

## Planning Committee

Report of Head of Planning and Building Control on 07 October 2021

**Plans List Item Number: 3**

### Reason for bringing to committee

Significant Community Interest

### Application Details

**Location:** VOIJON LOUNGE, THE GREEN, DARLASTON, WEDNESBURY, WS10 8JP

**Proposal:** PART CHANGE OF USE FROM RESTAURANT (USE CLASS E(B)) TO CONVENIENCE STORE (USE CLASS E(A))

**Application Number:** 21/0909

**Case Officer:** Rebecca Rowley

**Applicant:** T Arulananthapillai

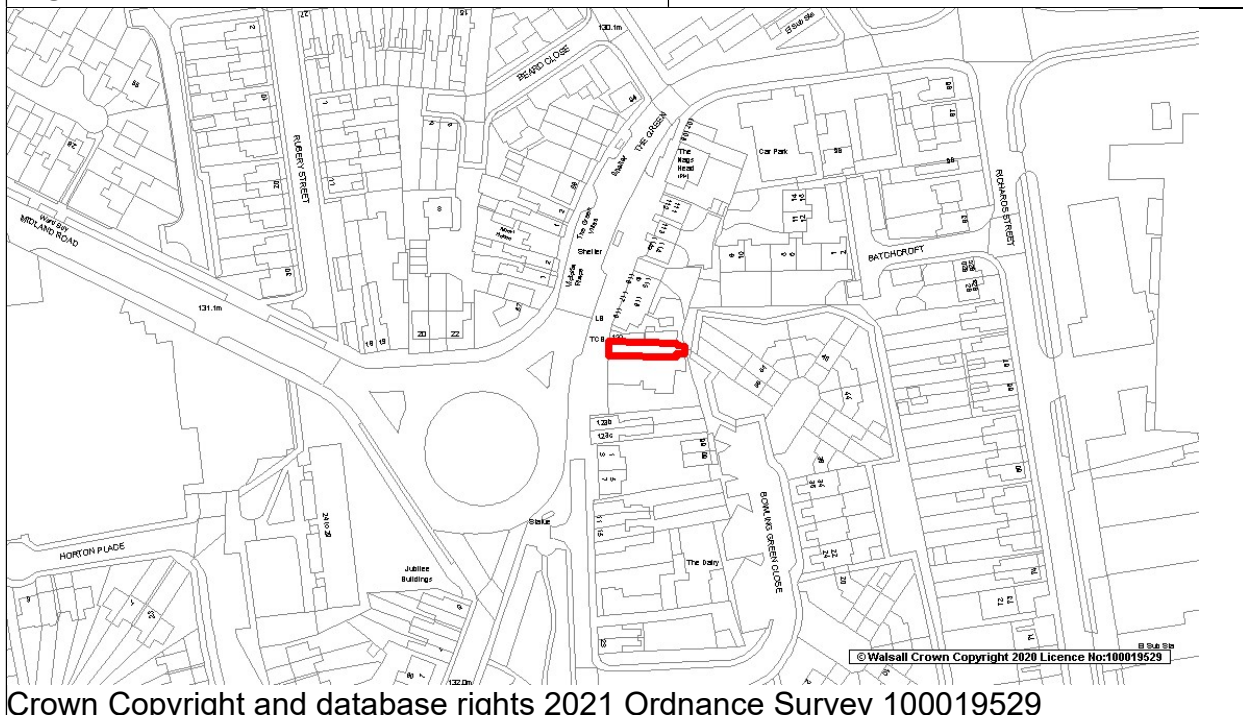
**Ward:** Bentley And Darlaston North

**Agent:** DPM (Design Project Management) Services

**Expired Date:** 06-Aug-2021

**Application Type:** Full Application: Change of Use

**Time Extension Expiry:** 15-Oct-2021



## Recommendation:

Planning Committee resolve to Delegate to the Head of Planning & Building Control to Grant Planning Permission Subject to Conditions and subject to

- The amendment and finalising of conditions;
- Overcoming the outstanding objection raised by Planning Policy Team

## Proposal

This application seeks permission for a change of use of part of the ground floor of the existing restaurant to a retail outlet. The proposed area for retail use would be 90.5m<sup>2</sup> out of a total restaurant area of approximately 224m<sup>2</sup>.

The proposed retail outlet would be accessed via an existing entrance door on the left hand side of the ground floor of the building and would consist of 67.5m<sup>2</sup> of retail floor space and 10.5m<sup>2</sup> of food storage space. A staff toilet would be provided at the rear of the site from the existing staff toilet of the restaurant.

There are no proposed extensions or alterations to the exterior of the building, the only internal alterations would be the addition of an internal wall to separate the shop from the restaurant area.

The proposed retail unit would employ 2 full time and 2 part time members of staff and the requested opening hours are 05:00am to 22:00pm Monday to Sunday and Bank Holidays.

## Site and Surroundings

The existing site building is a bar and restaurant known as Voujon Lounge. It is located on the ground floor of a two storey building comprising the restaurant and bar on the ground floor and a function room known as Sapphire Suite on the first floor. Branding for the Sapphire Suite, originally promoting a bar, snooker lounge and food has been in situ since at least April 2011. The site is listed on the Local Land and Property Gazetteer as Voujon Lounge function room since 13/04/2016. It is considered that the extant use of the building was originally previous use class A4 (now Sui Generis) but the use has evolved over time from being a drinking establishment with expanded food provision to being a restaurant and function room. No planning history can be found for this change.

It is located on Darlaston Green in an area surrounded by mainly residential use with a small parade of commercial premises to the norther side of the site including a chip shop, café and newsagents/off licence. On the opposite side of the street amongst a row of terraced residential dwellings there is one individual commercial unit which operates as a hairdressers. The site is approximately 470m outside of the Darlaston District Centre Boundary and has no specific allocation in Walsall's Site Allocation Document.

There is a bust stop a few metres along the road from the site with services running to Walsall and Bilston. There is no parking within the site boundary but there is an allocated on street parking area in front of the adjacent row of shops which can accommodate up to 5 vehicles, as well as allocated on street parking on the opposite side of the road for a further 5 vehicles.

## Relevant Planning History

BC17592P – change of use to snooker and social club – granted permission – 11/09/1986

## Relevant Policies

### **National Planning Policy Framework (NPPF)**

[www.gov.uk/guidance/national-planning-policy-framework](http://www.gov.uk/guidance/national-planning-policy-framework)

The NPPF sets out the Government's position on the role of the planning system in both plan-making and decision-taking. It states that the purpose of the planning system is to contribute to the achievement of sustainable development, in economic, social and environmental terms, and it emphasises a "*presumption in favour of sustainable development*".

**Key provisions** of the NPPF relevant in this case:

- **NPPF 4 – Decision Making**
- **NPPF 6 – Building a strong, competitive economy**
- **NPPF 7 – Ensuring the vitality of town centres**
- **NPPF 11 – Making effective use of land**
- **NPPF 12 – Achieving well-designed places**

On **planning conditions** the NPPF (para 56) says:

Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.

On **decision-making** the NPPF sets out the view that local planning authorities should approach decisions in a positive and creative way. They should use the full range of planning tools available and work proactively with applications to secure developments that will improve the economic, social and environmental conditions of the area. Pre-application engagement is encouraged.

### **National Planning Policy Guidance**

On **material planning consideration** the NPPG confirms- planning is concerned with land use in the public interest, so that the protection of purely private interests... could not be material considerations

### **Reducing Inequalities**

The Equality Act 2010 (the '2010 Act') sets out 9 protected characteristics which should be taken into account in all decision making. The **characteristics** that are protected by the Equality Act 2010 are:

- age
- disability
- gender reassignment

- marriage or civil partnership (in employment only)
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

Of these protected characteristics, disability and age are perhaps where planning and development have the most impact.

In addition, the 2010 Act imposes a Public Sector Equality Duty “PSED” on public bodies to have due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality and to foster good relations. This includes removing or minimising disadvantages, taking steps to meet needs and encouraging participation in public life.

Section 149(6) of the 2010 Act confirms that compliance with the duties may involve treating some people more favourably than others. The word favourably does not mean ‘preferentially’. For example, where a difference in ground levels exists, it may be perfectly sensible to install some steps. However, this would discriminate against those unable to climb steps due to a protected characteristic. We therefore look upon those with a disability more favourably, in that we take into account their circumstances more than those of a person without such a protected characteristic and we think about a ramp instead. They are not treated preferentially, because the ramp does not give them an advantage; it merely puts them on a level playing field with someone without the protected characteristic. As such the decision makers should consider the needs of those with protected characteristics in each circumstance in order to ensure they are not disadvantaged by a scheme or proposal.

### **Development Plan**

[www.go.walsall.gov.uk/planning\\_policy](http://www.go.walsall.gov.uk/planning_policy)

### **Saved Policies of Walsall Unitary Development Plan**

- GP2: Environmental Protection
- ENV32: Design and Development Proposals
- ENV35: Appearance of Commercial Buildings
- S1: Definition of Town Centre Uses
- S6: Meeting Local Needs
- S7: Out-of-Centre and Edge-of-Centre Developments
- T13: Parking Provision for Cars, Cycles and Taxis

### **Black Country Core Strategy**

- EMP1: Providing for Economic Growth
- CEN6: Meeting Local Needs for Shopping and Services
- CEN7: Controlling Out-of-Centre Development
- ENV2: Historic Character and Local Distinctiveness

### **Supplementary Planning Document**

## Designing Walsall

- DW3 Character
- DW8 Adaptability

## Consultation Replies

*(Case Officer's comments in italics)*

### Coal Authority

No comments to make

### Community Safety Team

No response received

### Environmental Health

No comments to make.

### Local Highways Authority

Support

### Pollution Control

There will be no significant impacts or concerns about air quality and contaminated land that are material planning considerations for this application.

### Public Health

No response received

### Strategic Planning Policy

A proposal of this scale and type can be supported where local need can be evidenced to be satisfied by the applicant.

### West Midlands Police

No response received

### West Midlands Fire Service

No response received

## Representations

*(Case Officer's comments in italics)*

10 representations were received from 10 separate neighbouring or nearby addresses raising the following concerns:

- Insufficient car parking for the existing venue and other nearby premises, cars park on the street and outside our houses
- I have to park away from my house (*This is not a material planning consideration for the purpose of this assessment*)
- The roundabout is dangerous, the cars park on it for the restaurant
- Road traffic accidents on the roundabout

- Noise from the existing use (*This is not a material planning consideration for the purpose of this assessment*)
- Noise from cars using the existing premises (*This is not a material planning consideration for the purpose of this assessment*)
- I have signed the petition of over 500 local residents to stop this (*The LPA has not received a petition in relation to this application or any details of whether the petition sets out material planning considerations*)

## Determining Issues

- Principle of Development
- Design, Layout and Character
- Amenity of Neighbours and Amenity of Future Occupiers
- Parking and Highway Safety

## Assessment of the Proposal

### Principle of Development

The application site lies on the A462 which is a district distributor with links to Darlaston Centre, Walsall and Willenhall. It is around 470m outside the northern side boundary of Darlaston District Centre, as identified by Walsall's Site Allocation Document policy SLC1, so would be considered an out of centre/edge of centre location. The site is not allocated or safeguarded for any other use in the plan and there is no overriding need for the land or buildings to be retained for its current use.

Although the site is not within the District Centre Boundary, this section of The Green comprises a row of ground floor commercial uses including a newsagents/off licence, a chip shop and a café, plus a hairdressers on the opposite side of the street.

The building has been in use as the Sapphire Suite, which originally promoted itself as a bar and snooker club with food provision, since at least 2011 this use appears to have evolved over the years to be the Sapphire Suite function room on the first floor and the Voujon Lounge restaurant on the ground floor since 2016. The building was historically a social club, and permission was granted for use as a snooker and social club in 1986.

The application form requests a change of use from planning use class A3 restaurant to planning use class A1 retail use. Following an update of some use classes in September 2020, this would now be a change from planning use class E(b) to planning use class E(a). As the uses now fall within the same use planning class, this change could lawfully be carried out using permitted development rights. However, it is considered that the extant use of the premises should be Sui Generis planning use class (use of its own) as that is the updated use class for the snooker and social club that was granted permission in 1986 and for the original promoted use of the Sapphire Suite as a bar/snooker club with food provision. No planning history can be found for a change of use of the ground floor to a restaurant. Therefore, the proposed change of use from Sui Generis planning use class to planning use class E(a) would require planning permission.

In accordance with saved UDP policy S1, the proposed retail use is defined as a town centre use and should be directed to a town centre, district centre or local centre in the first instance. Policy S6 states in part (c) that 'there are some areas, away from established centres, which are poorly served in quantitative and/or qualitative terms by existing local provision for [convenience shopping]. Out-of-centre development may be appropriate to

meet such specific local needs - otherwise proposals for additional out-of-centre development for town centre uses will be considered against policy S7. The Planning Policy Team advised that this small-scale proposal can be supported where local need can be evidenced to be satisfied by the applicant, as the application is for a centre use out-of-centre and so requires a brief statement from the applicant as to the proposals ability to meet local need in accordance with UDP Policy S6, although it is already well sited with regards to part (e) of this policy and existing retail provision appears to be limited in the surrounding cluster. A statement to this effect has been provided by the applicant which is considered addresses this requirement. The Planning Policy Team have been re-consulted in relation to this statement. Any comments received from the policy team will be included in the supplementary paper.

Furthermore, in accordance with the requirements of the BCCS, the regeneration area supports proposals for shops that serve new residential communities in Darlaston (for instance, new residential development along Citizens Way half a kilometre to the South). The scheme also presents a mix of uses across the ground floor which is comprehensive and supported by local and national policy.

The applicant has advised that the section of the restaurant that is proposed for a change of use is currently unused. Therefore, the re-use of this part of the ground floor of the building could create employment and benefit the local economy. The Local Highway Authority have expressed their support for this proposal so it is considered would not create any adverse effects on highway safety.

The area of the site that is proposed for this use has been allocated as retail space and storage space. A planning condition would be included to secure the maximum size of the retail outlet area to ensure that the storage space is not used as retail space without further consideration by the LPA. This will aid to limit the volume of customers and resultant parking requirements.

It is considered, the applicant has demonstrated the proposed use would meet a local need and therefore the proposed change of use to a retail outlet in this location would accord with the Council's planning policies including UDP Saved Policies S6 and S7 and BCCS Policies CEN6 & CEN7.

### **Design, Layout and Character**

The proposal does not seek permission for any exterior alterations to the building. Any advertisements relevant to the new use that would exceed the requirements of deemed consent would require consideration by an application for advertisement consent.

It is considered that the proposed change of use of part of the ground floor of this building would have limited impact on the appearance of the application site or the character of the locality and would integrate with the existing character of this row of commercial buildings.

### **Amenity of Neighbours and Amenity of Future Occupiers**

The proposed use as a retail outlet would be a commercial use in a building that is currently used for commercial purposes. Multiple concerns have been raised in relation to noise generated by the extant use of the premises. Whilst existing noise concerns are not a material planning concern in the assessment of this application, it is considered that the use of a section of the building as a retail outlet, would likely generate less noise and potential

for antisocial behaviour that the use as a restaurant and function room where users would regularly stay on site for longer periods of time and be leaving the premises later than the 10pm closing time that has been requested by the applicant for the retail outlet. Furthermore, the extant use would likely create cooking odours which would not be created by a retail outlet with no manufacturing or preparation of any product on site. Pollution Control Officers have advised that there are no concerns relating to air quality or odours. Any further comments in relation to this that may be received from Environmental Health will be added to the supplementary paper.

The applicant has requested opening hours of 05:00am to 22:00pm daily including Bank Holidays. Given the nature of the proposed use and the likely infrequency of customers visiting the site in the early hours of the morning it is considered that these opening hours would be acceptable. However, deliveries will be limited to between 08:00am and 10:00pm to limit additional noise that could be generated by larger delivery vehicles to within a timeframe when such vehicles are already likely to be moving in the area. A condition will be included to restrict the hours of opening and delivery times to limit any impacts on the amenity of local residents.

It is considered that the proposed use would create no additional harm to the amenity of local residents in relation to visual amenity, privacy, noise or odours above and beyond the existing situation and would meet the amenity requirements of saved UDP policy GP2.

### **Parking and Highway Safety**

The Local Highways Authority have expressed their support for this proposal and have advised that the site is in a small local centre area where other commercial uses are located. Limited parking is available generally on street that serves the local businesses. The proposed shop is relatively modest in size taking up about half of the ground floor restaurant.

In accordance with the requirements of saved UDP policy T13, the extant use of 90.5m<sup>2</sup> of floor space as a restaurant would require 4 parking spaces. The proposed use as a 67.5m<sup>2</sup> (after taking away the proposed storage room at the rear of the premises) of retail premises would require 5 parking spaces. Therefore the parking requirements for the proposed use would not be dissimilar to the extant use. Concerns regarding insufficient parking in the locality leads to many vehicles being parked along the street and an inability for occupants to park outside their own homes in some cases. Whilst it is acknowledged the extant use may require vehicles to park along the street away from the premises, in an area of unallocated parking for residents, it must be expected that it is not always possible to park outside your own house. Furthermore, it is considered that the proposed use, which would replace the requirements of the extant use rather than add to it, would not create any significant further pressure on parking availability in the local area above and beyond the existing situation.

The Planning Policy Team have advised that in the event of approval being granted, the planning authority may wish to consider conditions that restrict the use of the pavement frontage to ensure no informal parking by visitors threatens the Key Route protections under SAD Policy T4. Unfortunately, this is outside the scope of the planning system to enforce. There is third party legislation and agents better placed to pursue enforcement of pavement parking, consequently the planning authority is unable to add conditions in this instance.

## **Conclusions and Reasons for Decision**

The proposed use is unlikely to result in any significant additional harm to existing centres to warrant a refusal reason, its use will allow a business to operate, provide employment opportunities and will not have any additional impact on surrounding residents nearby above those businesses which currently operate in the area.

As such the key material planning considerations, neighbour comments and consultee responses have been weighed in assessing the planning application and it is considered that the proposed development accords with the aims and objectives of the National Planning Policy Framework, Black Country Core Strategy CEN6 and CEN7, Saved Unitary Development Plan GP2, ENV32, ENV35, T7, T8 and T13 and Supplementary Planning Document Designing Walsall and on balance is considered to be acceptable.

The use of safeguarding conditions in respect of the floor space used for retail outlet purposed and hours of use will ensure that the 6 tests: necessary; relevant to planning and; to the development to be permitted; enforceable; precise and reasonable in all other respects within the national planning guidance are fully met.

Taking into account the above factors it is considered that the application should be recommended for approval subject to the applicant providing the additional information that has been requested to demonstrate that the proposed use would serve a local need in accordance with the requirements of saved UDP policy S6.

### **Positive and Proactive Working with the Applicant**

In response to concerns raised by the Planning Policy Team, officers have requested further supporting information from the applicant to demonstrate that this proposal would meet local needs. No other amendments have been requested. Receipt of this information would enable full support to be given to this scheme.

### **Recommendation**

Planning Committee resolve to Delegate to the Head of Planning & Building Control to Grant Planning Permission Subject to Conditions and subject to

- The amendment and finalising of conditions;
- Overcoming the outstanding objection raised by Planning Policy Team

### **Conditions and Reasons**

1: The development hereby permitted shall be begun not later than 3 years from the date of this permission.

Reason: To ensure the satisfactory commencement of the development in accordance with the requirements of 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 not be carried out otherwise than in accordance with the following approved plans details and documents:

- Application Form, submitted 11/06/2021
- Block Plan, submitted 11/06/2021

- Existing and Proposed Floor Plans, drawing no. DPM278/01, submitted 11/06/2021

Reason: To ensure that the development undertaken under this permission shall not be otherwise than in accordance with the terms of the application on the basis of which planning permission is granted, (except in so far as other conditions may so require).

3: Notwithstanding the details as submitted, the development hereby permitted shall not be carried otherwise than in accordance with the 20.5m<sup>2</sup> area at the rear of the retail outlet unit that is indicated as a food store on Proposed Plans, drawing no. DPM278/01 shall be retained for storage and not used for any other purpose for the lifetime of this development.

Reason: To define the permission and protect the amenity of protect the amenities of nearby residential occupiers in accordance with saved UDP policies GP2 and ENV32.

4. No deliveries shall be taken at or despatched from the site otherwise than between the hours of 08:00am to 10:00pm hours Mondays to Sundays and Bank and Public Holidays.

Reason: To protect the amenities of nearby residential occupiers in accordance with saved UDP policies GP2 and ENV32.

5. The development hereby permitted shall not be open to customers otherwise than between the hours of 05:00am to 22:00pm hours Mondays to Sundays and Bank and Public Holidays.

Reason: To protect the amenities of nearby residential occupiers in accordance with saved UDP policies GP2, ENV32 and S10.

### **Notes for Applicant**

1: This permission is for a change of use only and does not grant permission for any other alterations to the exterior of the premises which may require planning permission.

2: This permission does not grant consent for any signs or advertisements, illuminated or non-illuminated. A separate application may be required under the Town and Country Planning (Control of Advertisements) Regulations 1992 or subsequent legislation.

### **END OF OFFICERS REPORT**