

Application No: 172101/SRP

Address: 219 London Road

Proposal: Change of use from Class A1 (shops) to Class A3 (restaurants). Prior Notification under Class C, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

Applicant: Mr Paul Garner

Case officer: Matt Burns

Introduction

The application relates to small ground floor A1 shop unit on the north side of London Road. The site is located within the Cemetery Junction District Centre and within an Active Frontage.

Proposal

The proposal is for a change of use of the ground floor unit from a Class A1 shop to a Class A3 restaurant with prior notification sought under Class C, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.

Relevant policies and supplementary planning guidance

Legal context

Class C(a) allows development consisting of a change of use of a building and any land within its curtilage to Class A3 (restaurants and cafes) from a Class A1 (shop). Class C(b) allows the building or other operations for the provision of facilities for (i) ventilation and extraction (including the provision of an external flue), and (ii) the storage of rubbish, reasonably necessary to use the building for a use falling within Class A3 (restaurants and cafes) of that Schedule.

Section C.1 specifies that C.1 Development is not permitted by Class C if:

- (a) the cumulative floor space of the existing building changing use under Class C exceeds 150 square metres;
- (b) the development (together with any previous development under Class C) would result in more than 150 square metres of floor space in the building having changed use under Class C;
- (c) the land or the site on which the building is located is or forms part of (i) a site of special scientific interest; (ii) a safety hazard area; or (iii) a military explosives storage area;
- (d) the site is, or contains, a scheduled monument; or
- (e) the land or building is a listed building or is within the curtilage of a listed building.

Under Section C.2, before development can be carried out under Class C(a) and C(b), the developer must apply for a determination as to whether prior approval is required in respect of:

- a) noise impacts of the development
- b) odour impacts of the development
- c) impacts of storage and handling of waste in relation to the development
- d) impacts of hours of opening of the development

- e) transport and highways impacts of the development
- f) whether it is undesirable for the building to change to a use falling within Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order because of the impact of the changes of use; (i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, Class A2 (financial and professional services) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services; (ii) where the building is located in a key shopping area, on the sustainability of that shopping area, and
- g) the siting, design or external appearance of the facilities to be provided under Class C(b), and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

In assessing these issues, officers must have regard to the NPPF as if the application were a planning application, and also have regard to the Local Development Framework (the NPPF states that due weight should be given to the adopted policies of the Local Development Framework according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given)).

Reading Borough Local Development Framework Core Strategy (2008)

CS2: Waste Minimisation

CS7: Design and the Public Realm

CS24: Car/cycle parking

CS25: Scale and Location of Retail, Leisure and Culture Development

CS26: Hierarchy of Centres

CS27: Maintaining the Retail Character of Centres

CS34: Pollution and Water Resources

Sites and Detailed Policies Document (2012)

DM4: Safeguarding Amenity

DM12: Access, Traffic and Highway Related Matters

DM13: Vitality and Viability of Smaller Centres

Planning History

96-00616 (960338) - Change of use of A1 shop to A3 pizza takeaway - Refused 17/10/96 and dismissed on appeal (APP/QO315/A/97/276688) 21/11/97.

Response to publicity

In relation to this 'prior approval' application, a site notice was displayed outside the site on 2nd October 2018, with the 21 day consultation period expiring on 23rd October 2018. No representations were received.

Consultation responses

Transport - No objection.

Environmental Protection - Noise and odour assessments are required.

Appraisal

Development is not permitted by Class C in the following instances (officer comments to follow in italics):

- a) the cumulative floor space of the existing building changing use under Class C exceeds 150 square metres.

Officer note: it does not (floor space changing use is approx. 147 square metres)

- b) the development (together with any previous development under Class C) would result in more than 150 square metres of floor space in the building having changed use under Class C

Officer note: not applicable in this instance

- c) the land or the site on which the building is located is or forms part of (i) a site of specific scientific interest; (ii) a safety hazard area; or (iii) a military explosives storage area

Officer note: it does not

- d) the site is, or contains, a scheduled monument

Officer note: it does not.

- e) the land or building is a listed building or is within the curtilage of a listed building

Officer note: it is not

Conditions in relation to Class C

This assessment can only consider the noise, odour, storage and handling of waste, hours of opening and transport impacts of the development as well as the impact of the development on the provision of A1 uses in this area and its impact on the sustainability of that shopping area.

In these regards:

a) Noise

Policy DM4 seeks to prevent development that would be detrimental to the living environment of new and existing residential properties.

Policy CS34 seeks to prevent development that would be damaging to the surrounding environment by way of pollution.

The site is located within a residential area and as such there are a number of nearby sensitive noise receptors. Environmental Protection Officers have advised that uses and applications that would require noise generating plant equipment where there are nearby noise sensitive receptors should be accompanied by an acoustic assessment carried out in accordance with BS4142:2014 methodology.

No details of any plant equipment have been provided as part of the application other than confirmation that a new full fitted kitchen is to be installed. Environmental Protection Officers have advised that plant may need to be sited in a particular location or be of a particular specification to meet the required standards.

The proposal is considered to fail to demonstrate that it could operate without causing unacceptable noise impact upon nearby residential receptors. Prior approval in respect of noise is therefore not given.

b) Odour

In addition to concerns about noise (as discussed above), cooking odour is often a significant problem in commercial kitchens and therefore the applicants must provide an assessment of the likelihood of odours based on the proposed cuisine and a statement of how the proposals will ensure that odour nuisance will be prevented. Reference must be made to the Defra Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems (January 2005) (As updated 2018 by EMAQ).

No details of any measures to control cooking odour have been provided as part of the application other than confirmation that a new full fitted kitchen is to be installed. Environmental Protection Officers have advised that control of odour may require plant or facilities to be sited in a particular location or be of a particular specification to meet the required standards.

The proposal is considered to fail to demonstrate that it could operate without causing unacceptable odour impact upon nearby residential receptors. Prior approval in respect of odour is therefore not given.

c) Storage and handling of waste

The applicant has indicated that the waste will be located to the rear of the shop but a specific location or store has not been indicated on a plan or any further details other than this provided.

The proposal is considered to fail to demonstrate how it would operate in terms of storage and handling of waste. Prior approval in respect of storage and handling of waste is therefore not given.

d) Hours of opening

Officers have considered the information specified by the applicant seeking hours of opening from 7:30am to 6:30pm on all days of the week. This is considered reasonable in terms of safeguarding the amenities of the area generally. Such hours could be secured via condition.

e) Transport

Transport officers raised no objection to the proposal. The proposal is therefore considered appropriate in this regard.

f) Provision of A1 and the sustainability of the shopping area

The site is located within an active frontage in the Cemetery Junction District Centre as defined by Policy DM13 (Vitality and Viability of Smaller Centres) of the Sites and Detailed Policies Document (2012, 2015). In such locations the policy states that development involving a net loss of A1 retail to other 'centre uses' will only be permitted where:

- (i) There would be no more than 3 consecutive units which are not in A1 retail use; and
- (ii) The proportion of the total length of the Key Frontage within the centre that is in A1 retail use would exceed 60%.

The policy helps to implement Core Strategy policies CS26 and, particularly, CS27: Maintaining the Retail Character of Centres.

An assessment of the District Centre Key Frontage has been undertaken and the proposed change of use does not create more than three consecutive units not in A1 use and does not exceed the 60% limit. The change of use would also not create more than two consecutive A5 takeaway units. Therefore the proposal is not considered to harm the sustainability of the District Centre.

g) The siting, design or external appearance of the facilities to be provided

The application does not propose any external alterations to the building.

Other

The application was received on 22/11/2017; however the application was not validated until 17th September 2018 when a scalable floor plan was submitted.

A email was sent to the applicant on Tuesday 6th November 2018 to explain that the use described within the application information (baguette shop) was, in the opinion of officers, more akin to an A1 (retail) use than A3 (restaurant). Officers advised the applicant that they may wish to withdraw the prior approval application and apply for a certificate of lawfulness for the proposed use under the current A1 use of the premises. This email also set out concerns with the current application for change of use to A3 in terms of lack of information in respect of noise, odour and waste management. At the time of writing this report the applicant has not responded to the email.

An Officer site visit was undertaken on Tuesday 6th November 2018 when it was noted that the change of use has already commenced and that the use went beyond that described within the application information. Advertisements indicated Indian and Pakistani food and all day breakfasts were available which would indicate that the development was in fact an A3 use. Given the range of food offerings advertised the officer concerns set out above in respect of lack of information relating to noise, odour and waste management are heightened.

Applications for prior approval under Part 3 must be addressed against the criteria set out in Class W. Paragraph 11 of Class W states that:

The development must not begin before the occurrence of one of the following –

- (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;
- (b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or
- (c) the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused

The development has commenced on site (identified that this was the case on 6th November 2018) before any of the above criteria have been met and therefore fails to meet the requirements of paragraph 11 of Class W. Prior Approval therefore cannot be given.

Conclusion

Prior Approval is not given for the following reasons:

1. The proposal fails to comply with Paragraph W(11) of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (as amended) because the proposed development has already begun.
2. The proposal fails to comply with Paragraphs C2(1) (a), (b) and (c) of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) because it fails to demonstrate that the development could operate without having unacceptable impacts upon surrounding residential occupiers and the environment in terms of noise, odour control and the storage and handling of waste, contrary to Policies CS2 (Waste Minimisation) and CS34 (Pollution and Water Resources) of the Reading Borough Local Development Framework Core Strategy (2008, 2015) and Policy DM4 (Safeguarding Amenity) of the Reading Borough Local Development Framework Sites and Detailed Policies Document (2012, 2015).