

14 DCCE2004/4168/F - CHANGE OF USE OF BUILDING FROM A HEALTH CENTRE TO A FISH AND CHIP SHOP, 139 QUARRY ROAD, HEREFORD.**For: Mrs S J Humphries, per Mr J I Hall, New Bungalow, Nunnington, Hereford, HR1 3NJ****Date Received: 3rd December, 2004 Ward: Tupsley Grid Ref: 52428, 40033****Expiry Date: 28th January, 2005**

Local Members: Councillors G. Hyde, Mrs M. Lloyd-Hayes, W.J. Walling

1. Site Description and Proposal

- 1.1 The application site comprises a vacant health centre (Use Class D1) with residential accommodation at first floor level. It is located in a prominent position close to the junction of Ledbury Road and Quarry Road and forms the end unit in a small parade of retail units, all of which have residential accommodation over.
- 1.2 The site benefits from a lay-by parking area serving the parade of shops. The submitted plans refer to an area of hardstanding to the north west of the building but this is not included within the red line defining the application site.
- 1.3 The site forms part of a designated Local Shopping Centre with the surrounding area being an Established Residential Area.
- 1.4 The proposal seeks planning permission for the change of use of the vacant health centre unit at ground floor level to a takeaway fish and chip shop (Use Class A5 under the provisions of the new Use Classes Order 2005) retaining the residential accommodation at first floor. The application is accompanied by additional supporting information including details of an extraction system, a petition supporting the application and details relating to proposed hours of business, parking/traffic control, litter and noise and activity associated with the use of the premises.
- 1.5 The application is a resubmission following the refusal of an identical application (with the exception of the additional information referred to above) on 1st November 2004 (DCCE2004/3349/F). The reason for refusal of this application is as follows:-

"The site is located within an established residential area as defined by the Hereford City Local Plan (1996). The proposed change of use of the ground floor to an (A5) fish and chip shop would be unacceptable and would cause harm to the residential amenity of the neighbouring residents and in particular those living directly over the retail units. Furthermore, such a use would alter the character of the area in terms of social activity outside normal business hours, increased noise and litter as well as emanating fumes and odours in close proximity to nearby residents. As such, the proposal fails to comply with Policy H21 of the Hereford City Local Plan which seeks to ensure non-residential uses are compatible with adjacent uses."

2. Policies

- 2.1 Hereford and Worcester County Structure Plan:

CTC9 - Development Requirements

2.2 Hereford Local Plan:

H12 - Established residential areas – character and amenity
H21 - Compatibility of non-residential uses
S13 - Local shopping centres

2.3 Herefordshire Unitary Development Plan (Revised Deposit Draft):

S1 - Sustainable development
S2 - Development requirements
DR2 - Land use and activity
TCR13 - Local and neighbourhood shopping centres
TCR15 - Hot food takeaway outlets
T11 - Parking provision

3. Planning History

- 3.1 CE1999/2179/F Change of use of ground floor shop to A3 hot food takeaway. First floor to remain in residential use. Refused 22nd September 1999.
- 3.2 CE2000/3342/F Change of use of ground floor to natural health centre. Approved 6th February 2001.
- 3.3 CE2004/4168/F Change of use of building from a health centre to a fish and chip shop. Refused 1st November 2004.

4. Consultation Summary

Statutory Consultations

- 4.1 None.

Internal Council Advice

- 4.2 Head of Environmental Health and Trading Standards comments that whilst discussions have taken place regarding the extract ducting I have not received specific details in relation to the proposed works. I would therefore suggest the application be rejected unless a suitable noise insulation scheme is submitted.
- 4.3 The Traffic Manager raises no objection to the grant of planning permission.

5. Representations

- 5.1 A total of 80 letters of objection have been received in response to the application. The concerns raised can be summarised as follows:-
- Inadequate parking having regard to level of use associated with existing shops and the use of Quarry Road as a short cut.
 - Increased traffic and parking problem. Threat to pedestrians and elderly people in the area.
 - Litter and noise would spoil the residential environments.

- Nuisance from cooking smells.
 - Attraction of vermin.
 - Health and safety issues relating to discarded food.
 - Toxic fumes from exhausts of waiting cars.
 - Takeaway use not compatible with character of area.
 - Proposed parking area originally intended as a communal landscaped space.
 - Ducting system would be unsightly and would not eradicate smells.
 - Activity will make it difficult to get our car in and out of our driveway.
 - No need for a fish and chip shop with other such businesses within a 1 mile radius of the site.
 - Threat of anti-social behaviour late at night.
- 5.2 Hereford City Council recommend refusal on the grounds of likely noise, smell and litter in a residential area.
- 5.3 The applicant has carried out their own petition of local residents and raised a petition of some 341 signatures from the surrounding area who raise no objection to the proposed chip shop feeling that it would be a useful local amenity.
- 5.4 A letter from the Residential Care Manager of 1-4 Ivy Close, Ledbury Road, Hereford has been received indicating that the majority of staff and clients employed or using the facility have no objection to the proposal suggesting that they would use the outlet.
- 5.5 Brightwells in their capacity as agents of the freehold owners of the application site comment upon the planning policy issues (addressed in the Officer's appraisal) and make the following comments:
- no objection raised by the Traffic Manager;
 - applicant will be installing a new ventilation system and the use of current technology will reduce the likelihood of nuisance emissions;
 - a restriction on trading hours would be accepted;
 - litter patrols and the provision of bins are proposed;
 - A3 takeaway will provide an important local service and amenity to an area which currently does not have such a facility.
- 5.6 The full text of these letters can be inspected at Central Planning Services, Blueschool House, Blueschool Street, Hereford and prior to the Sub-Committee meeting.

6. Officers Appraisal

- 6.1 The main issues for consideration in the determination of this application are as follows:-
- (a) the impact of the proposed use on residential amenity;
 - (b) highways and parking issues, and;
 - (c) visual impact of associated equipment.

Residential Amenity

- 6.2 The site lies within the Established Residential Area of Tupsley where Policy H12 of the Hereford Local Plan seeks to protect the environmental character and amenity of

the area and furthermore Policy H21 states that proposals will not be permitted where they would have an unacceptable adverse effect on residential character, including highway safety.

- 6.3 It is clear from the significant number of objection letters received in response to this application that noise, litter, odour, nuisance relating to vehicular traffic coming and going and the perceived threat of late night anti-social behaviour are serious concerns associated with this particular use and therefore notwithstanding its position within a commercial shopping parade these are relevant material considerations.
- 6.4 In response to these concerns the applicant has provided a detailed specification of an extraction system including reference to decibel levels, carbon filters, noise and odour attenuation measures and fan speed controllers designed to minimise the impact of cooking odours in the immediate vicinity of the site. In addition the applicant advises that the intended opening hours would be between 11.30am and 9.45pm Mondays to Fridays (the premises would be closed between 1.45pm and 4.45pm on these days) and 12.00pm to 9.45pm on Saturdays. The premises would be closed on Sundays.
- 6.5 It is intended to operate daily litter patrols in the vicinity of the premises and provide bins such that the general environs would be kept clean and tidy. The applicant further comments that the early closing time would ensure that customers would not congregate late at night or cause nuisance.
- 6.6 The Head of Environmental Health and Trading Standards has considered the submissions received by the applicant and is generally satisfied that a high specification extraction system could reduce the impact of odour emissions from the proposed takeaway to an acceptable level having regard to neighbouring properties, with the exception of future occupiers of the flat above the ground floor. At the time of writing, it has been advised that there is insufficient information available to assess the noise impact on future occupiers of the flat and on this basis a refusal recommendation has been put forward.
- 6.7 Further to this it has been advised that any permission granted should be the subject of hours of operation restrictions.
- 6.8 In reaching a recommendation on this highly sensitive proposal it is acknowledged that whilst individual elements such as the technical specification of extraction equipment, hours of operation and the responsible management of the site may have been addressed by the applicant there remains an overall judgement to be made in respect of the general implications of allowing the takeaway use in this location. The recent history of the application site directs towards the consistent refusal of planning permission and on balance it is not considered that this revised proposal is materially different from those submitted previously. It remains the case that a takeaway establishment is not considered compatible within this Established Residential Area and moreover that if the general noise and disturbance associated with the operation of the site and the comings and goings of customers would detract from the existing character of the locality which would not be in the interests of protecting the residential amenity of those existing residents living in the vicinity of the site. It is suggested that an acceptance of such a use even on the terms put forward by the applicant would lead to significant pressure in the future for an extension of hours that would be very difficult to oppose and therefore the refusal of planning permission is recommended.

Highway Safety and Parking

- 6.9 Local concerns have been expressed in relation to the limited parking available to serve the site but the Traffic Manager has advised that there would be insufficient grounds to object to this particular issue in highway safety terms. Previous refusals relating to this site have not relied upon highway safety concerns and as such it is considered unreasonable to introduce such a reason for refusal at this stage.
- 6.10 Notwithstanding this it is considered that the comings and goings of private cars and the slamming of doors for example would contribute to the erosion of the residential character of the area and as such would be relevant to the amenity concerns identified above.

Visual Amenity

- 6.11 In its original form, the application proposed an externally mounted extract duct that would have been very prominent on the elevation facing Ledbury Road. The applicant has revised the submission to include an internally positioned duct that would terminate just above ridge level on the rear roof slope of the property. It is considered that this would not in its own right have a significant effect on the locality to the extent that the refusal of permission would be warranted.
- 6.12 Reference has been made to the parking area to the north of the property but it is advised that this does not form part of the identified application site and as such is not relevant to the consideration of this particular proposal.

Conclusion

- 6.13 In the light of the manner in which this application has unfolded, the applicant has demonstrated a level of local support for this proposal but it is clear that there is also significant opposition from residents living in the vicinity. The overall impact of the proposed takeaway use having regard to the information provided and the views expressed by the Head of Environmental Health and Trading Standards is finely balanced. However the local planning authority has taken a consistent view on the unacceptability of such a use in this particular location and it is not considered that there are sufficient grounds to warrant departing from this view and as such the recommendation is one of refusal.

RECOMMENDATION

That planning permission be refused to the following reason:

- 1 The site is located within an established residential area as defined by the Hereford City Local Plan (1996). The proposed change of use of the ground floor to an (A5) fish and chip shop would be unacceptable and would cause harm to the residential amenity of the neighbouring residents and in particular those living directly over the retail units. Furthermore, such a use would alter the character of the area in terms of social activity outside normal business hours, increased noise and litter as well as emanating fumes and odours in close proximity to nearby residents. As such, the proposal fails to comply with Policy H21 of the Hereford Local Plan which seeks to ensure non-residential uses are compatible with adjacent uses.**

Decision:

Notes:

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Background Papers

Internal departmental consultation replies.