

2 UPPER MARSH MAY BANK NEWCASTLE  
MRS J DAVIES. 12/00496/FUL.

**The Application** is for full permission for the change of use from a betting office (Use Class A2) to a café (Use Class A3).

The site is within the urban area of Newcastle and adjoins Wolstanton Marsh which is part of the Green Heritage Network as defined on the Local Framework Proposal Map.

The application has been called to Committee for decision due to increase in traffic and lack of parking, increases in anti social behaviour and litter, noise and odour issues.

**The statutory 8 week determination period expires on 16 November 2012.**

**RECOMMENDATION**

**Permit subject to conditions relating to the following matters:-**

- (i) Standard Time limit.
- (ii) Approved plans/drawings/documents.
- (iii) Hour of use restricted to 8 am to 7.30 pm on any day.
- (iv) The use restricted to Class A3 use only (to clarify the extent of the permission which does not include permission for a hot food takeaway, Class A5).
- (v) Control over the food types prepared and equipment used.
- (vi) Control over refuse storage and collection arrangements.
- (vii) Control over arrangements for the collection and disposal of litter resulting from the use.
- (viii) Prior approval of colour of external flue to fume extraction system, and implementation in accordance with the approved details.
- (ix) Prior approval of the kitchen ventilation system.
- (x) Cessation of cooking in the event of an extraction failure.
- (xi) Control over the installation of air cooling/air extraction equipment.
- (xii) Control over food and grease debris from entering the drainage system.

**Reason for Recommendation**

Subject to conditions, it is not considered that there would be any significant adverse impact on residential amenity. Whilst no on site customer parking is proposed it is not considered that highway danger as a result of vehicles parked on the highway and as such it is not considered that an objection could be sustained on the grounds of impact on highway safety. Subject to a condition requiring the finished colour of the proposed extract flue and matching materials for the window to be bricked up it is considered that the proposal will not result in any visual harm. The proposal accords with Policies D1, D2 and TC4 of the Staffordshire and Stoke-on-Trent Structure Plan 1996 – 2011, Policy R15 of the Newcastle-under-Lyme Local Plan 2011 and the aims and objectives of the National Planning Policy Framework 2012.

**Policies and Proposals in the Approved Development Plan Relevant to This Decision:-**

West Midlands Regional Spatial Strategy 2008 (WMRSS)

Nil

Staffordshire and Stoke on Trent Structure Plan 1996 – 2011 (SSSP)

Policy D1: Sustainable Forms of Development  
Policy D2: The Design and Environmental Quality of Development  
Policy T12: Strategic Highway Network

Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (adopted 2009) (CSS)

Strategic Aim 5: To foster and diversify the employment base;

Strategic Aim 7: To help Newcastle Town Centre to continue to thrive;  
Policy SP1: Spatial Principles of Targeted Regeneration.  
Policy SP2: Spatial Principles of Economic Development  
Policy SP3: Spatial Principles of Movement and Access  
Policy ASP5: Newcastle and Kidsgrove Urban Neighbourhood Area Spatial Policy.  
Policy CSP1: Design Quality

#### Newcastle under Lyme Local Plan 2011 (LP)

Policy R15: Non-retail uses in District Centres and other Groups of Shops  
Policy T16: Development – General Parking Requirements.  
Policy N16: Protection of a Green Heritage Network.

#### Other Material Considerations Include:

#### National Planning Policy Framework (March 2012)

#### Supplementary Planning Guidance

Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance SPD (Nov 2010)  
Hot Food Takeaways (February 1996)

#### The Secretary of State's Announcement of His Intention to Abolish RSS

The Secretary of State has made it clear that it is the Government's intention to revoke RSSs and the Localism Act 2011, which includes powers to give effect to that intention, received Royal Assent on 15 November 2011. However, pending the making of a revocation order in accordance with the new Act, the RSS remains part of the statutory development plan. Nevertheless, the intention to revoke the RSS and the enactment are material considerations.

#### Relevant Planning History

1963 NNB6028 Permit – change of use to betting office

#### Views of Consultees

The **Highway Authority** has no objections on highway grounds to this proposal. They further advise that no NTADS contribution is required as the proposed development will not generate sufficient additional trips onto the highway network within the PM peak than the permitted use of the site.

The **Environmental Health Division** recommends refusal due to potential noise and odour impacts from the proposed development. They further advise this matter can be easily and adequately controlled by the installation of a silencer connected to the kitchen ventilation/extraction system the applicant is proposing and following this they would not have any objections to the proposal subject to conditions relating to the following:

- Restrictions on the nature of the food business to ensure the food types prepared and the equipment used within the kitchen is limited to that proposed.
- Hours of operation restriction to between 8am and 11pm Monday to Saturday and 8am to 10.30pm on Sundays.
- Waste collection and deliveries shall not take place before 8am on any day or after 10.30pm on Monday to Saturday and 10pm on Sundays.
- Litter disposal and collection arrangements to be agreed.
- Prior approval of a fume extract system which shall be provided before the premises opens and thereafter maintained.
- Cessation of cooking in the event of ventilation failure.
- Control over air cooling and air extraction equipment.
- Prevention of food and grease debris from entering the drainage system.
- Prior approval of refuse storage.

The views of the **Police Architectural Liaison Officer** have been sought and if received will be reported.

## **Representations**

A petition containing 168 signatures and objecting to the proposal has been received raising concerns in respect of traffic and parking, litter, anti social behaviour, devaluation of property and as a takeaway is already trading next door and others in the community.

Thirteen letters of objection have been received raising the following concerns:-

- Increase in a litter problem in the area.
- Increase in anti social behaviour.
- Increase in traffic.
- Lack of parking.
- Additional vehicles visiting premised will make visibility difficult at school times endangering lives.
- Too many other similar uses.
- Increased litter.
- Control of vermin.
- Odour issues.
- Noise nuisance.
- Competition for the existing businesses in the area.

Two letters of support have been received advising:-

- The proposal would be very good for the area.
- Would bring an empty eye sore of a building adjacent to the Marsh back into use.
- There is no other café in May Bank
- The concern regarding anti social behaviour and litter should not be an issue given it is intended as a daytime use.
- There is an existing car park close to premises.
- Concerns regarding who has been asked to sign the submitted petition against the proposal

## **Applicant/Agent's Submission**

Since the submission of the application the applicant has provide further information/details regarding the proposal, namely:-

- Sample menu
- Confirmation they seek planning permission for a café use only
- Alterations to opening hours from 7 am to 8 am and opening to 7.30 pm (to cater the occasional birthday party etc.)
- Percentage breakdown of envisaged business
- Details of grease traps
- Details of extraction units
- Waste and Litter Plan

## **Key Issues**

The application is for the change of use of a vacant betting shop (use class A2) to a café (use class A3). As initially submitted the application was seeking permission for a change of use to a hot food takeaway (use class A5) and café (use class A3) however this was later amended by the applicant to a café use only. No.2 Upper Marsh is a single storey flat roofed detached property. It is located adjacent to existing two storey fish and chip shop to one side and two storey residential properties to the rear and other side.

The proposal also involves the installation of an extraction system. The majority of this system would be contained within an enclosed area of the premises with a 300mm diameter pipe protruding 1 metre above the level of the flat roof.

The key issues to be considered in the determination of this application are the following:-

- Is the principle of the change of use acceptable?
- Would the proposal cause harm to the occupiers of neighbouring properties and the wider area?
- Would the proposal be detrimental to highway safety?
- Is the introduction of an extraction flue acceptable in visual terms?

Is the principle of the change of use acceptable?

The proposed use is located in a group of 2 buildings. The application premises have been vacant for some time, before that it was in use as a betting shop. The neighbouring property is hot food takeaway use.

With the exception of the two above uses Upper Marsh serves as access to residential property, in addition there is a vehicular exit onto Upper Marsh serving the May Bank Infants School. Upper Marsh also front onto Wolstanton Marsh.

Policy R15 of the Local Plan relates to the consideration of this type of proposed use in the district centres of Chesterton, Silverdale and Wolstanton and other groups of 3 or more shop units. Whilst the site is within a group of two buildings it is in close proximity to other commercial property in May Bank and as such Policy R15 should be taken into consideration. The policy, however, relates to the change of use from retail to non-retail uses and as the lawful use of the premises is a betting shop falling within Class A2 the proposal will not conflict with this policy.

Policy N16 of the Local Plan relates to development within or adjacent to green heritage areas. Wolstanton Marsh is such an area and in accordance consideration must be given to whether the proposal will harm the integrity of the Marsh its ecological and landscape value as an area of open space. It is not considered that the proposed use would have such adverse affects on the Marsh and as such there is no conflict with this policy.

Overall it is considered that the introduction of a café use would acceptable in land use terms subject to the considerations set out below.

Would the proposal cause harm to the occupiers of neighbouring properties and the wider area?

The Supplementary Planning Guidance on Hot Food Takeaways gives advice on the suitability of this type of use in different areas. Whilst the proposal is not for a hot food takeaway, it is considered this guidance can be used a starting point for the decision maker.

As indicated above, the property is within a predominately a residential area and in considering the advice in the SPG it is considered that the site falls within Category C1 of that Guidance which are distinguished by the degree of homogeneity of the surrounding residential areas.

The Guidance recommends the opening hours of the use should be restricted to no later than 11pm on Monday to Saturday and 10.30 pm on Sundays and Bank Holidays. The applicant is not seeking open beyond these times and is suggesting a closing time of 7.30 p.m. It is considered that by conditioning such opening hours there will be no adverse effect to the living conditions of nearby residents that would justify the refusal of the application.

The representations received on this proposal raise a number of other concerns relating to the proposed use. Some of which are not material planning considerations such the devaluation of property and the introduction of a business competitor. Those issues which are material planning consideration are:-

Litter

The applicant has submitted a waste and litter plan in which a number of measures are proposed to control both the waste and litter generated by the proposal including the provision of litter bins both inside and immediately outside the premises and a regular litter pick of the immediate area. The Environmental Health Division supports this approach and recommends imposing a condition relating to this matter.

### Anti Social Behaviour

Whilst the views of the Police Architectural Liaison Officer are awaited, the proposed café use would be a predominantly a day time use and as such it is unlikely result in any increase in anti social behaviour in the area particularly if the hours of operation as proposed are restricted through the imposition of conditions.

### Similar uses in the area

A survey of the area carried out by your officer found two hot food takeaways uses, one adjacent to the application and the other at the southern end of the High Street. Approximately in the centre of the High Street frontage there is a delicatessen/sandwich bar use which probably falls into a retail A1 use. There are no other cafes in this area. It is considered there is still a good mix of uses within the May Bank High Street and within the immediate street and the introduction of this proposed use would not adversely affect this mix.

### Odour and noise nuisance

As stated the proposal includes the introduction of fume extraction system which includes filters to remove any odours for the cooking process. Whilst not part of the submitted detail to date any noise generated by the extraction system can be appropriately controlled with the installation of silencer on the extraction system. The applicant has indicated a willingness to install the appropriate ventilation system and associated noise reduction measures.

Given that the proposed use is predominantly during the daytime, and that existing ambient noise level is mainly from road noise, any other noise generated by the proposed use or the users of the premises would not have an adverse impact on adjacent residential properties.

### Would the proposal be detrimental to highway safety?

There is no off-street parking associated with the premises, on street parking is possible outside the premises and adjacent residential properties in the area, there is a small public car park adjacent to Wolstanton Marsh within easy walking distance of the premises. The Highway Authority has raised no objections to the proposal.

On street parking currently takes place in connection with the adjoining hot food takeaway and as such could take place at any time during the day and night. In addition the current lawful use of the premises would generate a demand for parking which cannot be met on site. Any additional on street parking over and above that generated by the existing lawful use would not be to the extent where obstruction or danger to other highway uses would occur. As such and in light of the recommendation of the Highway Authority it is considered that the proposal would not be detrimental to highway safety.

### Is the introduction of an extraction flue acceptable in visual terms?

As discussed above the proposal involves the introduction of an extraction flue outlet through the flat roof of the premises. The flue would extend 1 metre above the level of the flat and would have an overall diameter of 300mm. This would be positioned in the middle of the building and as such when viewed from the street level the full extent of the flue would not be seen.

It is considered appropriate to impose a condition to any approval requiring the external part of the flue to be finished in a recessive colour.

With this condition imposed it is considered this part of the proposal would adversely harm the visual amenity of the area.

### **Background Papers**

Planning File

Development Plan

National Planning guidance/statements

### **Date Report Prepared**

30 October 2012