted, it is considered that the use of the premises is compliant with Policy TCR15 together with the imposition of suitably worded conditions as recommended.

RECOMMENDATION

That planning permission be granted subject to the following conditions:

- 1. C01 Time limit for commencement (full permission)**
- 2. C06 Development in accordance with the approved plans**
- 3. C55 Restriction on hours of opening (restaurants & hot food takeaways) (11pm–10am).**
- 4. C53 Restriction on hours of delivery**
- 5. Prior to any development on site details will be submitted to and approved in writing by the Local Planning Authority of a scheme of mechanical ventilation for the premises as well as other noise generating plant on site which will include refrigeration.**

Reason: In order that the Local Planning Authority can control the amount of noise generated on site and to comply with Policy DR2 of the Herefordshire Unitary Development Plan.

- 6. Prior to any development on site details will be submitted to the Local Planning Authority and approved in writing with regards to a scheme of storage of refuse on site.**

Reason: In order to protect the amenity of surrounding residential and to comply

with Policy DR2 of the Herefordshire Unitary Development Plan.

7. Prior to any development on site a detailed plan will be submitted and approved in writing by the Local Planning Authority of the flue and high velocity cowling to be fixed to the rear elevation of the building subject to this approval.

Reason: In the interests of the character of the building and amenity of the surrounding area and to comply with Policies DR2 and HBA6 of the Herefordshire Unitary Development Plan.

8. Prior to the commencement of development, a litter management plan shall be submitted to and approved in writing by the local planning authority. The management plan should include the provision of litter bins on the premises and infrastructure relating to regular litter patrols. The approved details shall be implemented prior to the first use of the premises which shall thereafter be operated in accordance with the management plan.

Reason: In the interest of amenity of the area and in accordance with Policy DR1.

INFORMATIVE:

1. N15 - Reason(s) for the Grant of Planning Permission

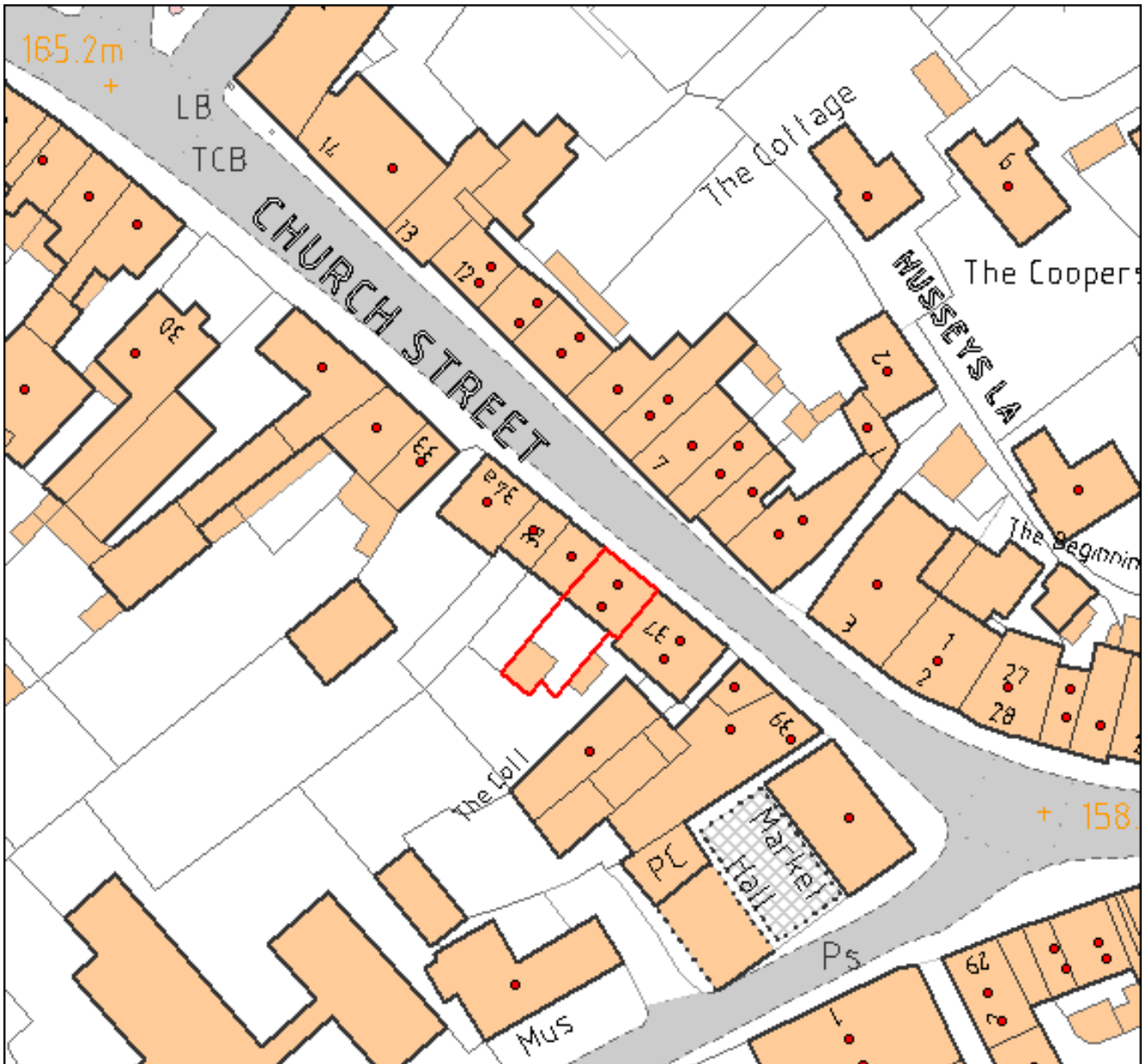
Decision:

Notes:

.....

Background Papers

Internal departmental consultation replies.



This copy has been produced specifically for Planning purposes. No further copies may be made.

APPLICATION NO: DMN/102310/F

SITE ADDRESS : 36 CHURCH STREET, KINGTON, HEREFORDSHIRE, HR5 3BE

Based upon the Ordnance Survey mapping with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Herefordshire Council. Licence No: 100024168/2005