
MAIN CASE

Proposal: Change of use from A1 (previous butchers shop) to a deli/cafe (mixed use A1/A3) use with ancillary hot food takeaway (e.g. sausage rolls, soup, coffee, toasted sandwiches and similar products) and installation of extraction equipment

Location: 65 High Street Sutton Ely Cambridgeshire CB6 2NL

Applicant: Mr Petros Petrou

Agent:

Reference No: 13/00333/FUL

Case Officer: Ann Caffall

Parish: Sutton
Ward: Sutton
Ward Councillor/s: Councillor Philip Read
Councillor Peter Moakes

Date Received: 14 May 2013 Expiry Date: 9 July 2013

2.1 EXECUTIVE SUMMARY

The application is brought before Committee at the request of the local member Cllr Moakes.

- 1.1 A1 retail use of this site may continue without the need for planning consent. In view of the planning history, your Officers are mindful of the future use of this unit. Following discussion with the applicants the nature of the application has been changed.
- 1.2 The application now seeks consent to change the use of the premises from A1 to a mixed A1/A3 use (deli/café), with ancillary hot food takeaway and installation of extraction equipment. The degree to which the hot food take away items are ancillary to the main use, is in practice a question of fact and degree. Court decisions have held this to be a “small proportion” of sales and between 4 - 10% of total sales.
- 1.3 Provided the cooking or heating of products for eating off the premises remains ancillary to the primary activity of the delicatessen and café, then Officers consider the proposed mix of uses is acceptable. Should there be a suspected breach in this use and the main use of the premises becomes a hot food takeaway, then the LPA has powers of enforcement. It also can require information to be provided by the applicants, which in this case is likely to include sales figure

1.4 Local representations support the A1/A3 use of the site but would strongly object to the use of the site as a hot food take-away (A5).

1.5 **A Site visit has been arranged for xx.xxam, prior to the Planning Committee meeting.**

1.6 RECOMMENDATION: APPROVE SUBJECT TO CONDITIONS

2.0 THE APPLICATION

2.1 The application seeks consent to change the use from A1 to a deli/café (mixed A1/A3) use with ancillary hot food takeaway e.g. sausage rolls, soup, coffee, toasted sandwiches and similar products and installation of extraction equipment.

2.2 The applicant has removed the A5 – hot food take away from the description of the application and the B2 use for manufacture of school meals to be consumed off the premises.

3.0 THE APPLICANT'S CASE

3.1 The Applicant's case is set out in the supporting statement, which can be viewed online via East Cambridgeshire District Council's Public Access online service, via the following link <http://pa.eastcambs.gov.uk/online-applications/>. Alternatively a paper copy is available to view at the East Cambridgeshire District Council offices, on the application file.

3.2 Prior to the submission of the application, the applicants invited people in the village to meet with the applicants. A questionnaire was given to each attendee. The aim of the consultation was to gauge public opinion as to what they would like the unit to be used for, to gauge what peoples shopping habits might be and what people can afford and to test people's real knowledge and pre-conceptions about the calorific and nutritional value of fish and chips and its fat content. Analysis of the questionnaire found that the overwhelming preferred use of the premises was for a deli/café.

3.3 The applicants have requested opening hours of 8am – 7pm Monday to Friday and 8am to 8pm on Saturdays. No Sunday or bank holiday opening is requested.

4.0 THE SITE AND ITS ENVIRONMENT

4.1 The single storey vacant shop unit is situated on the southern side of The High Street within a predominantly residential area. Access to the rear of the site is via a shared driveway with No 63High Street, a two storey dwellinghouse, where there is garage parking.

5.0 PLANNING HISTORY

5.1

11/01010/FUL	Change of use from A1 (butcher shop) to A5 (take away) and installation of extractor fan	Refused	02.02.2012
12/00814/FUL	Change of use from A1 (butchers shop) to A5 (take away) and installation of extractor fan	Withdrawn	21.09.2012

6.0 CONSULTATION RESPONSES

- 6.1 Sutton Parish Council – The Parish council welcomes the retail use in the village. The Sutton Vision welcomes the keeping of a retail outlet but has two concerns that can be addressed by applying conditions:-
- Appropriate wording to ensure that ancillary hot food take away doesn't become primary hot food takeaway.
 - Restricting hours of operation to those proposed in the application to prevent evening opening, to prevent pressure on High Street parking in the evening and problems associated with noise and disturbance. Restriction on hours of operation should reflect the need to control comings and goings outside those hours for food to be prepared for the following day, as this could involve the operation of the extractor fan late at night generating further noise and fumes.
- 6.2 Highway Authority – The site is located on the unclassified section of the High Street. The building was formerly a butchers shop. Customer on-street parking patterns are likely to be different to the proposed development than for a butchers. However, drivers have a duty to park safely without causing obstruction under highway law so I do not consider that the proposal can be considered to pose any adverse highway safety effect.
- 6.3 Environmental Services – My concern is that once permission is granted, any A5 use could operate, therefore if the current owner were to sell, there is the potential for any A5 use taking over. Subsequently we need to ensure we have sufficient control to make sure we can protect residential amenity.

There has been no response from the applicants regarding my request for further information. Why is there a silencer located before the extraction fan as well as after? Have the applicants consulted with the extraction engineers? Is the equipment located internally or externally and exactly where the extraction will be positioned in relation to surrounding residential properties? I also need to know how much dispersion there will be – where will the discharge be located and what sort of stack (including how high) are they intending to use. I strongly recommend that the applicants read the Defra guidance as we require further information before

being able to give formal comments regarding the proposals. Will there be any proposed external plant, for example air conditioning or refrigeration units or condensers, if so, we need to know the location.

I would recommend planning conditions to control hours of operation and extraction equipment.

6.4 Conservation Officer – The change of use of the units from a conservation viewpoint will not have an impact on either the character or appearance of the conservation area. However the information provided in regards to the extraction unit is not sufficient. We can't assess the size in comparison to the building or location on the building. More information is required regarding the extraction equipment.

6.5 Neighbours -

High Street – 17, 29, 51, 55, 60, 61, 61A, 63, 64, 65A 69A, 70, 72 72A, 74, 79, Red Lion Lane – 1, The Close – 1, The Brook - 4, The Row - 73, Lawn Lane – 33, Fieldgate – 2, Hillside, – 33, Vermuyden Gardens – 21, Longview 3

Welcome use of the old butchers for sale of fresh food meat, fish, delicatessen; and café; welcome inward investment into village and enhance community places. Total support for A1 and A3 uses - this is what the village needs. However objections to A5 use on grounds of

- long opening hours and pressure of parking safely on the High Street
- Access to properties in the High Street and The Close being blocked by parked vehicles
- increase in litter
- noise disturbance to residential properties particularly in the evening of patrons
- increased cooking smells
- Sutton needs increased retail facilities but doesn't need another takeaway.
- There have been offers on the premises as a retail unit
- We have been waiting for change to happen for two years
- Applicants stated at consultation evening that they would not rule out use of the premises as a fish and chip shop.
- Once granted mixed use with ancillary hot food takeaway it will be used as a fish and chip shop

7.0 THE PLANNING POLICY CONTEXT

7.1 East Cambridgeshire Core Strategy 2009

- CS1 Spatial Strategy
- S6 Transport impact
- EN2 Design
- EN5 Historic conservation

7.2 East Cambridgeshire Draft Local Plan (Pre-submission version) 2013

- GROWTH 2 Locational Strategy
- COM7 Transport impact
- COM8 Parking provision
- ENV2 Design

8.0 CENTRAL GOVERNMENT POLICY**8.1 National Planning Policy Framework 2012**

Core Planning Policies

3 Supporting a prosperous rural economy

12 Conserving and enhancing the historic environment

9.0 PLANNING COMMENTS

9.1 The site lies within the settlement boundary and Conservation Area of Sutton. The premises were previously used as a butchers shop (Class A1) and have been vacant since 2011. The main issues revolve around the primary use of the premises and the impact of the proposal on the conservation area on residential amenity.

9.2 Primary Use

9.3 The initial application proposed a range of uses of the premises which included A5 (hot food take away) and use of the site for the preparation of school dinners to be served off the premises. In view of the planning history of the site and objections from the Parish Council, Conservation Officer, Environmental Health Officer and local residents, Officers have consistently had concerns regarding the sale of hot food from the premises, the intensification of other uses on the site and the impact of any extraction equipment on both residential amenity and the character and appearance of the conservation area.

9.4 Shops play an important role in community life in rural villages. A vacant retail unit can have a negative impact on the vitality of the area and the street scene. Officers have been anxious to be constructive in their approach to the use of this site. They have been in discussion with the applicant in an attempt to achieve a mutually satisfactory use of the premises. During this discussion process, the site could have been used by the applicants, at any time, as a delicatessen, without the need for planning permission. The LPA could not prevent the use of the premises as an A1 retail unit.

9.5 It is important for the applicants, adjoining neighbours and the LPA that the primary use of the premises is clear and what level of use can be considered to an ancillary use. What role can conditions play in controlling the use of the business, without being unreasonable for the operation of the premises?

9.6 Case Law provides some clarity as to what is the planning unit and what constitutes a material change in the use of premises. Appeal decisions have also clarified for example, that sandwich shops are an A1 use class for consumption of food off the premises, but this can include e.g. the sale of hot soup and hot pies. The "Costa" type cafe format has been determined to be a mixed A1/A3 use

9.7 The agreed wording of the application is a change of use from A1 (previous butchers shop) to a deli/café (mixed use A1/A3) use, with ancillary hot food takeaway (e.g. sausage rolls, soup, coffee, toasted sandwiches and similar products) and installation of extraction equipment. There is no A5 hot food take away and there is no manufacture of school meals on the premises.

- 9.8 The primary use of the premises will therefore be a mixed use of Delicatessen and Café with any hot food being predominantly consumed on the premises in a small café area. The degree to which the hot food take away items are ancillary to the main use, is in practice a question of fact and degree. Court decisions have held this to be a “small proportion” of sales and between 4 - 10% of total sales.
- 9.9 Provided the cooking or heating of products for eating off the premises remains ancillary to the primary activity of the delicatessen and café, then Officers consider the proposed mix of uses is acceptable. Should there be a suspected breach in this use and the main use of the premises becomes a hot food takeaway, then the LPA has powers of enforcement. It also can require information to be provided by the applicants, which in this case is likely to include sales figures. The scale and type of equipment for cooking purposes is also an indication of the type of food that is being cooked and sold.
- 9.10 **Impact on adjoining occupiers.**
Officers consider that the opening hours that have been requested by the applicants are reasonable for an A1 use and should prevent any late night disturbance and suitable for an A1 retail unit in a village. Parking on the High Street seems most problematic in the evenings and the unit will be closed at 7pm during weekdays and 8pm on Saturdays. Insufficient details have been submitted regarding the fixed plant and equipment. Following the omission of A5 use, it is important that details of any such equipment that is needed for the preparation of hot food for the café, is agreed in the interests of the amenity of local residents and in order to assess the impact on the character and appearance of the conservation area.
- 9.11 **Impact on Conservation Area**
The change of use of the premises in itself will not have a material impact on the conservation area. Any installation of flues however or large fixed plant/equipment may have an impact and therefore details need to be clarified by condition.

10.0 **RECOMMENDATION**

RECOMMENDATION: Approve, subject to the following conditions: -

- 1 For the avoidance of doubt the development hereby approved shall relate only to the primary use of the premises as a mixed A1/A3 use as defined by the Town and Country Planning (Use Classes) Order 2006 as amended.
- 1 Reason: The application has been assessed on the basis of the specified uses, as requested by the applicants. A different use within the “A” Use Class would need to be considered on its own merits, given the location of the premises.
- 2 The development hereby permitted shall be commenced within 3 years of the date of this permission.

- 2 Reason: To comply with Section 91 of the Town and Country Planning Act 1990, as amended.
- 3 The premises shall only be open between the hours of 08:00 - 19:00 Monday to Friday and 08:00 to 20:00 hours on Saturdays.
- 3 Reason: To safeguard the residential amenity of neighbouring occupiers, in accordance with policy EN2 of the East Cambridgeshire Core Strategy 2009.
- 4 Delivery times to the premises shall be restricted to the hours of 08:00 - 19:00 each Monday - Friday and 08:00 - 20:00 on Saturday.
- 4 Reason: To safeguard the residential amenity of neighbouring occupiers, in accordance with policy EN2 of the East Cambridgeshire Core Strategy 2009.
- 5 The specific rated noise levels emitted from plant and/or machinery located on the site shall not exceed the existing background noise level or 35dB, whichever is the higher. The noise levels shall be measured and/or calculated at the boundary of the nearest noise sensitive property. The measurements and assessment shall be made in accordance with BS4142:1997
- 5 Reason: To safeguard the residential amenity of neighbouring occupiers, in accordance with policy EN2 of the East Cambridgeshire Core Strategy 2009.
- 6 Prior to the commencement of use of the site, noise details and locations of all external plant, including condensers refrigeration units, and air conditioning units, together with any mitigation measures to ensure the noise levels are within acceptable limits, shall be submitted to and agreed in writing with the Local Planning Authority. The agreed details shall be implemented and thereafter retained as such, unless otherwise agreed in writing by the way of a formal planning application.
- 6 Reason: To safeguard the residential amenity of neighbouring occupiers, in accordance with policy EN2 of the East Cambridgeshire Core Strategy 2009.
- 7 Prior to the commencement of use of the site, details of the extraction system (including type, location and noise levels) shall be submitted to and agreed in writing with the Local Planning Authority. The agreed scheme shall be in line with current government guidance for the type of food being cooked/prepared and shall be implemented and retained thereafter unless otherwise agreed by the Local Planning Authority by way of a formal application.

- 7 Reason: To safeguard the residential amenity of neighbouring occupiers, and the character and appearance of the conservation area in accordance with policies EN2 and EN5 of the East Cambridgeshire Core Strategy 2009.

<u>Background Documents</u>	<u>Location(s)</u>	<u>Contact Officer(s)</u>
<Application Files 13/00333/FUL, 12/00814/FUL 11/01010/FUL	Ann Caffall Room No. 011 The Grange Ely	Ann Caffall Senior Planning Officer 01353 665555 ann.caffall@eastcambs.gov.uk

<http://pa.eastcambs.gov.uk/online-applications/simpleSearchResults.do;jsessionid=C147DD7D6A25403B6BF360D5B17D4F18?action=firstPage>