

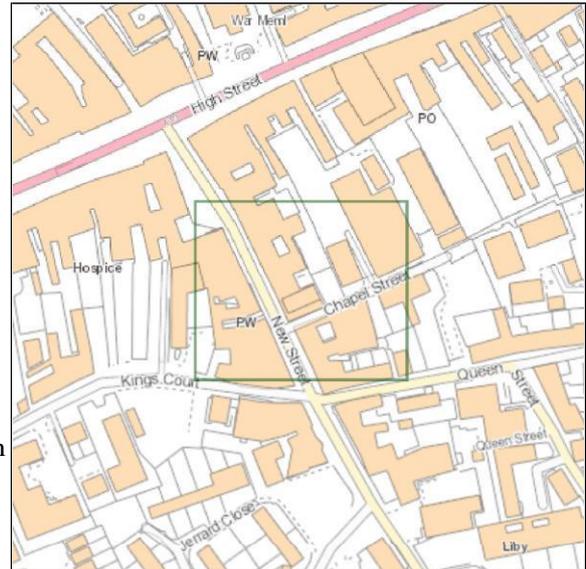
Ward Honiton St Pauls

Reference 19/0439/FUL

Applicant Mrs Hatice Oflaz

Location 20 New Street Honiton EX14 1EY

Proposal Change of use from A2 (professional Services) to (A3)restaurant use, including new rear access to serve residential unit and fenestration changes



RECOMMENDATION: APPROVE subject to conditions



		Committee Date: 9th July 2019
Honiton St Pauls (HONITON)	19/0439/FUL	Target Date: 01.05.2019
Applicant:	Mrs Hatice Oflaz	
Location:	20 New Street Honiton	
Proposal:	Change of use from A2 (Professional services) to A3 (restaurant) use, including new rear access to serve residential unit and fenestration changes	

RECOMMENDATION: APPROVE subject to conditions

EXECUTIVE SUMMARY

The application is before Committee as the recommendation is contrary to that of one of the ward members.

The ground floor of the premises is currently vacant but its most recent use has been as a shoe repair business, a use considered to fall with use class A2 of the Use Classes Order 1987 (as amended). The site is located within the town centre and the defined Primary Shopping Frontage where policy seeks to retain existing retail uses unless it has been demonstrated that there is no longer a need for such uses. In this instance, the proposal would not result in the loss of an existing retail use and has the potential to add to the vitality and viability of the town centre compared to the existing vacant unit, as such there is no objection to the principle of the change of use.

The proposed change of use would introduce a use which if not appropriately managed could have a potential harmful effect on residential amenity and concerns have been raised from neighbouring residents in this regard. The application includes details of a full extraction system and commercial kitchen layout designed to minimise noise and odour associated with the proposed use and the Environmental Health Officer considers these to be appropriate. In addition, it is considered necessary to control the hours of opening to remove the potential for late night noise.

To facilitate the change of use and to provide independent access to the first floor of the premises it is proposed to construct a new external access staircase at the rear of the site. Whilst such a proposal has potential visual and amenity impacts it is noted that similar accesses already serve the upper floors of adjoining properties and the rear elevation of the property is not prominent or particularly visible from public view. Similarly, the proposed extract flue to serve the proposed

restaurant use has been routed to minimise its impact and is not considered to result in any visual harm or wider impact on the designated conservation area.

Subject to the imposition of conditions set out at the end of the report it is considered that the proposed use could be acceptability accommodated without significant amenity impact, would in addition provide an additional residential unit and has the potential to add to the vitality and viability of the town centre, on this basis the application is recommended for approval.

CONSULTATIONS

Local Consultations

Parish/Town Council

21.03.19 Members unanimously object to the application for the following reasons:
' The proposal would adversely affect the amenity of neighbours as regards privacy and the detrimental effects of noise and smells caused by the development.
' The proposal was a risk to the safety of neighbours due to its close proximity to residential properties.
' The proposal was not in keeping with the character of the Conservation Area.

Further comments 30.05.19:

Support subject to the agreement of the Environmental Health Officer
(4 for: 3 against)

Further comments 13.06.19:

Members RESOLVED to make no comment in respect of the additional information provided.
(6 for; 2 against)

Honiton St Pauls - Cllr D Barrow

I would like to object to this change of use application as it is not suitable for this building to be a restaurant. The back entrance, where most deliveries and waste will be moved is uneven under foot and overlooked by a number of residential properties. So it will not enhance their quality of life.

Technical Consultations

Environmental Health

15.04.19 - I have considered this application and from the information submitted I am unable to either condition or considered this proposal, due to insufficient details available.

I would require full details of the kitchen layout and positioning of cooking equipment and ventilation/ extraction (internal and external) and full extraction specifications.

Any proposals of type of usage (takeaway etc), style of cooking and number and positions of wash hand basins/sinks.

Details of bins/bin area from food and other wastes.

Proposed Hours of opening to the public and whether proposed licensable activities are required.

Without this information I can only recommend refusal at this time.

Further comments 18.06.19:

I am satisfied with the specification submitted by Phoenix Fabrications (Southwest)Ltd and providing the extraction system is built to that specification then I have no further objections, therefore I recommend the following conditions are attached to any permission granted:

The extraction system shall be supplied and fitted to the specification and recommendations of Phoenix Fabrications (Southwest)Ltd and not shall not be operated between the hours of 23.30hrs and 10.00hrs on any day of the week.

The premises shall not be operational/open for business until the extraction system is installed and fully operational.

The premises shall not be open for business except between the hours of 2300hrs and 10.00hrs Monday to Sunday.

County Highway Authority

Observations:

The site is situated on the C63, New Street. The site will not encompass any new vehicular access, however due to Honitons good transport network of the rail and bus service together with its local facilities and services, I believe this site would be satisfactory for a non-car development.

The additional rear access already benefits from an existing pedestrian outlet onto the County Highway network.

I believe that the change from shop to restaurant will incur a similar level of traffic movements, which I would expect to be only a proportion of its total visitors with additional client'ell from the local area. Therefore the County Highway Authority has no objection to this planning application.

Recommendation:

THE HEAD OF PLANNING, TRANSPORTATION AND ENVIRONMENT, ON BEHALF OF DEVON COUNTY COUNCIL, AS LOCAL HIGHWAY AUTHORITY, HAS NO OBJECTION TO THE PROPOSED DEVELOPMENT

Conservation

We do not wish to comment.

Other Representations

10 no. separate representations have been received in relation to the application (including one from a previous adjoining ward member) raising the following concerns:

- Amenity concerns relating to noise and odour an impact on adjoining residents
- Concerns over impact of opening hours and late night activity by customers and staff
- Concern over lack of consultation on the proposed application
- Restricted access to the rear of the site (over which there is only a domestic right of way)
- The rear access and yard area are totally unsuitable for the storage/removal of food and associated waste.
- The rear access stairs will create a 'viewing platform' to the gardens of and windows serving neighboring properties resulting in a loss of privacy, or shade if screen fencing is proposed.
- This side of New Street is residential in character.
- Fire risk and evacuation concerns due to the narrow nature of the rear access.
- Adequacy of food/waste storage facilities to prevent vermin.
- Poor construction of existing rear single storey extension.
- Concerns over the safety of the existing chimney to which the extraction flue would be attached.
- The proposed extraction flue is designed to reduce noise and smells and will not eliminate these.
- Potential for staff to use rear yard area as a smoking/rest area creating noise and odour issues for adjoining residents.
- Increased parking requirement on New Street creating potential traffic flow and visibility issues for motorists
- Increased air pollution from traffic associated with the proposed use.

PLANNING HISTORY

None relevant

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies
Strategy 6 (Development within Built-up Area Boundaries)

Strategy 23 (Development at Honiton)

E10 (Primary Shopping Frontages)

E9 (Town Centre Vitality and Shopping Areas)

EN10 (Conservation Areas)

EN14 (Control of Pollution)

Government Planning Documents

National Planning Practice Guidance

NPPF (National Planning Policy Framework 2019)

SITE LOCATION AND DESCRIPTION

The application site relates to a mid-terrace property located on the east side of New Street to the southern end of but within the defined Primary Shopping Frontage. The site also lies within the Town Centre Shopping Area and the designated conservation area.

The property has a traditional timber shop front and has formerly been in retail use but is currently vacant. The upper floors are in residential use as a single associated unit accessed via the ground floor. To the rear is a small yard area with rear access taken via a private path running along the rear of adjoining properties and linking with Chapel Street to the south.

PROPOSED DEVELOPMENT

The application originally sought permission for the change of use of the ground floor of the premises from A1 (retail) use to (A3) restaurant use with the upper floor of the buildings forming an independent residential unit accessed from a new external staircase to the rear.

However, during the course of the application it was determined that the existing use, as shoe repairers, was an A2 (professional services) use and as such the application description has been amended to reflect this.

It should be noted that under permitted development legislation (The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 3, Class C) a change of use from premises in A1 (retail) or A2 (professional and financial services) use to a use falling within use Class A3 (restaurants and cafes) is permitted subject to prior approval being sought from the local planning authority as to various impacts of the development including: noise, odour, waste storage, hours of opening etc. In this instance works to facilitate the development have already started and as such the applicant has made a planning application as opposed to a prior approval application.

ANALYSIS

The application site lies within the built-up area boundary of the town where the principle of development is acceptable under Strategy 6 of the East Devon Local Plan. In addition Strategy 23 supports in principle the provision of new homes within the built-up area boundary and within the town centres promotes business opportunities to provide the focus for jobs, shops, tourism, leisure and recreation.

It is considered that the main issues in the determination of the application relate to:

- Impact of the proposals on vitality and viability of the town centre
- Impact on the conservation area
- Amenity Issues
- Highway safety Issues
- Other Issues

Impact of the proposals on vitality and viability of the town centre

The proposal lies close to the heart of the town centre and within a designated Primary Shopping Frontage. Within such areas the conversion or change of use of the ground floor areas of existing retail premises to non-retail uses are only permitted (under Policy E10 of the Local Plan) where the proposed use would not undermine the retail character, vitality or function of the Primary Shopping Area. In this instance, the application proposes an A3 (restaurant) use in place of the existing A2 (professional services) use. The A2 use is dormant as the former shoe repair business has closed.

Policy E10 of the Local Plan states that permission will only be granted for the conversion or change of use of the ground floor of existing shops to non-retail uses where the proposal would not undermine the retail function, character, vitality and viability of the Primary Shopping Area. In such circumstances there is a requirement to market the property for a minimum period of 12 months to determine whether or not there remains a need for such uses. In this instance, the ground floor of the building is not currently (nor was it last) in use as a shop as the former use was an A2 use, as such the proposal would not involve conversion or change of use of a shop within the primary shopping frontage area and therefore the requirement for marketing to take place is less explicit. At present the property is empty and is providing no benefit to the vitality and viability of the area.

This is not a large premises and does not have a large shop front or visual presence and is located on the edge of the primary shopping area where there are a variety of uses in the locality. The introduction of a new A3 use has the potential to add to the vitality and viability of the area, to a similar or greater extent as the former A2 use and therefore the vitality and viability of the Primary Shopping frontage would not be harmed and there would be a neutral impact on the retail function of the area. There is therefore no objection to the principle of the change of use where the proposal would have no negative impact on the vitality or viability of the town centre. Indeed the re-use of the upper floors of the building, which are currently vacant, for a residential use has the potential to have some, albeit minor, benefits in increasing activity in the town centre. In addition, it is recognised that there is general support for such proposals within permitted development legislation, subject to consideration of other factors.

Impact on Conservation Area

The external changes proposed are exclusively to the rear of the site where they are almost entirely hidden from public view. The changes proposed involve: alterations to an existing single storey offshoot, to allow for the external staircase, and; alterations to fenestration to include a new uPVC door and window at first floor level. There is

also a proposal for an external flue to serve the commercial kitchen, this would run up the rear elevation of the building at its northern side and across the roof before terminating in a vertical flue set behind and to the rear of the existing chimney stack. The agent has confirmed that the flue can be painted in a matt black finish and this could be made subject of a condition. In this instance whilst the property is within the conservation area, the rear elevation is not prominent or readily visible from public view and most of the windows on the rear elevations of adjoining properties appear to have been replaced in uPVC or similar.

The external staircase and extract flue are the most visible elements of the development but these are not readily visible from public view and their addition is not therefore considered to have any harmful impact on the conservation area.

Amenity Issues

The primary focus of the objections received relate to the potential for adverse impact on the amenity of adjoining and local residents, in particular due to noise and odours associated with the proposed use.

In terms of odours these would be related to cooking smells from the commercial kitchen. The application now includes details of the proposed filtration and extraction system proposed and the Environmental Health Officer has confirmed that these are fit for purpose and has raised no objections in this respect.

In relation to noise the concern is twofold, firstly in terms of general noise associated with the proposed use, including from staff using the kitchen area and yard to the rear and secondly from the extraction system. In relation to general noise there is less ability for direct control over this but it is certainly not uncommon for A3 uses to co-exist alongside residential uses and in town centres this is common. There is no reason why with responsible management and control over the opening hours of the premises the use should generate a level of noise that would result in unacceptable impact on adjoining occupiers. In respect to the noise from the extraction system the applicant has at the request of the Environmental Health Officer provided additional technical details of this and of the internal kitchen layout to serve the proposed restaurant use. The submitted details include details of the filtration system within the kitchen to reduce odours and the method of fixing and noise mitigation measures that would be installed to ensure that the noise of the extraction system is mitigated to a level appropriate for the location of the site with adjoining residential properties.

The use of the upper floors for residential use would require the creation of an external access stairway to the rear of the property. This staircase would run parallel to the wall on the northern site boundary and lead up to a small access deck and first floor entrance door. The size of the entrance deck would not make it conducive for use as an external dining or amenity area but there is some potential for views from the stairs/deck towards windows on the rear elevation of adjoining properties and objection has been raised on this ground. It is acknowledged that the proposed external staircase would result in some potential views back toward windows in the rear elevation of neighbouring properties and those to the north but there are already external access stairs serving first floor areas on either side of No.20 and it is noted that there is already a section of fence panelling that has been installed to provide

privacy screening from the rear access to the adjoining property 18A New Street and whilst this would potentially work to prevent views in this direction, if removed for whatever reason its effect would be lost. It is therefore considered necessary to require details of further methods of privacy screening to prevent loss of privacy.

Highway/Safety Issues

Concern has been raised that the proposed use would increase parking on New Street to the front of the site resulting in highway safety dangers due to the proximity to other road junctions and narrowness of the street. No such objection has been received by Devon County Council as the highways authority. New Street is double yellow lined in the vicinity of the site and therefore parking is not permitted, any parking forward of the building would be a matter for Devon County Council or the police authority to enforce.

In accordance with policy TC9 of the Local Plan parking provision should be sought on most new residential development in line with the guidance in that policy i.e. one space per one bed dwelling. However the policy does provide for exceptions where there is access to on-street parking/public car parks and very good public transport links, that is the case in this situation and as such the provision of dedicated parking is not considered to be essential.

Other Issues

In terms of future occupiers the proposal indicates provision of an enclosed rear garden/yard area which should provide adequate external storage space (for refuse/recycling etc.) so as to comply with the requirements of Policy H3.

Finally, the question of rights of access to the property via the pedestrian path to the rear has been raised. The applicant has subsequently included this access path within the red line site boundary for the application and has completed Certificate B indicating those other parties on which notice has been served. The applicant does therefore appear to have followed the appropriate procedures, should access not be available via the route indicated then further application for access via an alternative route is likely to be required.

Additional concerns have been raised in relation to other environmental health matters in particular in relation to the adequacy of food/waste storage facilities to prevent vermin. However this is not a matter that has been raised as a concern by the environmental health team.

Concern has also been raised relating to fire risk and evacuation egress due to the narrow nature of the rear access. This is a matter for consideration under the building regulations but there is no reason to consider this could not be satisfactorily achieved.

CONCLUSION

The ground floor of the premises is currently vacant but its most recent use has been as a shoe repair business.

The site is located within the town centre and the defined Primary Shopping Frontage where policy seeks to retain existing retail uses and in this instance, the proposal would not result in the loss of an existing retail use and has the potential to add to the vitality and viability of the town centre compared to the existing vacant unit. The principle of the proposal is therefore acceptable.

The proposed change of use would introduce a use could have a potential harmful effect on residential amenity and concerns have been raised from neighbouring residents in this regard. The application includes details of a full extraction system and commercial kitchen layout designed to minimise noise and odour associated with the proposed use and the Environmental Health Officer considers these to be appropriate. These details can be conditioned alongside a condition controlling the hours of opening to remove the potential for late night noise.

To facilitate the change of use and to provide independent access to the first floor of the premises it is proposed to construct a new external access staircase at the rear of the site. There are similar accesses already serving the upper floors of adjoining properties and the rear elevation of the property is not prominent or particularly visible from public view. Similarly, the proposed extract flue to serve the proposed restaurant use has been routed to minimise its impact and is not considered to result in any visual harm or wider impact on the designated conservation area.

Subject to the imposition of conditions, it is considered that the proposed use could be acceptability accommodated without significant amenity impact, would in addition provide an additional residential unit and has the potential to add to the vitality and viability of the town centre, on this basis the application is recommended for approval.

RECOMMENDATION

APPROVE subject to conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be carried out as approved.
(Reason - To comply with section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.
(Reason - For the avoidance of doubt.)
3. Prior to the initial occupation of the residential unit hereby permitted a privacy screen shall be erected to the north side of the external access stairs and first floor entrance deck in accordance with details that shall have been previously submitted to and approved in writing by the Local Planning Authority. The screen shall then be permanently maintained and retained in accordance with the approved details.

(Reason - In the interests of the privacy and amenity of neighbouring occupiers in accordance with policy D1 (Design and Local Distinctiveness) of the Adopted East Devon Local Plan 2013-2031.)

4. Prior to the initial use of the ground floor of the property, for use as a restaurant/café, the extraction system detailed in the specification letter from Phoenix fabrications (South West) Ltd. dated 30.05.19 and as shown on the accompanying 'proposed extract ventilation' section plan, shall be installed and brought into use and thenceforth operated subject to the following restrictions:
 - The extraction system shall not be operated between the hours of 23.30hrs and 10.00hrs the following day, on any given day
(Reason - In the interests of the amenity of neighbouring occupiers in accordance with policy D1 (Design and Local Distinctiveness) and EN14 – Control of Pollution of the Adopted East Devon Local Plan 2013-2031.)
5. Notwithstanding the requirements of condition 4 prior to the initial beneficial use of the extraction system all external components shall be painted matt black and thereafter maintained as such.
(Reason - In the interests of the character and appearance of the area and the preservation of the surrounding conservation area in accordance with policies D1 (Design and Local Distinctiveness) and EN10 – Conservation Areas of the Adopted East Devon Local Plan 2013-2031.)
6. The premises shall not be open for business outside the hours of 10.00 hours and 23.00 hours on any day.
(Reason - To protect adjoining occupiers from excessive noise in accordance with Policies D1 – Design and Local Distinctiveness and EN14 – Control of Pollution of the Adopted East Devon Local Plan 2013-2031.)

Plans relating to this application:

proposed extract ventilation (additional info)	Sections	30.05.19
Amended	Location Plan	08.05.19
1A : proposed extract ventilation (additional)	Other Plans	08.05.19
MO/EDDC/P2 Rev B (amended)	Proposed Combined Plans	08.05.19

List of Background Papers

Application file, consultations and policy documents referred to in the report.

